

Bills Committee on Domestic Violence (Amendment) Bill 2007
Meeting on 20 July 2007

Supplementary information

(a) Comparison of the major provisions of the Domestic Violence Ordinance (Cap. 189) and the Bill with anti-domestic violence legislation in overseas places

The Domestic Violence Ordinance (DVO) was modelled on the UK Domestic Violence and Matrimonial Proceedings Act of 1976, which was subsequently repealed and replaced by the Family Law Act of 1996. In reviewing the DVO, the Administration has made reference to the UK legislation and its subsequent changes, as well as the relevant legislation in New Zealand and Singapore. The major provisions of the DVO as proposed to be amended and the relevant ordinances of these three places are summarised at Annex.

(b) Reason(s) why same sex relationship was not covered by the Bill

The DVO currently provides protection to persons in spousal relationship and their children and is also applicable to the “cohabitation of a man and a woman as it applies to marriage”. In expanding the scope of the DVO to cover, inter alia, persons formerly in cohabitation relationship, we have not proposed any amendments to include same sex relationship under the DVO. Our reasons are :

- i. in Hong Kong, a marriage contracted under the Marriage Ordinance (Cap. 181) is, in law, the voluntary union for life of one man and one woman to the exclusion of all others. Our law, which reflects Government’s policy position, does not recognise same sex marriage, civil partnership, or any same sex relationship. Recognising same sex relationship is an issue concerning ethics and morality of the society. Any change to this policy stance would have substantial implications on the society and should not be introduced unless consensus or a majority view is reached by the society;

- ii. at present, any acts of violence are liable to criminal sanctions under the relevant ordinances, irrespective of the relationship between the abuser and the victim. Persons in same sex relationship are afforded the same level of protection as with those in heterosexual relationship under our existing criminal legislative framework; and
- iii. the DVO serves to provide additional civil remedies to specified types of domestic violence victims. Those who fall outside the scope of the DVO may continue to seek protection under the law of tort or inherent jurisdiction of the court. Persons in same sex relationship who suffer from violence perpetrated by their partners still have avenues to seek legal remedies.

(c) Whether the court might, in its criminal jurisdiction, require an abuser to attend an anti-violence programme approved by the Director of Social Welfare aimed at changing the attitude and behaviour of the abuser

Under the existing criminal legislative framework, the court may, pursuant to the Probation of Offenders Ordinance (Cap. 298), make a probation order requiring a person convicted of an offence to be under the supervision of a probation order. A probation order may in addition require the offender to comply with such requirements as the court considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences.

In connection with the above, the court has been referring convicted batterers put on probation to attend the Batterer Intervention Programme (BIP). The pilot BIP was launched by SWD since January 2006 providing treatment to batterers put on probation by the court, as well as to those who join the programme on a voluntary basis. As at end-June 2007, a total 27 counselling groups have been conducted with the participation of a total of 217 batterers, including 28 batterers on probation order. There were also 11 binding-over cases referred by the court who participated in the BIP on voluntary basis.

(d) Content of the anti-violence programme referred to in new section 3(1A) of Cap. 189, including its duration, what would constitute non-participation, and the penalty for non-participation, if any

The proposed anti-violence programme will be educational in nature and applicable to different types of abusers and their participation will be decided by the court. Whilst the detailed requirements of the proposed programme are being thrashed out by the SWD, it is expected to comprise five core components, viz. rapport building and ownership, control and monitoring of violence, self-understanding (learn, confront and challenge), skills training and building, and relapse prevention, with details as follows –

- (i) On *rapport building and ownership*, the participant will be familiarised with the programme and motivated for enhancement. The caseworker will arouse the person's awareness of the impact of abusive and violent behaviour as well as the legal consequences, and the importance of accepting one's responsibility and seeking help to change.
- (ii) On *controlling and monitoring of violence*, the participant will be guided to share his / her recent conflicts and their management. The caseworker will monitor the participant's situation and work out safety plans to enhance behavioural control and end one's abusive behaviour.
- (iii) On *self-understanding*, the participant will learn and face his / her antecedents of violence, vulnerability, and the violence development and culture, the effect of one's violence on his spouse / partners / the child and other family members, the impact of alcohol, gambling and substance abuse. The participant will also be taught on the key elements of a positive and healthy relationship, including the importance of communication, gender equality and mutual respect, the trust, support and empathy to the other person.
- (iv) On *skills training and building*, the participant will learn basic emotional control skills, including the awareness and expression of

his / her emotion, anger management and anxiety management. The training will help the participant improve his/her self esteem, communication skills and assertiveness. The participant will also receive training on non-violent tactics in handling and resolving relationship conflicts.

- (v) On *relapse prevention*, the participant will learn the relapse prevention skills and get prepared for further intervention.

