

立法會
Legislative Council

LC Paper No. CB(2)1812/02-03

Ref : CB2/BC/5/01

Paper for the House Committee meeting on 25 April 2003

**Report of the Bills Committee on Interest on
Arrears of Maintenance Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on the Interest on Arrears of Maintenance Bill.

Background

2. The Interest on Arrears of Maintenance Bill (the Bill) is part of a package of legislative proposals to implement the recommendations of the "Inter-departmental working group on review of law and administrative measures affecting divorcees and children who are eligible for alimony" (the Working Group). In its report published in May 2000, the Working Group made a total of 10 recommendations to address the difficulties encountered by maintenance payees in collecting and enforcing maintenance payments.

3. To address the problem of some maintenance payers withholding payment until shortly before the court hearings scheduled for the judgment summons but defaulting again after paying a few months, the Working Group recommended that the court be empowered to impose surcharge on late maintenance payments.

4. Following consultation with the Hong Kong Bar Association, the Law Society of Hong Kong and the Judiciary, the Administration proposes, instead, to empower the court to impose interest at judgement rate on maintenance arrears.

The Bill

5. Under the Bill, the maintenance payer may be required to pay interest only upon an application by the maintenance payee in proceedings instituted for

enforcing the maintenance order, and the amount of interest will be calculated according to a prescribed formula.

The Bills Committee

6. At the House Committee meeting on 11 January 2002, Members agreed that a Bills Committee should be formed to study the Bill. The Bills Committee was activated on 28 June 2002 and first met on 22 July 2002. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon Margaret NG, the Bills Committee has held 10 meetings with the Administration and has met with representatives from eight organisations as listed in **Appendix II**.

Deliberations of the Bills Committee

Interest to be calculated automatically in case of default in maintenance payment

8. Under section 50 of the District Court Ordinance (Cap. 336) (DCO), judgment debts carry simple interest at the rate the court orders or, in the absence of an order, at the rate the Chief Justice determines by order. Members consider that arrears of maintenance should be deemed judgment debts so that interest would arise automatically upon default of maintenance payment.

9. In considering whether maintenance payment should be treated as judgment debts, the Administration has pointed out that a maintenance order is different from an ordinary civil debt in that -

- (a) periodical maintenance payments are on-going payments while debt means a contractual liability that has already been incurred;
- (b) a maintenance order can be varied or discharged by an order of the court but not a debt;
- (c) bankruptcy cannot be used as a means to enforce periodical payments whereas it may be used so for civil debts; and
- (d) unsecured periodical payments are not assignable.

10. The Administration has further pointed out that section 11 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) (MPPO) empowers the court "to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended". This provides both the payer and the payee of a maintenance order with a channel to

vary or discharge the order should either or both parties feel the need. Although this lends strength to the argument that a maintenance order is not a final judgment, any change to the maintenance order will only ensue following an application to vary or discharge it. In cases where no such application has been made, the maintenance payee has legitimate and reasonable expectation to receive full and punctual payment(s). As the maintenance payer should be in the best position to assess his/her own financial situation, the onus is on the maintenance payer to apply to vary or discharge a maintenance order when he/she considers it necessary. Another court order is the only legal means to vary or discharge the original maintenance order.

11. In view of the above, the Administration agrees that a maintenance order is arguably a judgment debt until the court decides to have it varied or discharged. It therefore considers it not unreasonable for interest to be calculated automatically in case of default in maintenance payments until the court, on application, makes an order to vary or discharge the original maintenance order.

12. The Administration has also pointed out that a person is not entitled, without leave of the court, to enforce through the court the payment of arrears, if the arrears became due more than 12 months before proceedings to enforce payment are begun. The provision is to prevent large sums from mounting up, and to avoid the payer from being mistakenly led to believe by the payee's acquiescence that he/she will not enforce the order. The Administration considers that this principle should also apply in the calculation of interest on maintenance arrears.

