

**For information
on 11 June 2010**

Legislative Council Panel on Home Affairs

**Setting up an intermediary body for the effective enforcement of
Maintenance orders**

PURPOSE

This paper reports to Members the latest progress in legislative amendments to facilitate maintenance payees' collection of maintenance payments.

BACKGROUND

2. At the meeting of this Panel on 11 December 2009, Members reiterated the need for the Administration to re-consider the option of establishing an intermediary body to collect and enforce maintenance payments. Members requested the Administration to further review the problems encountered by maintenance payees, make recommendations to resolve these problems and devise a timetable for implementing these measures.

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

3. We have made reference to overseas experiences in the enforcement of maintenance orders and the powers available to the relevant authorities. Over the years, we have introduced various measures including the Attachment of Income Orders Scheme to empower the Judiciary with comparable powers.

4. The main problem faced by maintenance payees remains the evasion of the maintenance payers from compliance with the judgment summons. An intermediary body per se affords no additional protection to payees.

5. To facilitate the enforcement of maintenance orders and the timely collection of maintenance payment, the Administration is working on ways to streamline the court procedures in relation to judgment summons to combat the problem of maintenance payers evading service of the judgment summons. 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”).

6. We are working on the following areas of improvement –

- (a) To clarify that the Court, on hearing a judgment summons, may order payment of maintenance arrears accruing due after the application for the issue of the judgment summons up to the date of the order;
- (b) To relax the service requirements in judgment summons proceedings; and
- (c) To empower the Court to make an order for the arrest of the maintenance payer pending examination; an order prohibiting him/her from leaving Hong Kong; and 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.

7. At present, every judgment summons shall be served on the

maintenance payer personally. It is not uncommon for the maintenance payers to take the advantage of the service difficulties in order to evade their responsibilities. We are working on ways to relax the service requirements in judgment summons proceedings.

8. In order to secure a maintenance payer's attendance at the hearing of a judgment summons, consideration is given to how the Court may be empowered, depending on such relevant circumstances of a case as the conduct of the maintenance payer, to make an order that the maintenance payer be arrested or prohibited from leaving Hong Kong, if there is reasonable cause to believe that the judgment summons may be ineffective to secure the attendance of the maintenance payer at court.

9. 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, it is under consideration that the Court may make an imprisonment order against the maintenance payer.

10. We are also seeking to empower the Court to make orders of payment of arrears accruing up to and including the date of the order of commitment.

11. We are now consulting the Judiciary on the proposed amendments. We plan to consult the legal profession on the proposed amendments in the 4th quarter of 2010.

OTHER INFORMATION

12. At the last Panel meeting, the Administration was also requested to provide information on -

- the number of applications for Comprehensive Social Security Assistance ("CSSA") from new arrivals with less than seven years' residence in Hong Kong, whose ex-spouses had defaulted

maintenance payment; and the number of such applications which had been successful; and

- whether the interest incurred from loans to tie over the period with financial difficulties due to failing to receive maintenance payment could be covered by CSSA.

13. Members may wish to note that there was no breakdown on the applications made by those whose ex-spouses had defaulted maintenance payment. A maintenance payee who fails to receive maintenance payment and suffers financial hardship may apply for CSSA. As CSSA is used to meet the basic need, there would not be additional CSSA payment to cover the interest incurred from loans to tie over the period with financial difficulties due to failing to receive maintenance payment.

**Home Affairs Bureau
Social Welfare Department
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