

立法會 *Legislative Council*

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Background brief prepared by Legislative Council Secretariat for the Bills Committee on the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007

Purpose

This paper gives an account of the discussions by the Panel on Home Affairs on the legislative proposal to amend the Attachment of Income Order (AIO) legislation.

Background

2. Under the AIO Scheme introduced in 1998, the Court can make an AIO under the AIO legislation¹ requiring an income source² to deduct a specified amount (which may be the whole or part of the amount payable under a maintenance order) from a maintenance payer's income, and pay the deductions direct to a maintenance payee.

The Bill

3. The Amendment Bill seeks to make the AIO legislation apply to the Government as an income source insofar as attachment of wages or salary is concerned.

Major issues raised by the Panel on Home Affairs

4. The Panel on Home Affairs was briefed at its meeting on 13 April 2007 on the legislative proposal to amend the AIO legislation to the effect that the

¹ An AIO may be made under section 20 of the Guardianship of Minors Ordinance (Cap. 13), section 9A of the Separation and Maintenance Orders Ordinance (Cap. 16) or section 28 of the Matrimonial Proceedings and Property Ordinance (Cap. 192). These three provisions are collectively known as the AIO legislation.

² "Income source" is defined in Rule 2 of the Attachment of Income Order Rules (Cap. 13A) as a person by whom the income of the maintenance payer is payable.

legislation would be applicable to the Government as an income source and would be binding on persons whose income source was the Government.

5. While members were supportive of the legislative proposal, they requested the Administration to ensure that, in drafting the Bill, the AIO legislation would be applicable to any officer of statutory bodies (such as the Equal Opportunities Commission, The Ombudsman, etc.) as well as to the staff members of organisations (such as the Independent Police Complaints Council) which were independent from the Government but whose staff members were civil servants. The Administration assured members that the views and advice of the Civil Service Bureau and the Department of Justice had been solicited in this regard to ensure that the proposed legislation would apply to the above-mentioned bodies.

6. In response to members' enquiry about the application of the AIO legislation to offices of the Central People's Government (CPG) in Hong Kong and to local employees of consulates established in Hong Kong, the Administration informed the Panel that, by virtue of section 66 of the Interpretation and General Clauses Ordinance (Cap. 1), an ordinance did not bind the State unless there was an express provision or necessary implication that the State was bound thereby. There was neither such express provision nor any such necessary implication in the AIO legislation. The Administration also informed the Panel that the income source for consular officers and employees would generally be their respective States. The AIO legislation did not have extra-territorial effect, and did not apply to an income source outside Hong Kong. As such, local employees of consulates established in Hong Kong were not subject to the AIO legislation.

7. Members were of the view that the Administration should implement effective measures to facilitate the enforcement of maintenance orders and timely collection of maintenance payment.

8. The Administration informed the Panel that there was an agreed arrangement between the Immigration Department (ImmD) and The Law Society of Hong Kong whereby if a lawyer required a maintenance payer's address for the purpose of taking legal action against the latter to recover maintenance arrears, the lawyer could request ImmD to search their records and provide the maintenance payer's address if available. Standard forms were also made available to facilitate the application of AIOs. To address the financial difficulties encountered by some maintenance payees, the complicated procedures in processing applications for Comprehensive Social Security Assistance (CSSA) and legal aid had been streamlined to reduce the number of visits required to be made by maintenance payees to the Social Welfare Department and the Legal Aid Department; synchronised procedures for making applications for CSSA and legal aid had also been implemented.

9. Some members reiterated the need to set up an intermediary body for the collection of maintenance payments in order to address fundamentally the problems encountered by maintenance payees. The Administration, however, maintained its view that the proposed body would not be able to offer maintenance payees or taxpayers any significant benefits over and above those that could be achieved by improving the existing system.

10. Members may wish to refer to the minutes of the Panel meeting on 13 April 2007 for details of the discussion.

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