13. In calculating interest on maintenance arrears, the Administration recommends, and the Bills Committee agrees, that the following principle should be followed -

- (a) simple interest as provided in section 50 of DCO should be adopted;
- (b) the amount of arrears should no longer be subject to the 12-month enforcement rule specified under section 12 of MPPO if it has been affirmed through enforcement proceedings as an item of debt by the court; and
- (c) if the court makes a committal order against the maintenance payer and suspends it under rule 87(6) of the Matrimonial Causes Rules (Cap. 179 sub. leg.), any payment made by him/her is subject to the order of priority stipulated in rule 87(8) thereof.

Surcharge on maintenance arrears as a further deterrent

14. Members consider that as a further deterrent, the court should have discretion to impose a surcharge on maintenance arrears in cases where the

maintenance payer repeatedly defaults without reasonable excuse. Members have pointed to cases where the maintenance payer repeatedly makes irregular and partial payments, even after enforcement orders have been made and despite their financial capability to make full payments.

15. The Administration has pointed out that in normal circumstances, either interest or surcharge is required for default in payment. Whereas interest awarded is something due the maintenance payee for not being able to obtain full and punctual payment(s), a surcharge serves a different function and carries an implication that the payer has been at fault or not been able to fulfill what is required of him/her.

16. In recognition of the not insignificant number of cases referred to by members in paragraph 14 above, the Administration agrees that a surcharge may be imposed as a further deterrent in cases where the court finds blameworthy conduct on the part of the maintenance payer. The Administration has emphasized that while maintenance payees should automatically be entitled to interest on arrears at judgment rate unless otherwise determined by the court, a surcharge may be imposed by the court only in deserving cases. The Administration proposes that -

- (a) on application from a maintenance payee, the court may impose a surcharge;
- (b) an order for a surcharge should only be made when the court is satisfied that the payer has defaulted repeatedly without reasonable excuse; and
- (c) a maintenance payer may be summoned to the court by a judgment summons and should be given the opportunity to defend himself/herself.

Surcharge ceiling

17. The Administration proposes to set the ceiling at 30% of the total arrears of maintenance, taking into account that the payee would have already been compensated for his/her loss in interest on the maintenance arrears by the automatic interest at judgment rate. However, members of the Bills Committee are unanimously of the view that the surcharge ceiling should be set at 100% of the arrears and to leave the discretion to the court to determine the appropriate amount of surcharge in each case.

18. The Administration has explained that while it shares members' view that the surcharge ceiling should be of a sufficiently high level in order to be an effective deterrent against blameworthy conduct of defaulting repeatedly without reasonable excuse, it considers that a 100% surcharge ceiling too onerous. The

Administration appreciates that the surcharge ceiling serves as a reference to the court in determining the surcharge requires but considers that it has also to be reasonable.

19. The Administration has further pointed out that in deciding on the nature and amount of payment(s) to be provided in a maintenance order, the court has already taken into account a host of factors involved, including the financial position of the maintenance payer. Pitching the ceiling at too high a level may actually defeat a purpose of the surcharge, i.e. to compensate the payee for the distress and anxiety caused. In this connection, the Administration has referred to the comment of the Law Society of Hong Kong that the surcharge proposal together with the imposition of interest can lead to the payer "simply opting to disappear" as in the majority of cases, there is simply insufficient money to pay maintenance.

20. The Administration has also pointed out that a 30% ceiling is already higher than the surcharge on late payment of tax and Government rent (5% for late payment not exceeding six months, and 10% thereafter).

Problem of deliberate evasion of service summons by maintenance payers.

21. Members have expressed concern about the problem of deliberate evasion of service of summons by maintenance payers. To address the problem, some members suggest that the court should be given the power to impose a surcharge even though the maintenance payer fails to appear before the court, so long as the summons has been served to the address provided by the payer.

