

For information
on 9 November 2006

Legislative Council Subcommittee to Study the Subject of Combating Poverty

Enforcement of Maintenance Orders

Purpose

This paper apprised Members of the measures taken by the Administration to facilitate enforcement of maintenance orders and the timely collection of maintenance payment.

Background

2. In its Report on Women in Poverty released in June 2006, the Subcommittee made a series of recommendations to alleviate problems faced by women in poverty and to prevent women from falling into poverty. One of the recommendations is that the Government should consider establishing an intermediary body for the collection and enforcement of maintenance payments.

Measures taken by the Administration

3. In order to address the difficulties encountered by maintenance payees in collecting maintenance payments and enforcing maintenance orders, an Inter-departmental Working Group, comprising representatives of the Home Affairs Bureau (HAB), the then Health and Welfare Bureau, Department of Justice, Social Welfare Department and Legal Aid Department, was set up in April 1999 to review the law and administrative measures affecting divorcees and children who are eligible for alimony. The Working Group has carefully considered the proposal to set up an intermediary body for collection of maintenance payments, and concluded in its report published in May 2000 that it would be more effective to improve the existing system of collecting maintenance

payments and enforcing maintenance orders than to establish an intermediary body for collection of maintenance payments. The Working Group also expressed concern that the adoption of the proposal might, in time, lead to pressure on the maintenance board to advance payments to the maintenance payees before receiving them from the maintenance payers. Instead, the Working Group recommended improvements be made to the law, court procedures and administrative measures affecting persons who are eligible for maintenance.

4. Over the years, the Administration has amended the law, and improved the court procedures and administrative measures affecting maintenance payees to facilitate enforcement of maintenance orders and timely collection of maintenance payment. These include:

- (a) Improvements to the Attachment of Income Order (AIO) Scheme, which guarantees punctual maintenance payment, were introduced on 25 January 2002 through legislative amendments. The circumstances in which an AIO can be made have been relaxed so as to enable more maintenance payees to benefit from the Scheme. Hitherto, an AIO can be made only if the maintenance payer has defaulted payment without reasonable excuse. The court is also given the discretion to dispense with certain steps in the court procedures and shorten time limits specified in the law so as to speed up the processing of AIO applications;
- (b) The Interest and Surcharge on Arrears of Maintenance Ordinance 2003 was enacted to combat the problem of default in maintenance payment. With effect from 1 May 2005, interest will be levied on arrears of maintenance to compensate the maintenance payee for monetary loss due to default by the maintenance payer. To deter repeated default without reasonable excuse, a defaulter is liable to a surcharge of up to 100% of the total arrears of maintenance;
- (c) The complicated and time-consuming procedures in processing applications for Comprehensive Social Security Assistance (CSSA) and legal aid have been streamlined to

reduce the number of visits required of applicants to the Social Welfare Department, Legal Aid Department and their lawyers;

- (d) Non-governmental organizations (NGOs) and professional bodies (including The Law Society of Hong Kong, Hong Kong Bar Association and The Hong Kong Family Law Association) have been informed that cases of maintenance payers failing to notify the maintenance payees of changes of address can be reported to the police station nearest to the maintenance payer's last known address;
- (e) The Law Society of Hong Kong has been requested to inform its members that they can, with the use of a standard letter, request the Immigration Department, Transport Department and Housing Department to search their records for addresses of maintenance payers against whom legal actions will be taken to sue for arrears in maintenance;
- (f) The Social Welfare Department has streamlined the procedures in referring single parents receiving CSSA from Social Security Field Units to Family Services Centres for timely counseling and family services. The new referral arrangement could save the single parents from repeating their unpleasant experience to different workers when applying for welfare and financial assistance. To date, the referral system continues to run smoothly and no problem has been detected;
- (g) On publicity and public education, HAB sponsored 34 community involvement projects proposed and run by NGOs in the three fiscal years of 2000-01 to 2002-03. Through these projects, which encompassed a wide range of activities, including carnivals, hotline services and seminars, public awareness of the responsibilities of maintenance payers, the rights of maintenance payees, and the services available to maintenance payees in the event of default has been enhanced. HAB has secured funds in 2006-07 (amounting

to \$300,000) to finance community involvement projects. Other ongoing publicity measures include publications on maintenance-related issues and Announcements of Public Interest on TV and radio.

5. At present, a judgment summons is required to be served personally on the maintenance payer. To combat the problem of maintenance payers deliberately trying to evade service of judgment summons, we are working on legislative amendments to relax the requirement for judgment summonses to be served personally.

6. At present, the court may only order payment of maintenance arrears accrued up to the date of application for judgment summons only. The additional arrears accrued from that date up to the date of court hearing will have to be the subject of another judgment summons. To provide convenience to the court and litigating parties, legislative amendments are being prepared to enable the court to order payment of maintenance arrears accrued up to the date of court hearing.

Enforcement of maintenance orders against self-employed maintenance payers

7. Some Members have expressed concern that the AIO scheme does not cover self-employed persons. Under the current law, there are procedures for attachment of assets/bank accounts of maintenance payers, including those who are self-employed. Under Section 52A of the District Court Ordinance (Cap. 336), the court is empowered, upon the application of a maintenance payee as a judgment creditor, to impose a “charging order” against the maintenance payer’s beneficial interest in a property in respect of the outstanding sum. The payee can further apply to the court for sale of the property to enforce the charging order pursuant to Section 52A of the District Court Ordinance (read together with Order 50 of the Rules of the District Court, Cap. 336H). Under Orders 46 and 47 of the Rules of the District Court, Cap. 336H and Orders 46 and 47 of the Rules of the High Court, Cap. 4A, a writ of fieri facias may, upon application, be issued by the Court directing the bailiff to seize the goods, chattels or other movable property of the judgment debtor, and to sell the seized goods, etc. for the purpose of paying the judgment debt and other

expenses.

8. Attachable income under the AIO Scheme is also not restricted to salary or wages. The income include, among others, wages, rent and dividends. If a maintenance payer has a flat rented to a third person, the maintenance payee may apply to the court for an order to attach the rental income as settlement for whole or part of the amount payable under the maintenance order.

Social Expenditure on CSSA

9. One of the considerations behind the recommendation behind the proposal for setting up a maintenance board was that it could relieve the burden on CSSA, thus bringing about savings on social expenditure. It was believed that this could address the problem of divorcees relying on CSSA and refraining from applying for maintenance orders or from taking legal actions to recover arrears. This belief, however, is not supported by facts and statistics. On the contrary, Members may note that -

- (a) from January 2001 to September 2006, 96% of the single parent families receiving CSSA either received nominal maintenance (i.e. maintenance payment being \$1) from the maintenance payer or nil maintenance. A maintenance board, if established, would potentially serve only 4% of CSSA single-parent recipients in collecting maintenance payments; and
- (b) for those CSSA single parent families receiving non-nominal maintenance, the average amount of maintenance received as at September 2006 was around \$1,600 per month. Any maintenance payments collected by the proposed maintenance board would be insufficient to support the family expenses. The Government would still need to meet the shortfall by way of CSSA payments.

Given the small number of potential CSSA clients and the need for

continuing with CSSA payments, it is unlikely that the savings in CSSA payments could offset the operational costs for running the proposed maintenance board.

Presentation

10. Members are invited to note the contents of this paper.

Home Affairs Bureau
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