

立法會
Legislative Council

LC Paper No. CB(2)928/01-02
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seen by the Administration)

Ref : CB2/SS/7/01

Subcommittee on Attachment of Income Order (Amendment) Rules 2001

**Minutes of the second meeting
held on Friday, 28 December 2001 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon Audrey EU Yuet-mee, SC, JP (Acting Chairman)
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Andrew WONG Wang-fat, JP
Hon LAW Chi-kwong, JP
Hon LI Fung-ying, JP

Members Absent : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon Miriam LAU Kin-yea, JP
Hon CHOY So-yuk

Public Officers Attending : Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs 2

Mr Andrew CHEUNG
Assistant Secretary for Home Affairs

Ms Phyllis POON
Government Counsel

Ms Ada CHAU
Senior Legal Aid Counsel

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

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Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Dora WAI
Senior Assistant Secretary (2) 4

As the Chairman was out of town, Ms Audrey EU presided over the meeting in the capacity of Acting Chairman.

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. The Subcommittee pointed out that subrules (4) and (5) of rule 8 were inconsistent with each other and imposed different requirements on a maintenance payer. Under rule 8(4), a maintenance payer was required to comply with the requirements set out in subrule (4)(a) if he had a "new income source" within 21 days after he ceased to receive any income from the original income source. No reference was made as to whether the new income was capable of being attached.

4. However, rule 8(5) provided that if a maintenance payer acquired "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 were basically the same requirements as in subrule (4)(a). The Subcommittee expressed concern that this provision might be interpreted in such a way that a maintenance payer was not required to comply with the requirements if he considered that his new income was not capable of being attached. This might give rise to a situation where a maintenance payer would use this provision as a pretext for not applying for an attachment of income order (AIO). To remove the loophole, the Subcommittee suggested that a maintenance payer should be required to notify the relevant parties whenever he acquired any new income, regardless of whether it was capable of being attached.

5. The Administration explained that although the wording appeared different, the meaning was the same. "Income source" was defined to mean a person by whom the income of the maintenance payer was payable. It could be argued that the income from such income source was capable of attachment.

(Post-meeting note : The Administration has considered the issue in greater depth and agrees that there could be situations where the income from an "income source" is not capable of being attached.)

6. The Administration would amend rule 8(5) to improve the clarity of the provisions. In this connection, the Subcommittee requested the Administration to provide the proposed amendments as soon as possible for members' consideration. The Administration noted that the deadline for giving notice of amendment was 9 January 2002.

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7. In addition, the Administration undertook to consider the suggestions made by members in drawing up the revised version of the information booklets on the AIO Scheme. It also undertook to consider members' views when designing the proforma of the affidavit required for the application for an AIO.

8. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 2
Legislative Council Secretariat
17 January 2002

**Proceedings of the second meeting of the
Subcommittee on Attachment of Income Order (Amendment) Rules 2001
on Friday, 28 December 2001 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000-0155	Acting Chairman	Opening remarks	
0156-0213	Admin	Proforma of the affidavit required for application for a maintenance order	
0214-0313	Acting Chairman	Ditto	
0314-0436	Admin	Proforma of the affidavit required for application for an AIO	
0437-0443	Acting Chairman	Ditto	
0444-0526	Admin	Ditto	
0527-0626	Acting Chairman	Places for making statutory declaration before a Commissioner of Oath after completing the affidavit	
0627-0642	Admin	Ditto	
0643-0651	Acting Chairman	Ditto	
0652-0659	Admin	Ditto	
0700-0757	Acting Chairman	Service of summons by Court Bailiff	
0758-0816	Mr LAW Chi-kwong	Circumstances where summons could be served by Court Bailiff	
0817-0902	Admin	Ditto	
0903-0911	Acting Chairman	Court Bailiff to serve summons free of charge on behalf of applicants without legal representation	
0912-0925	Admin	Ditto	
0926-0932	Acting Chairman	Ditto	
0933-1010	Admin	Ditto	
1011-1020	Acting Chairman	Admin to include the above free of charge service in the revised version of information booklets on AIO Scheme	
1021-1023	Admin	Ditto	
1024-1038	Acting Chairman	Ditto	
1039-1048	Admin	Circumstances where summons could be served by Court Bailiff	
1049-1054	Acting Chairman	Ditto	
1055-1114	Admin	Ditto	
1115-1125	Acting Chairman	Ways to assist cases where the address of maintenance payer was not known	