22. In response to the suggestion, the Administration has pointed out that the blameworthy conduct of the maintenance payer is a fact to be established by the court before imposing a surcharge. As accrued maintenance arrears can amount to tens of thousands of dollars and since the surcharge scheme is designed to cover all maintenance arrears cases, the imposition of a surcharge by the court may inflict a serious detriment on some maintenance payers. From the general legal policy perspective, where there is a serious detriment to an individual on the establishment of certain facts, the criminal standard of proof (i.e. beyond reasonable doubt) would be required even though the case is not a criminal matter. The facts will not be taken to be proved merely on a balance of probabilities.

23. The Administration has further explained that if the court is empowered to impose a surcharge on a maintenance payer in his/her absence, there may be cases where the criminal standard of proof is not satisfied. It is only appropriate that a maintenance payer be afforded a chance to present his/her points to the court. Otherwise, there is no way for the court to find that there is no reasonable excuse for the payer's failure to comply with the maintenance order.

Application for surcharge

24. In response to members' request, the Administration has provided additional information on the application procedures for surcharge.

Enforcement proceedings and summons

25. Members note that a maintenance payee may attach an application for surcharge to any concurrent enforcement proceedings. These include judgment summons, attachment of income order, garnishee proceedings and charging order to enforce the maintenance order under which arrears have accrued.

26. Application for surcharge may also be made by way of summons, which provides for alternative modes of service and would cater for the scenario where the maintenance payer in question tries to evade service of the summons. Apart from personal service, the payee could choose to serve on the legal representative acting for the maintenance payer, if represented, or by sending the summons and other relevant documents to the last known address of the maintenance payer, if unrepresented. If the payer fails to attend the hearing or if the service has been unsuccessful, the court could direct service in such manner as appropriate, or make an order of surcharge in the absence of the payer at the hearing if it is satisfied with the payee's efforts to serve the documents in the first attempt.

27. If the court makes an order of surcharge in the absence of the payer, the payer may apply to the court to set aside or vary the order or to appeal against the order after he has knowledge of the order being made. The court will take into consideration all relevant matters, including all applicable legal requirements and Articles 10 and 11 of the Hong Kong Bills of Rights Ordinance (Cap. 383), in exercising its discretion to confirm, set aside or vary the order or to allow or dismiss the appeal, as the case may be.

28. As for enforcement of payment of surcharge, a maintenance payee could choose the enforcement proceedings available under the law which best fit the circumstances.

Provision of user-friendly forms for use of applicants

29. Members have expressed concern about the user-friendliness of the proposed summons procedures for application for surcharge. They have asked for application forms to be provided for perusal in order to gauge their user-friendliness. In response to the request, the Administration has submitted to the Bills Committee the standard summons forms with the Administration's annotations and suggested wordings for completion by maintenance payees, together with a draft affidavit in support of the application for surcharge.

Computer software for calculation of interest on maintenance arrears

30. Members have asked the Administration to develop a computer software for calculation of interest on arrears of maintenance. Following discussion with the departments concerned on the timeframe for the project, the Administration has informed the Bills Committee that the whole process is expected to take 90 to 110 days. The Administration is sorting out with the departments concerned on the technical issues involved and will proceed with the procurement procedures once it is ready.

Consultation with the legal profession

31. As requested by the Bills Committee, the Administration has sought the views of the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Family Law Association on the Committee Stage amendments (CSAs) proposed by the Administration.

32. The Administration has advised that the Hong Kong Family Law Association is agreeable to the latest proposal from the Administration and the Bar Association has no comments.

33. As regards the Law Society of Hong Kong, its Family Law Committee supports in principle the introduction of interest on maintenance arrears, but points to the possible resource implications on the court arising from the need to calculate the interests for unrepresented litigants. The Family Law Committee considers that the imposition of interest and surcharge might be too onerous in that in the majority of cases, there is simply insufficient money to pay the maintenance.

Intermediary body for the collection of maintenance payments

34. Members note that the Working Group had considered the proposal of setting up an intermediary body for the collection of maintenance payments. However, the Working Group concluded that an intermediary 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 administrative system. The Administration had accepted the Working Group's recommendation not to set up an intermediary body.

