

**For discussion on
13 June 2008**

Legislative Council Panel on Home Affairs

**Streamlining Court Procedures and Setting up an Intermediary Body
for the Effective Enforcement of Maintenance Orders**

PURPOSE

This paper informs Members of the measures to facilitate effective enforcement of maintenance orders; and the Administration's views with regard to the proposal to establish an intermediary body to collect and enforce maintenance payments.

**MEASURES TO FACILITATE EFFECTIVE ENFORCEMENT OF
MAINTENANCE ORDERS**

2. The Administration is committed to delivering maintenance policies to protect the interests of maintenance payees. The Administration has, in consultation with the Judiciary Administration, amended the laws where appropriate, and improved procedures of the Court and other administrative measures for the effective enforcement of maintenance orders.

Legislative Measures

Interest and Surcharge on Arrears of Maintenance

3. The Interest and Surcharge on Arrears of Maintenance Ordinance was brought into operation in May 2005 with the objective of compensating the maintenance payee for monetary loss due to default by the maintenance payer, and deterring repeated default. The current interest is, similar to other judgment debt cases, set at a rate ordered by the Court or, in the absence of an order, at the rate the Chief Justice

determines by order. A defaulter is also liable to a surcharge of up to 100% of the total arrears of maintenance.

Attachment of Income Order

4. Before 2002, an Attachment of Income Order (“AIO”) could be made only if the maintenance payer had defaulted payment without reasonable excuse. Legislative amendments were introduced in 2002 to relax the circumstances under which an AIO could be made so as to provide greater guarantee of punctual maintenance payments, and enable more maintenance payees to be benefited. The Court was 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. In 2007, the AIO legislation was further amended to enable the Court to grant an AIO to all income sources, in order to enable the maintenance payee to receive their maintenance in a timely manner.

Judgment Summons

5. Under Rule 87(1) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) (“MCR”), judgment summons is a summons issued under the Rules of the High Court requiring a judgment debtor to appear and be examined as to his means. It is a common device for the enforcement of maintenance orders. It requires the maintenance payer to appear in Court to be examined as to his means and explain why he/she does not pay. Following examination, the Court may make a new order for payment of the amount due by giving time or by ordering payment by installments. If the Court finds that the maintenance payer fails to show the cause why he should not be committed to prison, the Court may make an order for commitment of the maintenance payer. The Court may suspend the order of commitment on condition that the maintenance payer pays the arrears within a specified period or by installments.

6. At present, as laid down in Rule 87 of MCR and Order 90A of the Rules of the District Court (Cap. 336 sub. leg. H) (“RDC”) -

- (a) A judgment summons must be served personally on the maintenance payer;

- (b) Where the maintenance payer fails to attend the Court hearing, the Court may adjourn the summons to a specified time on a specified day and order the maintenance payer to attend at that time on that day (i.e. “order to attend”);
- (c) Again the order to attend for the adjourned hearing must be served personally on the maintenance payer;
- (d) Where the maintenance payer fails to attend the adjourned hearing after being personally served with an order to attend, or he/she attends but fails to show cause as to why an order of commitment should not be made against him/her, the Court may make an order for commitment of the maintenance payer.

7. To combat the problem of maintenance payers deliberately evading the service of the judgment summons, the Administration is, in consultation with the Judiciary Administration, working on proposals for legislative amendments to, amongst other issues, relax the requirement for the judgment summons to be served personally on the maintenance payers, and on measures to empower the Court to more effectively make orders to secure attendance of the maintenance payer for examination of the judgment summons proceedings.

8. At present, the Court may order payment of maintenance arrears accrued up to the date of application for the judgment summons only. The additional arrears accrued from that date up to the date of the hearing of the Court would have to be the subject of another judgment summons. Proposals for legislative amendments are being prepared to enable the Court to order payment of maintenance arrears accrued up to the date of Court hearing.

9. The major proposals for legislative amendments are set out at **Annex**.

Administrative Measures

10. To ensure a more effective enforcement of the maintenance orders, the complicated and time-consuming procedures in processing applications for Comprehensive Social Security Assistance (“CSSA”) and legal aid have been synchronized to reduce the number of visits required of the applicants to the Social Welfare Department (“SWD”), Legal Aid Department (“LAD”) and their lawyers. SWD will, where appropriate, directly refer cases to LAD to pursue legal action to enforce maintenance order. SWD has also streamlined the procedures in referring single parents receiving CSSA from the Social Security Field Units to the 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.