Time	Speaker	Subject(s)	Action required
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Time	Speaker	Subject(s)	Action required
1126-1334	Admin	Assistance provided by Transport Department, Immigration Department and Housing Department in cases where the address of maintenance payer was not known	
1335-1354	Acting Chairman	Ditto	
1355-1442	Admin	Ditto	
1443-1459	Acting Chairman	Enquiry on whether a maintenance payer's failure to notify the relevant parties of his change of address would constitute an offence	
1500-1506	Admin	Response to the above enquiry	
1507-1517	Acting Chairman	Assistance provided by the Police in cases where the address of maintenance payer was not known	
1518-1553	Admin	Ditto	
1554-1609	Acting Chairman	Ditto	
1610-1623	Admin	Ditto	
1624-1633	Mr Andrew WONG	Assistance provided by Transport Department in cases where the address of maintenance payer was not known	
1634-1659	Acting Chairman	Ditto	
1700-1719	Admin	Ditto	
1720-1841	Acting Chairman	Other information which should be included in the revised version of information booklets on AIO Scheme	
1842-2126	Mr LAW Chi-kwong	Reason for requiring a maintenance payer to notify the court as well as the relevant person in case of change of income source	
2127-2148	Admin	Ditto	
2149-2231	Acting Chairman	Ditto	
2232-2303	Mr LAW Chi-kwong	Ditto	
2304-2505	SALA	Existing rule 11 under which non-compliance with rule 8(3) would constitute an offence	
2506-2525	Mr LAW Chi-kwong	The new rule 11(1)(e) under which non-compliance with rule 8(4)(b) would constitute an offence	
2526-2532	SALA	Ditto	
2533-2546	Acting Chairman	Ditto	
2547-2730	Mr LAW Chi-kwong	Possibility of simplifying the notification procedures in case of change of income source	
2731-2817	Admin	Ditto	
2818-2827	Acting Chairman	Admin to set out clearly in the revised version of information booklets on AIO Scheme the parties to be notified in case of change of income source	

Action

Time	Speaker	Subject(s)	Action required
2828-2848	Mr LAW Chi-kwong	Ways of notifying a maintenance payee of the maintenance payer's change of income source if the address of the former was not known	
2849-2852	Acting Chairman	Definition of "relevant person"	
2853-2904	Mr LAW Chi-kwong	Ditto	
2905-2924	Admin	Ditto	
2925-2943	Mr LAW Chi-kwong	Ways of ensuring a maintenance payer's compliance with all requirements in respect of notification of his change of income source	
2944-3007	Admin	Reasonable grounds for failing to comply with the notification requirements	
3008-3116	Mr LAW Chi-kwong	Ditto	
3117-3215	Admin	Possible problems in service of documents if the address of a designated payee was unknown	
3216-3229	Acting Chairman	Ditto	
3230-3320	SALA	Ditto	
3321-3336	Acting Chairman	Ditto	
3337-3345	Admin	Ditto	
3346-3359	Acting Chairman	Ditto	
3400-3435	Mr LAW Chi-kwong	Ditto	
3436-3453	Admin	Ditto	
3454-3457	Mr LAW Chi-kwong	Ditto	
3458-3542	Admin	Ditto	
3543-3717	Mr LAW Chi-kwong	Ditto	
3718-3723	Acting Chairman	Ditto	
3724-3736	Mr Andrew WONG	Service of documents	
3737-3937	Admin	Ways of serving a document under rule 12	
3938-4000	Mr LAW Chi-kwong	Service of documents	
4001-4013	Mr Andrew WONG	Admin to include information on service of documents in an AIO and in the revised version of information booklets on AIO Scheme	
4014-4037	Mr LAW Chi-kwong	Service of documents	
4038-4134	Acting Chairman	Briefing to Miss CHAN Yuen-han on the earlier discussion of the Subcommittee	
4135-4159	Miss CHAN Yuen-han	Reason for not being able to attend the first meeting	
4200-4210	Acting Chairman	Practice in the United Kingdom on application for a new AIO in case of change of income source	
4211-4425	Admin	Ditto	