35. Members consider that as in the case of Attachment of Income Orders, the present proposals are not cost effective and will only benefit a small number of maintenance payees. Despite the implementation of such proposals, many maintenance payees would still encounter difficulties in collecting maintenance payments.

36. As the various legislative amendments implemented hitherto to improve the enforcement of maintenance order are ineffective, members disagree with the

conclusion reached by the Working Group and urge the Administration to reconsider the proposal of setting up an intermediary body for the collection and enforcement of maintenance payments. Apart from shielding maintenance payees from emotional turmoil when confronting their ex-spouses, the intermediary body, with expert knowledge and concerted efforts, would be more cost-effective and efficient in recovering arrears from maintenance payers than if the same act is carried out by the maintenance payees themselves. Members also share the view that more efficient collection and enforcement of maintenance payments would also help to relieve the pressure on legal aid and Comprehensive Social Security Assistance Scheme.

37. As the establishment of an intermediary body is outside the ambit of the Bills Committee, members agree that the matter should be referred to the Panel for Home Affairs for follow-up.

Committee Stage amendments (CSAs)

38. The CSAs to be moved by the Bills Committee to set the surcharge ceiling at 100% of the total amount of arrears of maintenance are in **Appendix III**. Except the percentage, the wording of the CSA to be moved by the Bills Committee is identical to the relevant parts of the CSAs to be moved to the Administration. The CSAs to be moved by the Administration are in **Appendix IV**.

Follow-up action by the Panel on Home Affairs

39. As stated in paragraph 37 above, the Bills Committee recommends that the issue of setting up an intermediary body for the collection and enforcement of maintenance payments should be followed up by the Panel on Home Affairs.

Follow-up action by the Panel on Administration of Justice and Legal Services

40. The Bills Committee also requests that the Panel on Administration of Justice and Legal Services to follow up with the Administration on ways to address the problem of evasion of service of summons by maintenance payers.

Follow-up action and undertaking by the Administration

41. As mentioned in paragraph 30 above, the Administration has undertaken to develop a computer software for calculation of interest on maintenance arrears for reference by all parties concerned. The Secretary for Home Affairs would undertake in his speech at the resumption of the Second Reading debate on the Bill

to develop the software and to brief the Panel on Home Affairs on the software during the user acceptance test stage before the commencement of the Ordinance.

Late submission of papers / draft CSAs by the Administration

42. On 21 March 2003, the Chairman of the Bills Committee brought to the House Committee's attention the late submission of discussion papers and draft CSAs by the Administration which had caused delay in completing the scrutiny of the Bill. The Chairman of the House Committee wrote to the Chief Secretary for Administration on 26 March 2003 to convey the concerns expressed by Members on the matter.

43. The Administration has apologised for the late submission of papers/CSAs. It has explained that some fundamental changes have been proposed during the scrutiny of the Bill, and some of these proposals required detailed examination within the Administration, and with the Judiciary, before a consolidated response could be formulated for consideration by the Bills Committee. Also, the Bill seeks to amend four pieces of principal legislation, namely the Guardianship of Minors Ordinance, Separation and Maintenance Orders Ordinance, Matrimonial Causes Ordinance and the MPPO. This increases the volume of draft CSAs required and hence the lead time for preparation and checking, causing the delay in providing papers / CSAs to the Bills Committee.

Recommendation

44. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 14 May 2003.

Advice sought

45. Members are invited to note the recommendation of the Bills Committee in paragraph 44 above.

Appendix I

Bills Committee on Interest on Arrears of Maintenance Bill 2001

Membership List

Chairman	Hon Margaret NG
Members	Dr Hon David CHU Yu-lin, JP
	Hon Cyd HO Sau-lan
	Hon Albert HO Chun-yan
	Hon CHAN Yuen-han, JP
	Hon YEUNG Yiu-chung, BBS
	Hon Miriam LAU Kin-yea, JP
	Hon CHOY So-yuk
	Hon LAW Chi-kwong, JP
	Hon LI Fung-ying, JP
	Hon Audrey EU Yuet-mee, SC, JP
	 (Total : 11 Members)
Clerk	Ms Doris CHAN
Legal Adviser	Mr LEE Yu-sung
Date	22 July 2002

