

# 立法會 *Legislative Council*

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## **Panel on Home Affairs**

### **Background brief prepared by Legislative Council Secretariat for the meeting on 11 December 2009**

#### **Setting up an intermediary body for the effective enforcement of maintenance order**

#### **Purpose**

This paper sets out measures taken by the Administration to facilitate the effective enforcement of maintenance orders and summarizes views of Legislative Council (LegCo) Members on the setting up of an intermediary body for the effective enforcement of maintenance orders.

#### **Background**

2. Either party to a divorce who is in need of continuing financial support may apply to the Court for an order requiring payment by the other party towards the maintenance of himself/herself or his/her children or both. Where the maintenance payer defaults in payment, the maintenance payee has to go through time-consuming and complicated court proceedings to enforce the maintenance order. In 1998, the Administration introduced the Attachment of Income Order (AIO) Scheme to enable a maintenance payee to receive punctual maintenance payments specified in the maintenance order.

3. Under the AIO Scheme, the Court can make an AIO under the AIO legislation enacted in 1997, requiring an income source<sup>1</sup> 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. Before 2002, an AIO could only be made if the maintenance payer had defaulted payment without reasonable excuse. This provision has been relaxed since 2002 as elaborated in paragraph 8(b) below.

4. In view of the difficulties encountered by divorcees in collecting maintenance payments, LegCo Members have been urging the Administration to consider the proposal of setting up an intermediary body for the collection and enforcement of maintenance payment since the idea was first raised at the meeting of the Home Affairs Panel in April 1996.

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<sup>1</sup> Note: "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.

## **Review on the enforcement of maintenance orders**

5. In April 1999, the Administration set up the Inter-departmental Working Group on Review of Law and Administrative Measures affecting Divorcees and Children who are Eligible for Alimony (the Working Group) to study measures to address problems faced by maintenance payees. In May 2000, the Working Group published a report recommending a series of legislative and administrative measures to improve the system. The Working Group also concluded that the setting up of a maintenance board to collect and enforce maintenance payment would unlikely bring, to either the maintenance payees or the taxpayers, any significant benefits over and above those which could be achieved by improving the existing system.

6. The Administration accepted all the recommendations made by the Working Group and presented its report to the Panel at its meeting in June 2000. At the meeting, the Administration further explained its considerations for accepting the Working Group's recommendation not to set up an intermediary body, which are summarized as follows -

- (a) payment and collection of maintenance was a private affair between the payer and the payee, and the Government should not interfere unless there was a very strong reason to do so;
- (b) if an intermediary body was going to arrange advance payments to the maintenance payee, it might give the wrong impression to the maintenance payer that he could pass the burden to the intermediary body;
- (c) an intermediary body would not be able to recover all arrears from the maintenance payers and as a result taxpayers had to shoulder the financial responsibility which should be that of the maintenance payers; and
- (d) the job of an intermediary body could be achieved by improving the existing administrative systems.

7. Members expressed strong dissatisfaction at the Administration's decision. They pointed out that -

- (a) only 18 of the 57 applications for AIOs during the 24 months from April 1998 to March 2000 were approved and it took as long as six months for some applications to be approved. The statistics showed that the AIO Scheme was not an effective means to address the problem of maintenance arrears;
- (b) although implementation of the recommendations of the Working Group could be of some assistance, the hardship and torment suffered by the maintenance payees and their children in collecting maintenance payments would not be alleviated in the absence of an intermediary body;

- (c) the Government had an obligation to protect needy people from financial hardship and mental stress, and setting up an intermediary body did not represent an intervention into private disputes;
- (d) an intermediary body would always be more effective than an individual in recovering arrears of maintenance payments; and
- (e) the Government's decision not to set up the intermediary body was tantamount to telling all maintenance payers that they could evade the responsibility to pay maintenance payments and even a government body was unable to recover the arrears.