Action

Time	Speaker	Subject(s)	Action required
4426-4438	Acting Chairman	Practice in the United Kingdom on application for a new AIO in case of change of income source	
4439-4445	Admin	Ditto	
4446-4451	Acting Chairman	Ditto	
4452-4500	Admin	Ditto	
4501-4514	Miss CHAN Yuen-han	Ditto	
4515-4606	Admin	Ditto	
4607-4608	Miss CHAN Yuen-han	Admin's proposed amendments to rule 8	
4609-4710	Admin	Ditto	
4711-4738	Miss CHAN Yuen-han	Enforceability of the amended rule 8, especially in cases where a maintenance payer's income was unstable	
4739-4854	Admin	Briefing on the new requirements under rule 8(4), (5) and (6)	
4855-4927	Miss CHAN Yuen-han	Enforceability of the amended rule 8, especially in cases where a maintenance payer's income was unstable	
4928-4936	Admin	Ditto	
4937-4939	Miss CHAN Yuen-han	Ditto	
4940-4952	Admin	Ditto	
4953-4957	Miss CHAN Yuen-han	Ditto	
4958-5034	Admin	Ditto	
5035-5045	Miss CHAN Yuen-han	Ditto	
5046-5053	Admin	Validity of a maintenance order in case of invalidity of the relevant AIO	
5054-5055	Miss CHAN Yuen-han	Ditto	
5056-5057	Admin	Ditto	
5058-5108	Miss CHAN Yuen-han	Ditto	
5109-5114	Admin	Ditto	
5115-5123	Miss CHAN Yuen-han	Ditto	
5124-5136	Admin	Ditto	
5137-5205	SALA	Pre-condition for issue of an AIO	
5206-5236	Miss CHAN Yuen-han	Admin to consider introducing amendments to more effectively address cases where the job nature of a maintenance payer was of high mobility or his income was unstable	
5237-5306	Admin	Response to the above	
5307-5340	Miss CHAN Yuen-han	Reason for setting the period for application for a new AIO at 21 days	

Action

Time	Speaker	Subject(s)	Action required
5341-5437	Admin	Reason for setting the period for application for a new AIO at 21 days	
5438-5457	Acting Chairman	Ditto	
5458-5528	Miss CHAN Yuen-han	Ditto	
5527-5609	Mr LAW Chi-kwong	Ditto	
5610-5623	Miss CHAN Yuen-han	Ditto	
5624-5748	Admin	Ways of enforcing a maintenance order	
5749-5841	Mr LAW Chi-kwong	Admin to consider allowing the notification and application required under rule 8(4)(a)(i) and (ii) respectively to be done in the same proforma of the affidavit required for application for an AIO	
5842-5909	Admin	Response to the above	
5910-5927	Mr LAW Chi-kwong	Notification and application required under rule 8(4)(a)(i) and (ii)	
5928-010012	Acting Chairman	Ditto	
010013-010023	Admin	Admin to consider members' views when designing the affidavit	
010024-010030	Mr LAW Chi-kwong	Notification and application required under rule 8(4)(a)(i) and (ii)	
010031-010052	Acting Chairman	Service of notification document of change of income source by Court Bailiff	
010053-010100	Admin	Ditto	
010101-010159	Acting Chairman	Clause by clause examination of the Amendment Rules	
010200-010638	SALA	Meaning of "designated payee" and "specified payee" and problems of not having a definition of the two terms in the Rules	
010639-010932	Admin	Response to SALA's proposal	
010933-010952	Miss CHAN Yuen-han	Views on SALA's proposal	
010953-011007	Acting Chairman	Wording of the amendment proposed by SALA	
011008-011027	SALA	Ditto	
011028-011109	Acting Chairman	Reason for repealing the definition of "designated payee" and "maintenance payer" under rule 2	
011110-011128	Admin	Ditto	
011129-011202	SALA	Ditto	
011203-011244	Acting Chairman	Ditto	