11. Non-governmental organizations and legal professional bodies have been informed that where the maintenance payers fail to notify the maintenance payees of the change in address, reports to the police station nearest to the maintenance payer’s last known address can be made. Moreover, the Law Society of Hong Kong has been requested to inform its members that they can, with the use of a letter, request the Immigration Department, Transport Department and Housing Department to search their records free-of-charge for addresses of maintenance payers against whom legal actions will be taken to sue for arrears in maintenance.

12. On publicity and public education, there are readily available promotional and publicity materials on maintenance-related matters compiled by various government departments. The Administration has also sponsored non-governmental organizations to carry out community involvement projects/activities to enhance public awareness of the rights of maintenance payees and services available to them. Through these projects, which encompass a wide range of activities, including 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. Furthermore, there are ongoing publicity measures include publications on maintenance-related issues, and Announcement of Public Interest on television and radio.

PROPOSED SETTING UP OF AN INTERMEDIARY BOARD FOR THE COLLECTION AND ENFORCEMENT OF MAINTENANCE PAYMENTS

13. There have been suggestions for the Administration to consider establishing an intermediary body for the collection and enforcement of maintenance payments.

14. We are of the view that an intermediary body per se would not bring significant benefits over and above those that can be achieved by improving the existing system through various legislative and administrative measures.

15. We note there are suggestions for the intermediary body to arrange payment in advance to defaulting maintenance payee to alleviate the maintenance payee's imminent financial difficulties during a default payment. In this case, the intermediary body would certainly be likely to incur liabilities if it fails to claim arrears from the defaulting maintenance payer.

16. In principle, maintenance in arrears is a type of civil disputes between parties which involve private debts. As such, we consider it not appropriate for the Government to proactively interfere with such private matters of fellow citizens by setting up an intermediary body to deal with the collection and payment of maintenance debts.

17. In conclusion, we do not find it justifiable to consider setting up an intermediary body to help collect maintenance payments. The existence of such an intermediary body would not make a difference in terms of cases whereby the maintenance payers do not have the ability to pay or simply do not wish to pay.

WAY FORWARD

18. For the proposed legislative amendments referred to in paragraphs 7 to 9 above and in the Annex, we will consult the stakeholders on the draft Amendment Rules. When the relevant Amendment Rules are finalized, they will be submitted to the Legislative Council in 2009 for scrutiny.

Home Affairs Bureau
June 2008

**Major Proposals for Legislative Amendments
For A More Effective Enforcement of the Judgment Summons**

To facilitate the enforcement of maintenance orders and the timely collection of maintenance payment, the Administration is now, in consultation with the Judiciary Administration, considering means to streamline the Court procedures in relation to judgment summons to combat the problem of maintenance payers deliberately evading service of the judgment summons.

2. The streamlining of Court procedures entails amendments to the following legislation -

- (a) The Matrimonial Causes Rules (Cap.179 sub. leg. A) (“MCR”);
- (b) The Matrimonial Causes (Fees) Rules (Cap.179 sub. leg. B) (“MCFR”); and
- (c) The Rules of the District Court (Cap.336 sub. leg. H) (“RDC”).

The Amendment

3. The purposes of the proposed legislative amendments are to –

- (a) Relax the requirement for a judgment summons to be served personally on the maintenance payer, in case the Court hearing convened to cross-examine the maintenance payer as to his/her property and means and failure to pay maintenance has to be adjourned because the payer fails to attend; and
- (b) Empower the Court, where specified conditions are met and where the Court deems fit, to make an order for the arrest of the maintenance payer pending examination (“order for arrest”); an order prohibiting him/her from leaving Hong

Kong (“prohibition order”); and to make an order that he/she be imprisoned until the resumption of the adjourned judgment summons hearing so as to ensure the appearance of the maintenance payer at the resumption of the examination.

