

**Extract from the minutes of meeting of the Panel on Home Affairs
held on 13 April 2007**

- Members present** : Hon CHOY So-yuk, JP (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon LI Kwok-ying, MH, JP
Dr Hon Joseph LEE Kok-long, JP
Hon Daniel LAM Wai-keung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon Tommy CHEUNG Yu-yan, JP
- Members absent** : Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
- Public Officers attending** : Item IV

Mr Donald TONG Chi-keung
Deputy Secretary for Home Affairs (1)

Miss Joanna CHOI Chuen-han
Principal Assistant Secretary for Home Affairs (2)
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Ms Joanne MAK
Senior Council Secretary (2)2

Miss Kiwi NG
Legislative Assistant (2)2

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IV. Proposed amendments to the Attachment of Income Order Legislation

[LC Paper No. CB(2)1503/06-07(01)]

The legislative proposal

6. Deputy Secretary for Home Affairs (1) (DSHA(1)) briefed members on the salient points of the Administration's proposal to amend the Attachment of Income Order (AIO) legislation to the effect that the AIO legislation was applicable to the Government as an income source and was binding on persons whose income source was the Government.

7. Members in general expressed support for the legislative proposal. Deputy Chairman said that the Department of Justice (DoJ) should ensure in the future that any legislative proposal would be applicable to the Government if it was the policy intent to do so. Mr HO reminded the Administration to ensure that the AIO legislation would be applicable to any officer of statutory bodies, such as EOC, The Ombudsman, etc. as well as to the staff members of organisations such as the Independent Police Complaints Council which was independent from the Government but the staff members of its Secretariat were civil servants. He requested the Administration to avoid any more omission regarding the applicability of an AIO in drafting the legislative proposal.

8. DSHA(1) said that the Administration would ensure that the AIO legislation would be amended to the effect that the legislation was applicable to the Government as an income source and was binding on persons whose income source was the Government. In this connection, the views and advice of the Civil Service Bureau (CSB) and DoJ had been solicited.

9. Mr HO further asked whether the AIO legislation would be applicable to employees of state organs in Hong Kong including the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in HKSAR and the Liaison Office of the Central People's Government in

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HKSAR, and to local employees of foreign consulates established in Hong Kong. DSHA(1) said the AIO legislation after amendment would not be applicable to Mainland officials of state organs in Hong Kong and undertook to provide a written response after the meeting.

10. Mr LI Kwok-ying asked whether the legislative proposal was also aimed to cover staff employed by the Government on contractual basis. DSHA(1) replied in the affirmative.

Measures to facilitate enforcement of maintenance orders and timely collection of maintenance payment

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11. Mr Albert CHAN said that he had received many complaints about difficulties encountered by divorcees in claiming the maintenance payments and in applying for legal aid. He suggested that application procedures for AIOs should be streamlined and that simplified application forms should be made available, in order that maintenance payees would be able to complete relevant application procedures and fill out relevant forms on their own without having to apply for legal aid to appoint a solicitor. He suggested that simplified application forms should also be made available for maintenance payers when they sought permission to vary or waive an AIO due to changes in financial conditions. DSHA(1) responded that standard forms were already available to facilitate the application of AIOs. He agreed to provide samples of the forms for members' information.

12. DSHA(1) further pointed out that 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, and synchronised procedures for making applications for CSSA and legal aid had been implemented.

13. Referring to paragraph 4 of the Administration's paper, Miss CHAN Yuen-han noted that only a total of 175 AIOs had been issued since the implementation of the AIO legislation in 1998 up till the present. She asked about the total number of divorce cases and maintenance orders issued by the court during the same period, and whether the enforcement of maintenance orders was in general satisfactory or otherwise. She said that some Legislative Council (LegCo) Members including herself had held a strong view that consideration should be given to setting up an intermediary body for the collection of maintenance payments. She urged the Administration to reconsider the proposal.