Action

Time	Speaker	Subject(s)	Action required
011245-011320	Mr LAW Chi-kwong	Views on SALA's proposal	
011321-011340	Acting Chairman	Ditto	
011341-011405	Miss CHAN Yuen-han	Ditto	
011406-011415	Mr LAW Chi-kwong	Ditto	
011416-011446	Acting Chairman	Members' support for Admin's existing drafting of rule 2	
011447-011458	Admin	Proposal to include the definition of "designated payee" and "specified payee" in the revised version of information booklets on AIO Scheme	
011459-011555	Acting Chairman	Rule 2A – Application for attachment order to be made by summons or originating summons	
011556-011657	SALA	Rule 3 – Application for attachment order – editorial amendment to the title of rule 3	
011658-011734	Mr LEUNG Yiu-chung	Use of the word “藉” in Chinese version of rule 2A	
011735-011813	Admin	Ditto	
011814-011828	Mr LEUNG Yiu-chung	Ditto	
011829-011837	SALA	Ditto	
011838-011936	Mr LEUNG Yiu-chung	Ditto	
011937-011953	Acting Chairman	Admin's proposed amendments to rule 3(1), 3(2)(f) and (g)	
011954-012017	Mr LAW Chi-kwong	Ditto	
012018-012041	Mr LEUNG Yiu-chung	Acts which would be considered as “honest belief” under rule 3(2)(f) and (g)	
012042-012209	Admin	Ditto	
012210-012217	Mr LEUNG Yiu-chung	Ditto	
012218-012236	Acting Chairman	Grounds to be provided by a designated payee to support her belief under rule 3(2)(f) and (g)	
012237-012324	Admin	Ditto	
012325-012339	Acting Chairman	Ditto	
012340-012350	Mr LAW Chi-kwong	Ditto	
012351-012416	Acting Chairman	Difference between “reasonable belief” and “honest belief”	
012417-012525	SALA	Ditto	
012526-012536	Acting Chairman	Ditto	
012537-012559	SALA	Ditto	
012600-012615	Mr LEUNG Yiu-chung	Difficulty in introducing evidence to support a designated payee's belief	
012616-012705	Mr LAW Chi-kwong	Difficulty in introducing evidence to prove a maintenance payer's failure in making payments	