Appendix II

Bills Committee on Interest on Arrears of Maintenance Bill 2001

List of deputations

- Caritas - Hong Kong
- Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
- Hong Kong Catholic Marriage Advisory Council
- Hong Kong Family Welfare Society
- Hong Kong Federation of Women's Centres
- Hong Kong Single Parents Association
- Maintenance Concern Group
- The Law Society of Hong Kong

Appendix III

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Honourable Margaret NG

Clause

Amendment Proposed

4 By adding -

"20B. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;

- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;
or
- (b) be sent -
 - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
 - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same

at the address for service or the last known address of that judgment debtor;
or

- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total

arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336)."

7 By adding -

"9C. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;
or
- (b) be sent -
 - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
 - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor;
or

- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336)."

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Surcharge on arrears of maintenance

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(2) The application for a surcharge under subsection (1) may be made -

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- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last

known address of the judgment debtor;

(c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;
or
- (b) be sent -
 - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
 - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor;
or

- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

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- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

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(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order; or
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(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last

known address of the judgment debtor;

(c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;
or
- (b) be sent -
 - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
 - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor;
or

- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) Subject to subsection (13), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) If the court grants leave, on the application of a judgment creditor for leave under section 12 to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(14) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

Appendix IV

4th draft: 19.03.2003

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
1(1)	By deleting "Interest on Arrears of Maintenance Ordinance 2001" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003".
4	(a) In the heading, by deleting " Section " and substituting " Sections ".
	(b) By deleting "is" and substituting "are".
	(c) In the proposed section 20A(1) - (i)by adding "and section 20B" after "this section"; (ii)in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 (of

2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (of 2003)";

(iii)in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;

(iv) by deleting the definition of "judgment rate".

(d) In the proposed section 20A(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to".

(e) By deleting the proposed section 20A(3) and substituting -

"(3) For the purposes of subsection (2) -

- (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
- (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and
- (c) for the purposes of that section 50, the date on which

payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 20B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the

sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application."

- (f) In the proposed section 20A(4), by deleting -
"(4) In determining"
and substituting -

"(7) If an application is made under subsection (6), in deciding".

(g) In the proposed section 20A, by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336)".

(h) By adding after the proposed section 20A -

"20B. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for

enforcing the maintenance order; or

- (b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be

decided by the court under
subsection (11);

(f) a request for fixing a date,
time and place for the hearing
of the application;

(g) a request for an order
requiring the judgment debtor
to pay to the judgment creditor
the surcharge claimed if the
judgment debtor does not appear
at the hearing.

(4) On receipt of the summons and
affidavit, the court shall fix a date, time and
place for the hearing of the application.

(5) The judgment creditor shall serve a
sealed copy of the summons and a copy of the
affidavit, together with a notice of the
hearing, on the judgment debtor.

(6) Without prejudice to any enactment
relating to the service of documents and save
as is otherwise expressly provided, the
summons, affidavit and notice may -

(a) be personally served on the
judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an

order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of

payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

- 7
- (a) In the heading, by deleting "**Section**" and substituting "**Sections**".
 - (b) By deleting "is" and substituting "are".
 - (c) In the proposed section 9B(1) -
 - (i) by adding "and section 9C" after "this section";
 - (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 (of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003

(of 2003)";

- (iii) in the definition of "judgment debtor",
by deleting the semicolon and
substituting a full stop;
- (iv) by deleting the definition of "judgment
rate".

(d) In the proposed section 9B(2), by deleting everything
after "order, the" and before "interest" and
substituting "judgment creditor is entitled to".

(e) By deleting the proposed section 9B(3) and
substituting -

"(3) For the purposes of subsection (2) -

- (a) the arrears in respect of each
periodical payment or payment
of a lump sum, as the case may
be, under a maintenance order
shall be treated as a judgment
debt for the purposes of section
50 of the District Court
Ordinance (Cap. 336);
- (b) the interest under subsection
(2) shall be calculated in
accordance with that section
50; and
- (c) for the purposes of that section

50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 9C;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the

sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application."

