

**For information on
11 December 2009**

**Legislative Council Panel on Home Affairs
Effective Enforcement of Maintenance Orders**

PURPOSE

This paper informs Members of the implementation of improvement measures to help maintenance payees to collect maintenance payments.

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

2. We note there have been suggestions for the Administration to consider establishing a body for the collection and enforcement of maintenance payments. We have reported our views to the Panel in the past. In principle, maintenance in arrears is a type of civil disputes between parties which involve private debts. In circumstances where the maintenance payers do not have the ability to pay, a maintenance board would not necessarily be a solution to recovering maintenance. We do not consider it appropriate for the Government to proactively interfere by setting up an intermediary body to deal with the collection and payment of maintenance debts.

Legislative Measures

3. To facilitate the enforcement of maintenance orders and the timely collection of maintenance payment, the Administration is working on ways to streamline the court procedures in relation to judgment summons to combat the problem of maintenance payers evading service of the judgment summons. The streamlining of court procedures entails amendments to the following legislation -

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

4. The areas of improvements to consider are –

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

Summary of Improvements being pursued

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

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

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

8. We are also considering how the Court may be empowered to make order of payment of arrears accruing up to and including the date of the order of commitment.

Administrative Measures

9. To ensure a more effective enforcement of the maintenance orders, applications for Comprehensive Social Security Assistance ("CSSA") and legal aid have been synchronized to reduce the number of visits required of the applicants to the Social Welfare Department ("SWD") and Legal Aid Department ("LAD").

10. Under the existing procedures, in processing CSSA applications involving divorcees who have not received alimony or whose ex-spouses have defaulted in maintenance payments, SWD will not stop or reduce CSSA payment until the CSSA applicants have successfully recovered the alimony. SWD will require these CSSA applicants to file claims for maintenance or seek assistance to enforce the maintenance order and refer these cases to the LAD for assistance.

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

12. On publicity and public education, there are readily available promotional and publicity materials on maintenance-related matters compiled by various government departments. The Administration has also sponsored non-governmental organizations to carry out community involvement projects/activities to enhance public awareness of the rights of maintenance payees and services available to them. Through these projects, which encompass a wide range of activities, including hotline services and seminars, public awareness of the responsibilities of maintenance payers, the rights of maintenance payees, and the services available to maintenance payees in the event of default has been enhanced.

**Home Affairs Bureau
Legal Aid Department
Social Welfare Department
December 2009**