

立法會
Legislative Council

LC Paper No. CB(2)824/01-02

Ref : CB2/SS/7/01

**Paper for the House Committee meeting
on 11 January 2002**

**Report of the Subcommittee on
Attachment of Income Order (Amendment) Rules 2001**

Purpose

This paper reports on the deliberations of the Subcommittee on the Attachment of Income Order (Amendment) Rules 2001 (the Amendment Rules).

Background

2. An attachment of income order (AIO) is a court order requiring an "income source" (e.g. an employer or a tenant) to deduct the maintenance payment from the maintenance payer's income, and pay the deductions direct to the maintenance payee.

3. The Attachment of Income Orders (Amendment) Ordinance 2001 (the Amendment Ordinance) passed on 4 July 2001 seeks to relax the circumstances under which an AIO may be made. Under the Amendment Ordinance, an AIO may be made where the court is satisfied that -

- (a) a maintenance payer has without reasonable excuse failed to make any payment pursuant to a maintenance order;
- (b) where the court has reasonable grounds to believe that the maintenance payer will not make full and punctual payment; or
- (c) where the maintenance payer and the payee agree to the making of an AIO.

In addition, an AIO can be made in the same hearing in which a maintenance order is made or varied and it can be made by the court on its own motion or on application by the maintenance payer, payee or both.

The Amendment Rules

4. The Amendment Rules seek to amend the Attachment of Income Order Rules (Cap. 13 sub. leg.) to provide for the court procedures to implement the Amendment Ordinance.

The Subcommittee

5. The House Committee agreed at its meeting on 14 December 2001 to form a subcommittee to study the Amendment Rules. The Subcommittee has held two meetings with the Administration. The membership of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

Making the procedures more user-friendly

6. Members have requested the Administration to make the application procedures for a new AIO on change of income source more user-friendly to enable applicants to comply with the requirements without legal representation. After consulting the Judiciary Administrator, the Administration has set out its proposals as follows -

- (a) the Home Affairs Bureau (HAB) will prepare, as an administrative document, a blank form for use as the affidavit required for applying for an AIO. Copies of the form will be made available at various places including the Family Court Registry for picking up by the applicants;
- (b) after completing the form, a maintenance payer or maintenance payee can make a statutory declaration before a Commissioner of Oath at the Family Court Registry or other places such as a District Office of the Home Affairs Department;
- (c) the form, and the necessary application procedures, will be set out in a revised version of the information booklets on the AIO Scheme published by HAB;
- (d) the Court Bailiff will, on request from applicants who are not legally represented and have difficulties to effect services of summons, effect service on behalf of the applicants free of charge;
- (e) when the court makes an AIO, it will attach to the AIO a note to remind maintenance payers to comply with the new rule 8(4) (i.e. if he ceases to receive income from the income source to whom the

AIO is directed, he shall notify the court and apply for a new AIO where appropriate). The relevant form referred to in (a) above will also be attached to the note; and

- (f) when revising the information booklet referred to in (c) above, HAB will include additional guidance and proformas aimed at those who have to comply with the procedures without legal representation.

7. Members have also made various suggestions regarding the proposed proformas as well as the information booklets on the AIO Scheme. These suggestions include stating the availability of the free of charge service of summons by Court Bailiff outlined in paragraph 6(d) above and setting out clearly the parties to be notified on change of income source in the information booklets. The Administration has undertaken to consider members' suggestions when designing the proformas and revising the information booklets.

Drafting of new subrules (4) and (5) of rule 8

8. Section 10(c) of the Amendment Rules adds new subrules (4), (5) and (6) to rule 8 to set out the proposed arrangement relating to the maintenance payer's obligation to notify the designated payee of changes in employment and apply for a new AIO.

9. The Subcommittee has pointed out that subrules (4) and (5) are inconsistent as they impose different requirements on the maintenance payer. A maintenance payer is required to comply with the requirements set out in subrule (4)(a) if he has a "new income source" within 21 days after he ceases to receive any income from the original income source. No reference is made as to whether the income is capable of being attached. Subrule (5) provides that if a maintenance payer acquires "any new income capable of being attached", he shall within 21 days after the acquisition comply with the requirements in subrule (5)(a) to (c), which are basically the same requirements as in subrule 4(a).

10. Members have expressed concern that subrule (5) may be interpreted in such a way that a maintenance payer is not required to comply with the requirements if he considers that his new income is not capable of being attached. This may give rise to a situation where a maintenance payer would use this as a pretext for not applying for a new AIO. To plug the loophole, the Subcommittee has suggested that the maintenance payer should be required to notify the relevant parties whenever he acquires any new income, regardless of whether it is capable of being attached.

11. The Administration has accepted the views of the Subcommittee and will move an amendment to subrule (5) to improve the clarity of the provisions.

Proposed amendment

12. The amendment to be moved by the Administration in response to suggestions made by the Subcommittee is in **Appendix II**.

Recommendation

13. The Subcommittee recommends support of the Amendment Rules and the amendment to be moved by the Administration.

Advice sought

14. Members are invited to note the recommendation in paragraph 13 above.

Council Business Division 2
Legislative Council Secretariat
10 January 2002

Appendix I

Subcommittee on Attachment of Income Order (Amendment) Rules 2001

Membership List

Chairman	Hon Margaret NG
Members	Hon Cyd HO Sau-lan
	Dr Hon LUI Ming-wah, JP
	Hon CHAN Yuen-han, JP
	Hon LEUNG Yiu-chung
	Hon Andrew WONG Wang-fat, JP
	Hon Miriam LAU Kin-ye, JP
	Hon CHOY So-yuk
	Hon LAW Chi-kwong, JP
	Hon LI Fung-ying, JP
	Hon Audrey EU Yuet-mee, SC, JP
	(Total : 11 Members)
Clerk	Ms Doris CHAN
Legal Adviser	Mr LEE Yu-sung
Date	20 December 2001

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and
General Clauses Ordinance (Cap. 1))

ATTACHMENT OF INCOME ORDER (AMENDMENT) RULES 2001

RESOLVED that the Attachment of Income Order (Amendment)

Rules 2001, published in the Gazette as Legal Notice No. 260 of 2001 and laid on the table of the Legislative Council on 12 December 2001, be amended, in section 10(c), in the new rule 8(5), by repealing everything after "(b)," and before the dash and substituting "if subsequently a maintenance payer has a new income source, he shall, within 21 days after he is first entitled to receive any income from the new income source".