- (f) In the proposed section 9B(4), by deleting -
"(4) In determining"
and substituting -

"(7) If an application is made under subsection (6), in deciding".

(g) In the proposed section 9B, by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).".

(h) By adding after the proposed section 9B -

"9C. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for

enforcing the maintenance order; or

- (b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be

decided by the court under
subsection (11);

(f) a request for fixing a date,
time and place for the hearing
of the application;

(g) a request for an order requiring
the judgment debtor to pay to
the judgment creditor the
surcharge claimed if the
judgment debtor does not appear
at the hearing.

(4) On receipt of the summons and
affidavit, the court shall fix a date, time and
place for the hearing of the application.

(5) The judgment creditor shall serve a
sealed copy of the summons and a copy of the
affidavit, together with a notice of the
hearing, on the judgment debtor.

(6) Without prejudice to any enactment
relating to the service of documents and save
as is otherwise expressly provided, the
summons, affidavit and notice may -

(a) be personally served on the
judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to

appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a

surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

- 8 (a) In the heading, by deleting "**Section**" and substituting "**Sections**".
- (b) In the proposed section 53A(1) -
- (i) by adding "and section 53B" after "this section";**
 - (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 (of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (of 2003)";**
 - (iii) by deleting the definition of "judgment rate".**
- (c) In the proposed section 53A(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to".
- (d) By deleting the proposed section 53A(3) and substituting -

"(3) For the purposes of subsection (2) -

(a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and

subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 53B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the

maintenance in arrears,
whether in one amount or by
instalments, payable by the
judgment debtor under the
order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application."

(e) In the proposed section 53A(4), by deleting -
"(4) In determining"
and substituting -

"(7) If an application is made under subsection (6), in deciding".

(f) In the proposed section 53A, by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336)".

(g) By adding after the proposed section 53A -

"53B. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit

of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the

surchage claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor;

or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring

the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment
in compliance with the
maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved

by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

- 11 (a) In the heading, by deleting "**Section**" and substituting "**Sections**".
- (b) By deleting "is" and substituting "are".
- (c) In the proposed section 28AA(1) -
- (i) by adding "and section 28AB" after "this section";**
 - (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 (of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (of 2003)";**
 - (iii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;**
 - (iv) by deleting the definition of "judgment rate".
- (d) In the proposed section 28AA(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to".
- (e) By deleting the proposed section 28AA(3) and substituting -
- "(3) Subject to subsection (5) and for the purposes of subsection (2) -
 - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may

be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If the court grants leave, on the application of a judgment creditor for leave under section 12, to enforce arrears of maintenance which became due for more than 12 months, the interest under subsection (2) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of

the arrears.

(6) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 28AB;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

(e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(7) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application."

(f) In the proposed section 28AA(4), by deleting -
"(4) In determining"
and substituting -

"(8) If an application is made under subsection (7), in deciding".

(g) In the proposed section 28AA, by adding -

"(9) A judgment debtor who is aggrieved by a requirement under subsection (8) to pay interest may appeal to the Court of Appeal

against the decision under section 63 of the District Court Ordinance (Cap. 336).".

(h) By adding after the proposed section 28AA -

"28AB. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection

(2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring

the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or

by leaving the same
with the solicitor;

or

(ii) if the judgment
debtor is
unrepresented, by
post to the address
for service given by
him or his last known
address, or by
leaving the same at
the address for
service or the last
known address of
that judgment
debtor; or

(c) be served in such other manner
as the court directs.

(7) If the judgment debtor fails to
appear at the hearing of the application on the
date fixed under subsection (4), then -

(a) if the court is satisfied that
the summons, affidavit and
notice have been duly served on
the judgment debtor, it may

proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that

there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) Subject to subsection (13), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) If the court grants leave, on the application of a judgment creditor for leave under section 12 to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) shall be calculated from the date specified by

the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(14) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

New By adding after "CONSEQUENTIAL AMENDMENTS" -

"The Rules of the High Court

11A. Definitions

Order 1, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, by adding -

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the Ordinance;".