14. DSHA(1) briefed members of the following findings in the Thematic Household Survey Report No. 29 compiled by the Census and Statistics Department (C&SD) -

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- (a) some 51 000 of those 227 100 divorced/separated persons had applied for a maintenance order for payment of alimony from the court;
- (b) 40 100 divorced/separated persons had successfully obtained a maintenance order; and
- (c) 22 200 divorced/separated persons were awarded non-nominal maintenance, of whom 11 200 persons had received the maintenance payment in full, while 11 000 persons reported otherwise. 9 000 of these 11 000 persons had not taken legal action to recover the arrears of maintenance for reasons including inability of the ex-spouse to pay maintenance, belief that the ex-spouse would not pay maintenance; and inability to contact the ex-spouse.

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15. At the request of Ms Emily LAU, DSHA(1) agreed to provide the relevant findings in writing. The Chairman requested the Administration to also provide reasons of those unsuccessful applications for a maintenance order in the information to be submitted. In response to Deputy Chairman's enquiry, DSHA(1) explained that the survey findings regarding the enforcement of maintenance order were estimates derived from the information collected from the interviewed households of the Thematic Household Survey conducted from June to August 2006 and did not represent the actual figures.

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16. Ms Emily LAU expressed concern about the measures available to assist those divorced/separated persons who had successfully obtained a maintenance order but could not receive maintenance. DSHA(1) responded that maintenance payees who encountered financial difficulties following a default in maintenance payments could apply for the CSSA. He pointed out that a mechanism was in place to enlist the assistance of the Immigration Department in searching their records for the addresses of maintenance payers against whom legal actions would be taken to sue for maintenance arrears. At the Chairman's request, DSHA(1) agreed to provide the number of cases in which this mechanism had been triggered to help lawyers representing the maintenance payees in the process of recovering default maintenance payments.

17. Dr Fernando CHEUNG pointed out that there were some 60 000 single-parent families, half of which were on the CSSA Scheme. He considered that the Administration should put in place more effective measures to assist maintenance payees in collecting maintenance payments rather than leaving the payees to resort to the CSSA Scheme, as this meant putting the financial burden on the community as a whole. He urged the Administration to review the existing mechanism and procedures for the enforcement of maintenance orders and collection of maintenance payments with a view to seeking improvements. He further suggested that as a Bills Committee would probably

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be formed to scrutinise the relevant legislative proposal, the Administration should commission an academic institute to conduct research studies on the existing problems and issues relating to the collection of maintenance payments, including the proposal of setting up an intermediary body and the situation of those single-parent families which could not receive maintenance, and provide the findings to the Bills Committee to be formed for reference.

18. Miss CHAN Yuen-han and the Chairman echoed Dr CHEUNG's views. They considered that to review the existing mechanism for making improvements would be more fruitful than adopting a piecemeal approach for introducing improvements which only had limited effect in resolving problems encountered by maintenance payees. The Chairman further said that Democratic Alliance for the Betterment and Progress of Hong Kong was in support of conducting such a review. She pointed out that two motions on the subject of setting up a maintenance board or alimony council to assist in the collection and payment of alimony to single-parent families were passed by LegCo on 26 February 1997 and 8 December 1999 respectively. The Research and Library Services Division of the LegCo Secretariat had also conducted an in-depth research study in 1998 on the operation and effectiveness of overseas intermediary bodies responsible for the collection and enforcement of maintenance payments.

19. DSHA(1) responded that the Administration had carefully considered the issue, but it maintained the view that the proposed board 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. He explained that there was urgency to proceed with amending the AIO legislation so that the latter could apply to those persons whose income source came from the Government. He explained that the Administration also took the view that maintenance payers should fulfil their obligations under the maintenance orders to provide maintenance to their ex-spouses and/or children, and the CSSA Scheme should only serve as a safety net. He, however, pointed out that according to available information, between 2001 and 2006, about 95% of those single-parent families living on CSSA were receiving either nominal maintenance from their ex-spouse or did not receive any maintenance, whereas for those who could receive non-nominal maintenance payments, the average amount was around \$1,600 only.

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