Relaxation of the Personal Service Requirement

4. The procedures for the judgment summons proceedings to enforce maintenance orders are prescribed in Rules 87 to 91 of MCR and Order 90A of the RDC. According to Rule 87(4) of MCR and Order 90A, Rule 2(4) of the RDC, every judgment summons shall be served on the maintenance payer *personally*. The same requirement of personal service applies where the maintenance payer has been served a judgment summons but fails to attend the relevant hearing, and the Court adjourns the hearing and orders the payer to attend the adjourned hearing (“order to attend”).

5. It is not uncommon for the maintenance payers to take the advantage of the service difficulties in order to evade their responsibilities.

6. The Administration has considered dispensing with the requirement for the judgment summons to be served personally. This could provide an effective solution to the problem. Nonetheless, the measure would seem to be too draconian and may do injustice to the maintenance payers who genuinely do not receive the summons. In this connection, the Administration recommends to retain the requirement for the original judgment summons to be served personally. We are working with the Judiciary Administration on ways to relax the service requirements in respect of the judgment summons, particularly the order to attend the adjourned hearings. For example, amendments will be made to the relevant rules to empower the Court to serve an order to attend on the maintenance payer by alternative mode of service where the Court considers fair and reasonable.

Power of the Court to make an order for arrest and prohibition order where Maintenance Payer fails to attend Court

7. In order to alleviate the hardship faced by most maintenance payees and to provide an extra weapon to tackle the service requirement difficulties, the Administration is considering amendments to the rules to confer powers on the Family Court to make order for arrest of the maintenance payer, and order prohibiting him/her from leaving Hong Kong pending examination having regard to the provisions in Order 49B, rule 1 of the Rules of the High Court (Cap.4 sub. leg. A)(“RHC”).

8. Specifically, notwithstanding that a judgment summons should *normally* be served personally, the Court may make an order for arrest and/or a prohibition order if it appears to the Court from all the circumstances of a case, including the conduct of the maintenance payer, that there is reasonable cause to believe that a judgment summons may be ineffective to secure the attendance of the maintenance payer for examination.

9. The Administration will make the rules less restrictive in terms of the party who may invoke the order for arrest and the point of time at which an order for arrest and/or a prohibition order may be made. At present, the Court may only issue an order of commitment if a maintenance payer fails to attend the Court after being served with an order to attend or if he/she fails to show cause why an order of commitment should not be made against him/her. Under the amended rules, an order for arrest or a prohibition order may be made by the Court of its own motion *or* on the *ex parte* application of the maintenance payee. Moreover, the Court is empowered to make an order for arrest or prohibition order at the time a judgment summons is directed to be issued, at any time afterwards (whether or not the judgment summons has been served on the maintenance payer) or on an adjournment of the hearing of the judgment summons or at any time during that adjournment.

10. Moreover, if the Court makes an order for arrest, the Court Bailiff shall, when executing the order, serve the judgment summons personally on the maintenance payer if it has not already been served by

the maintenance payee. This removes the maintenance payee's burden of carrying out the personal service of the judgment summons once the Court makes an order for arrest.

Power of the Court to make imprisonment order upon adjourning a judgment summons

11. At present, the Court is empowered to issue an order of commitment under rule 87(5)(c) of MCR and Order 90A, rule 2 (5)(c) of the RDC only where a maintenance payer fails to attend the adjourned hearing upon the service of the order to attend or where the maintenance payer attends but fails to show cause why an order of commitment should not be made against him/her.

12. Under the proposed amended rules, where a maintenance payer attends the scheduled hearing and the hearing is adjourned, and if it appears to the Court that from all circumstances of the case, including any evidence heard by the Court and the conduct of the maintenance payer, that there is reasonable cause to believe that he/she may not appear at the resumption of the examination, the Court may make an imprisonment order against the maintenance payer.

Accrual Date of Arrears

13. In addition, the Rules and the relevant Forms are worded at present such that the Court has power to order the payment of arrears accrued up to *the date of application for judgment summons* only, while the additional arrears accrued from that date up to *the date of hearing* will have to be the subject of another judgment summons. To eliminate unnecessary procedures to the Court and litigating parties, the Rules are proposed to be amended such that the Court may make order of payment of arrears from time to time accruing up to and including the date of the order of commitment.