11B. Application for order

Order 49, rule 2 is amended, by adding after paragraph (b) -

"(ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating -

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
- (ii) the surcharge payable in

respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

11C. Order imposing a charge on a beneficial interest

Order 50, rule 1(3) is amended, by adding after paragraph (b) -

"(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating -

- (i) the interest payable in respect of the arrears of maintenance that the

judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or

section 28AB(1) of the
Matrimonial Proceedings and
Property Ordinance (Cap.
192), as the case may be;".

11D. Forms

Appendix A is amended -

(a) in Form No. 72 -

(i) in the second paragraph, by
adding "and interest at the
judgment rate calculated from
the date on which maintenance
payment is due to the date of
payment and surcharge at a rate
to be decided by the High Court,
as referred to in Order 49, rule
2(ba)(i) and (ii)" after
"costs)";

(ii) in the third paragraph, by
adding "and interest at the
judgment rate calculated from
the date on which maintenance
payment is due to the date of
payment and surcharge at a rate
to be decided by the High Court,

as referred to in Order 49, rule 2(ba)(i) and (ii)" after "order),";

(b) in Form No. 73 -

(i) in the first paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the second paragraph, by adding ", \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "judgment debt";

(c) in Form No. 74, by adding "and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "debtor";

(d) in Form No. 75, in the second

paragraph, by adding "(interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)";

- (e) in Form No. 76, in the second paragraph, by adding "(\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)".

12 By deleting everything after "Rules" and substituting -

"(Cap. 13 sub. leg. A) is amended -

- (a) in the definition of "related maintenance order", by repealing "20(1AA)", "9A(1AA)" and "28(1AA)" and substituting "2" in all places;

- (b) by adding -

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the High Court

Ordinance (Cap. 4) or section 50(1)(b) of the District Court Ordinance (Cap. 336), as the case may be;".

New By adding -

"13. Requirements relating to application made by designated payee

Rule 3(2)(f) is amended -

(a) in subparagraph (i), by repealing "and" at the end;

(b) by adding -

"(iii) the interest payable in respect of arrears of maintenance that the designated payee is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the

Matrimonial Causes
Ordinance (Cap. 179) or
section 28AA(2) of the
Matrimonial
Proceedings and
Property Ordinance
(Cap. 192), as the case
may be; and

- (iv) the surcharge payable
in respect of arrears of
maintenance under
section 20B(1) of the
Guardianship of Minors
Ordinance (Cap. 13),
section 9C(1) of the
Separation and
Maintenance Orders
Ordinance (Cap. 16),
section 53B(1) of the
Matrimonial Causes
Ordinance (Cap. 179) or
section 28AB(1) of the
Matrimonial
Proceedings and
Property Ordinance

(Cap. 192), as the case
may be;".

14. Schedule amended

The Schedule is amended, in Form 4 -

- (a) by renumbering "*1.", "*2." and "*3." as
"*3.", "*4." and "*5." respectively;
- (b) by adding -
 - *1. The sum of \$..... being
interest as referred to in rule
3(2)(f)(iii) of the Attachment
of Income Order Rules (Cap. 13
sub. leg. A).
 - *2. The sum of \$..... being
surcharge as referred to in
rule 3(2)(f)(iv) of the
Attachment of Income Order
Rules (Cap. 13 sub. leg. A).";
- (c) in the fourth paragraph, by repealing "or
3" where it twice appears and substituting
", 3, 4 or 5";
- (d) in NOTE 2, by repealing "or 3" and
substituting ", 3, 4 or 5".