Action

Time	Speaker	Subject(s)	Action required
012706-012753	SALA	Court's decision on whether the grounds provided by a designated payee were reasonable	
012754-012827	Acting Chairman	Ditto	
012828-012835	Mr LAW Chi-kwong	Practicability of rule 3A (requirements relating to joint application made by maintenance payer and designated payee) and rule 3B (requirements relating to application made by maintenance payer)	
012836-012841	Acting Chairman	Ditto	
012842-012858	Admin	Ditto	
012859-013007	Acting Chairman	Rule 3C – Making of attachment order by court on its own motion; Rule 5 – Verification of signed statement; Rule 5A – Making of attachment order in the same hearing in which related maintenance order is made; and Rule 6(4) – Issue of attachment order	
013008-013034	Mr LEUNG Yiu-chung	Service of a sealed copy of an AIO by a designated payee on the maintenance payer, the income source and the specified payee under rule 6(4)	
013035-013043	Admin	Ditto	
013044-013051	Acting Chairman	Ditto	
013052-013107	Admin	Ditto	
013108-013118	Mr LAW Chi-kwong	Ditto	
013119-013137	Admin	Ditto	
013138-013144	Acting Chairman	Rule 8(4), (5) and (6) – Obligations of maintenance payer	
013145-013155	Miss CHAN Yuen-han	Definition of “designated payee” and “specified payee”	
013156-013253	Admin	Ditto	
013254-013330	Acting Chairman	Circumstances where a maintenance payer could choose not to apply for an AIO	
013331-013429	Admin	Ditto	
013430-013436	Miss CHAN Yuen-han	Possibility of enabling a maintenance payer to use rule 8(6) as a pretext for not applying for an AIO	
013437-013508	Admin	Ditto	
013509-013534	Acting Chairman	Admin to consider requiring a maintenance payer who did not wish to apply for an AIO to indicate in the proforma of the affidavit required for application for an AIO	
013535-013545	Mr LAW Chi-kwong	Ditto	

Action

Time	Speaker	Subject(s)	Action required
013546-013615	Acting Chairman	Rule 9 – Variation of attachment order; Rule 10 – Discharge of attachment order; and Rule 11 – Offences and penalty	
013616-014025	Admin	Introduction on the proposed offences under rule 11	
014026-014159	Acting Chairman	Possible disputes over the wording “any income capable of being attached” under rule 8(4)(b) and 8(5); and the reason for not using “any income” instead	
014200-014324	Admin	Reason for using “any income capable of being attached” instead of “any income”	
014325-014519	Acting Chairman	Need to require a maintenance payer to notify the court and the relevant person whenever he acquired any new income regardless of whether it was capable of being attached	
014520-014552	Mr LAW Chi-kwong	Ditto	
014553-014844	Admin	Ditto	
014845-015018	Acting Chairman	Reason for adopting inconsistent wording “if he has a new income source” under rule 8(4)(a) and “if a maintenance payer acquires any new income capable of being attached” under rule 8(5)	
015019-015100	Mr LAW Chi-kwong	Ditto	
015101-015208	Acting Chairman	Reason for adopting inconsistent wording “if he has no new income source” and “that he does not have any income capable of being attached” under rule 8(4)(b)	
015209-015218	Mr LAW Chi-kwong	Ditto	
015219-015319	Admin	Definition of “income source”	
015320-015349	Acting Chairman	Ditto	
015350-015414	Mr LAW Chi-kwong	Ditto	
015415-015456	Admin	Ditto	
015457-015607	Mr LAW Chi-kwong	Ditto	
015608-015657	Admin	Admin to provide the proposed amendments to rule 8(5) to give effect to the suggestion made by members	✓
015658-015741	Acting Chairman	Eligibility for applying for an AIO	
015742-015732	Mr LEUNG Yiu-chung	Ditto	
015753-015809	Mr LAW Chi-kwong	Ditto	
015810-015839	Acting Chairman	Ditto	
015840-015846	Admin	Other ways to enforce a maintenance order	
015847-015903	Acting Chairman	Ditto	

Action

Time	Speaker	Subject(s)	Action required
015904-015920	Mr LAW Chi-kwong	Admin's proposal to amend rule 8(5)	
015921-015950	Mr LEUNG Yiu-chung	Ditto	
015951-020136	Acting Chairman	Rule 12 – Service of documents; Rule 13 – Dispensation with procedures and abridgement of time limit; and Forms under the Schedule	
020137-020201	Clerk	(a) Extension of scrutiny period; and (b) Deadline for giving notice of amendment	
020202-020211	Acting Chairman	Expected date of finishing the production of the revised version of information booklets on AIO Scheme	
020212-020342	Admin	Ditto	
020343-020347	Acting Chairman	Completion of scrutiny of the Amendment Rules	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
17 January 2002