### **Measures to facilitate effective enforcement of maintenance orders**

8. Subsequent to the discussion on the Working Group's report in June 2000, the Administration consulted the Panel on various legislative proposals to enhance the enforcement of maintenance orders and briefed members on the implementation of the legislative and administrative measures recommended by the Working Group in 2002, 2004, 2007 and 2008 respectively. A summary of these improvement measures is set out in the ensuing paragraphs -

#### Legislative measures

- (a) the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 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;
- (b) 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 proceeding 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; and
- (c) to combat the problem of maintenance payers deliberately evading the service of the judgment summons<sup>2</sup>, the Administration had consulted the Panel in June 2008 on the proposed 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

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<sup>2</sup> Note: Under Rule 87(1) of the Matrimonial Causes Rules (Cap.179 sub. Leg. A), judgement summons is a summons issued under the Rule 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.

empower the Court to more effectively make orders to secure attendance of the maintenance payer for examination of the judgement summons proceedings. To eliminate unnecessary procedures to the Court and litigating parties, the Administration had also proposed legislative amendments to enable the Court to order payment of maintenance arrears accrued up to the date of Court hearing instead of the date of application for the judgment summons.

#### Administrative measures

- (a) the complicated and time-consuming procedures in processing applications for Comprehensive Social Security Assistance (CSSA) and legal aid had 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. Under the new referral arrangement, SWD would, where appropriate, directly refer cases to LAD to pursue legal action to enforce maintenance orders. SWD had also streamlined the procedures in referring single parents receiving CCSA from the Social Security Field Units to the Family Services Centres for timely counseling and family services;
- (b) the Home Affairs Bureau had informed non-governmental organizations (NGOs) and legal professional bodies of the following measures to facilitate the effective enforcement of maintenance orders: maintenance payees who applied for judgement summons without legal representation might apply for summonses to be served by Court Bailiffs; the Court could specify in appropriate cases the mode of payment after taking into account the wishes of the parties involved and the circumstances surrounding the cases concerned; cases of maintenance payers failing to notify the maintenance payees of change of address could be reported to the police station nearest to the maintenance payer's last known address;
- (c) the Law Society of Hong Kong had been requested to inform its members that they could, 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 would be taken to sue for arrears in maintenance; and
- (d) promotional and publicity materials on maintenance-related matters compiled by various government department were readily available; NGOs had been sponsored to carry out community involvement projects/activities to enhance public awareness of the rights of maintenance payees and services available to them; and ongoing publicity measures including publications on maintenance-related issues and Announcement of Public Interest on television and radio had been arranged.

## **Intermediary body for enforcement of maintenance payments**

9. During the discussions on the legislative proposals and administrative measures mentioned in the preceding paragraph, members had revisited issues relating to the setting up of an intermediary body/maintenance board. Key views and suggestions made by members on the proposal are highlighted as follows.

10. Members generally supported the setting up of an intermediary body/maintenance board for the collection of maintenance payments and urged the Administration to re-consider the proposal. They considered that the various piecemeal legislative amendments proposed by the Administration could not save maintenance payees from the painful experience of chasing maintenance payments, and the ultimate solution to resolving issues of default by maintenance payers was to establish an intermediary body to collect and enforce maintenance payments. In their view, the proposal would be more cost-effective and efficient in recovering arrears from maintenance payers than if the same act was carried out by the maintenance payees themselves. Moreover, it would help ease the CSSA burden and avert the need for the maintenance payees to go through the very cumbersome and time-consuming legal procedures in the process of collecting maintenance payments.

11. Some members further suggested that the proposed intermediary body, if set up, should mainly assist maintenance payees in handling the cumbersome legal procedures, while the existing legal and administrative measures in relation to the collection of maintenance could be maintained. Considerations should also be given to expanding the functions and responsibilities of the Family Service Centres, which should handle the collection of maintenance on behalf of the maintenance payees once the Court had determined the amount payable.

12. Concerning the existing enforcement system, some members opined that the ineffectiveness of the existing system had resulted in the transfer of the financial burden of those irresponsible maintenance payers to the community. These members also expressed concern about the existing situation under which divorcees who were defaulted on maintenance payments would suffer financial loss when they applied for CSSA because the amounts of their maintenance payments would be deducted from their CSSA payments notwithstanding the non-payment. These members suggested that SWD should still issue the CSSA payment to the maintenance payees under these circumstances, but the arrears later recovered from the maintenance payers concerned could be returned to SWD.