Matrimonial Causes Rules

15. Judgment summons: general provisions

Rule 87 of the Matrimonial Causes Rules (Cap. 179
sub. leg. A) is amended -

- (a) in paragraph (1), by adding -

"interest" (利息) means interest in respect of arrears of maintenance payable under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the High Court Ordinance (Cap. 4) or section 50(1)(b) of the District Court Ordinance (Cap. 336);

"surcharge" (附加費) means a surcharge in respect of arrears of maintenance payable under

section 20B(1) of the
Guardianship of Minors
Ordinance (Cap. 13), section
9C(1) of the Separation and
Maintenance Orders Ordinance
(Cap. 16), section 53B(1) of the
Matrimonial Causes Ordinance
(Cap. 179) or section 28AB(1) of
the Matrimonial Proceedings
and Property Ordinance (Cap.
192), as the case may be.";

- (b) in paragraph (5)(a), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (c) in paragraph (6), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (d) by repealing paragraph (8)(a) and substituting -

"(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of -

- (i) interest;**

- (ii) surcharge;
- (iii) the costs of the judgment summons;
- (iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (v) if the court makes an order on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and".

16. Special provisions as to judgment summons

Rule 88(2) is repealed and the following substituted

-

"(2) Witnesses may be summoned -

- (a) to prove the means of the judgment debtor; and
- (b) to provide information relevant to the court's decision on interest and surcharge,

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of

subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued."

17. Forms

The Appendix is amended -

(a) in Form 22, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs" -

"Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment"

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court" ;

(b) in Form 23, by adding after the entry relating to "Amount due and unpaid in respect of order and costs" -

"Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment"

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court
.....".

The Rules of the District Court

18. Definitions

Order 1, rule 4(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended, by adding -

""judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 50(1)(b) of the Ordinance;"

19. Application for order

Order 49, rule 2 is amended, by adding after paragraph (b) -

"(ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating -

(i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179)

or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

20. Order imposing a charge on a beneficial interest

Order 50, rule 1(3) is amended, by adding after paragraph (b) -

"(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating -

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

21. Judgment summons: general provisions

Order 90A, rule 2 is amended -

(a) in paragraph (1), by adding -

"interest" (利息) means interest
in respect of arrears of
maintenance payable under
section 20A(2) of the
Guardianship of Minors
Ordinance (Cap. 13),
section 9B(2) of the
Separation and
Maintenance Orders
Ordinance (Cap. 16),
section 53A(2) of the
Matrimonial Causes
Ordinance (Cap. 179) or
section 28AA(2) of the
Matrimonial Proceedings
and Property Ordinance
(Cap. 192), as the case may
be;

"surcharge" (附加費) means a
surcharge in respect of
arrears of maintenance

payable under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be."

- (b) in paragraph (5)(a), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (c) in paragraph (6), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (d) by repealing paragraph (8)(a) and substituting -

"(a)all payments made after the date of the order of commitment by the

judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of -

(i) interest;

(ii) surcharge;

(iii) the costs of the judgment summons;

(iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

(v) if the Court makes an order on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and".

22. Special provisions as to judgment summons

Order 90A, rule 3(2) is repealed and the following substituted -

"(2) Witnesses may be summoned -

(a) to prove the means of the judgment debtor; and

(b) to provide information relevant to

the Court's decision on interest and surcharge,

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued."

23. Forms

(1) Appendix A is amended -

(a) in Form No. 72 -

(i) in the second paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the third paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "order),";

(b) in Form No. 73 -

(i) in the first paragraph, by adding "and interest at the

judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the second paragraph, by adding ", \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "judgment debt";

(c) in Form No. 74, by adding "and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "debtor";

(d) in Form No. 75, in the second paragraph, by adding "(interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))"

after "rate)";

(e) in Form No. 76, in the second paragraph, by adding "(\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)".

(2) Appendix D is amended -

(a) in Form No. 1, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs\$" -

"Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment\$
Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court\$";

(b) in Form No. 2, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs\$" -

"Interest payable in respect of the
arrears of maintenance, at the
judgment rate calculated from the
date on which maintenance payment is
due to the date of

payment\$

Surcharge payable in respect of the
arrears of maintenance at a rate to
be decided by the

Court\$".".