13. Other members expressed concern that the AIO would not be applicable if the maintenance payers were self-employed and urged the Administration to make further improvement to the existing enforcement of maintenance orders. They requested the Administration to take into account the 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 passed by LegCo on 26 February 1997 and 8 December 1999 respectively (details set out in paragraphs 4 and 27 of the background brief on the subject prepared by the Secretariat in 2002 ([LC Paper No. CB\(2\)1076/01-02\(04\)](#))), and to make reference to the LegCo Secretariat's research report ([RP04/98-99](#)) which showed that the success rate of collecting maintenance

payments by an intermediary body in Australia was very high and had proven to be very cost-effective.

14. In response, the Administration advised that ever since the publication of the Working Group's report in 2000, it had not changed its position regarding the setting up of an intermediary body/maintenance board for the enforcement of maintenance orders. The Administration did not find it justifiable to pursue the proposal for the following reasons -

- (a) 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;
- (b) maintenance in arrears was a type of civil disputes between parties which involved private debts, and it was 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; and
- (c) the existence of such an intermediary body would not make a difference in terms of cases whereby the maintenance payers did not have the ability to pay or simply did not wish to pay.

15. The Administration further advised that while it had no plan to establish an intermediary body, it had been exploring measures to enhance assistance for divorcees who encountered difficulties in collecting maintenance payments, for instance, a pilot scheme had been launched on mediation in matrimonial cases. The Administration had last consulted the Panel on Administration of Justice and Legal Services in March 2009 on its proposal to provide funding for mediation in legally aided matrimonial cases on a permanent basis.

16. Regarding members' suggestion on the grant of CSSA payments to maintenance payees as specified in paragraph 12 above, the Administration explained that the suggested approach might be a case of hypothecation of revenue which was against the principles of management of public finance. The Administration, however, undertook to follow up with SWD and LAD on whether there was further room for enhancing collaboration between SWD and LAD in providing assistance for maintenance payees who were CSSA recipients.

### **Latest development**

17. Upon members' request, the Administration has agreed to brief members on the latest position regarding the implementation of the improvement measures to facilitate the effective enforcement of maintenance orders at the Panel meeting on 11 December 2009.

## **Relevant papers**

18. A list of relevant papers with their hyperlinks at the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
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## Appendix

### Panel on Home Affairs

#### Relevant documents on setting up an intermediary body for the effective enforcement of maintenance orders

Committee	Date of meeting	Minutes/Paper/Report	LC Paper No.
Panel on Home Affairs	14.12.1998	Research Report on "Child Support Agencies in Overseas Countries" prepared by Research and Library Services Division	RP04/98-99 <a href="http://www.legco.gov.hk/yr98-99/english/sec/librariy/989rp04.pdf">http://www.legco.gov.hk/yr98-99/english/sec/librariy/989rp04.pdf</a>
	8.2.2002	Administration's progress report on implementation of legislative and administrative measures affecting divorcees and children who are eligible for alimony	LC Paper No. CB(2)1076/01-02(03) <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0208cb2-1076-3e.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0208cb2-1076-3e.pdf</a>
		Background brief on intermediary body for the collection and enforcement of maintenance payments and related issues prepared by Legislative Council Secretariat	LC Paper No. CB(2)1076/01-02(04) <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0208cb2-1076-4e.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0208cb2-1076-4e.pdf</a>
		Minutes of meeting	LC Paper No. CB(2)1278/01-02 <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020208.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020208.pdf</a>
	22.3.2004	Minutes of meeting	LC Paper No. CB(2)2000/03-04 <a href="http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040322.pdf">http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040322.pdf</a>

<b>Committee</b>	<b>Date of meeting</b>	<b>Minutes/Paper/Report</b>	<b>LC Paper No.</b>
	13.4.2007	Administration's paper on proposed amendments to the Attachment of Income Order legislation	LC Paper No. CB(2)1503/06-07(01) <a href="http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/ha0413cb2-1503-1-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/ha0413cb2-1503-1-e.pdf</a>
		Minutes of meeting	LC Paper No. CB(2)1980/06-07 <a href="http://www.legco.gov.hk/yr06-07/english/panels/ha/minutes/ha070413.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ha/minutes/ha070413.pdf</a>
	13.6.2008	Administration's paper on streamlining court procedures and setting up an intermediary body for the effective enforcement of maintenance orders	LC Paper No. CB(2)2215/07-08(01) <a href="http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0613cb2-2215-1-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0613cb2-2215-1-e.pdf</a>
		Minutes of meeting	LC Paper No. CB(2)2824/07-08 <a href="http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080613.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080613.pdf</a>