The proposed anti-violence programme is expected to consist of twelve two to three-hour-long sessions conducted by mental health professionals (social workers, counselors or psychologists) in the form of either one-on-one or group session. Non-governmental organisations (NGO) will be engaged in delivering the programme and they will be invited to submit programme proposals for approval by the Director of Social Welfare in due course. The approved programmes should include the key elements as set out above and may be modified to suit different types of abuses concerned.

The respective NGO service providers will be required to record attendance of participants. Absence from a scheduled session without prior notification to the service provider will be regarded as non-compliance of the requirement set by the court and hence a breach of the injunction concerned. Breach of an injunction is a contempt of court and can be punished by imprisonment or a fine.

- (e) **Court cases to demonstrate that the term “molest” in Cap.189 already applied to psychological abuse, and whether acts such as harassing a pet or a child of the applicant and bombarding the applicant with telephone calls and email to request reconciliation could be regarded as psychological abuse**

Under Section 3 of the existing DVO, the court may grant an injunction if it is satisfied that the applicant has been “molested” by the respondent. While the term “molest” is not defined in the DVO, decided cases have revealed that in the context of family, the concept of “molest” is wide, extending to abuses beyond the more typical instances of physical

assaults to include any form of physical, sexual or psychological molestation or harassment which has a serious detrimental effect upon the health and well-being of the victim, and the threat of any form of such molestation or harassment. Information gathered from the Judiciary also reveals that the court has granted injunction under the DVO on grounds of the three different forms of abuse. There are also abundant cases decided by the courts in Hong Kong and in the UK that confirms the above interpretation of “molest”.

A number of selected cases by courts in Hong Kong and the UK are summarized below for Members’ reference –

Horner v Horner [1982] 2 All ER 495 (Eng, CA)

The wife was harassed by the husband, who telephoned her repeatedly at work, handing her abusive letters and postcards and intercepting her on the way to work. She applied for a non-molestation order under the Domestic Violence and Matrimonial Proceedings Act of 1976 but her application was rejected. On the wife’s appeal, the Court of Appeal held that “molesting” included conduct which did not amount to violent behaviour. Ormrod L.J. said: *“for my part I have no doubt that the word ‘molesting’ ...does not imply necessarily either violence or threats of violence. It applies to any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court.”*

George v George [1986] 2 FLR 347 (Eng, CA)

The husband gave an undertaking to the court not to assault, molest or otherwise interfere with his wife. The conduct complained of by the wife included sending letters in extremely abusive terms, shouting obscenities in front of her and the children, and following her around. The Court of Appeal held that such conduct constituted “molestation” in breach of the undertaking. Although it was not a case of physical molestation in any way, it was a serious matter that the husband failed to control himself and committed serious oral molestations. The original decision to commit the husband to prison was held.

Chan Chun Hon v Chan Lam Lai Bing Shirley [1994] 3 (HKC 196)

The wife was excluded from the matrimonial home by a non-molestation order and an ouster order against her. There was little evidence of actual domestic violence. The whole thrust of the husband's evidence was that this was a case of verbal abuse and that the conduct of the wife in relation to himself, his parents and brother and, in particular, to the child of the marriage was such that in their interests, the wife should not be allowed to live in the flat. The Court of Appeal dismissed the wife's appeal and held that the trial judge had applied the correct principles on the evidence he heard.

L v T [1995] HKFamC 2; FCDJ003039/1995 (HKC)

The wife applied for the continuation of a non-molestation and ouster order against the husband. It was the wife's case that the husband had on numerous occasions returned to the matrimonial home, shouting and swearing outside the premises, demanding to be let in. This had caused a degree of emotional distress to her and the children, and caused her constant vomiting and eventual collapse for which she had to be hospitalised for treatment. On one occasion, the husband was let in and as soon as he entered, he violently swept things on to the floor causing damage. On another occasion, the husband forced open the metal gate and entered the premises. He violently broke the furniture in the premises, leaving the premises in a mess. The wife feared for her safety. The District Court was satisfied that there had been violence in the flat as described by the wife as well as a real risk of continuing physical danger and violence in the future. The wife's application was accepted.

L v N [2001] HKFamC 2; FCMC005693/2000 (HKC)

The parties had a son of 5 year-old. It was said that the mother had extremely volatile nature with regular violence towards the father including once threatening him with a knife and regularly throwing things at him in temper. She regularly told him that he was useless

and that he should leave her to go back to his hometown. She also threatened to chop the father with a meat-cleaver in the presence of the son, frightening the son terribly. It was also said that the mother had been cruel to the son by subjecting him to long hours of homework every night during which she would scream and yell at him as well as smack and pinch him, causing him to cry and to be fearful of her. The father said the mother had exerted such psychological pressure on him that he started to have panic attacks and that he had become so concerned for the son's safety that the only solution was for the mother to move out of the matrimonial home. Armed with the above evidence, the father was granted a non-molestation order and ouster order against the mother.

As regards Member's question on whether harassing a pet of the applicant may amount to molestation, we are unable to locate any relevant court cases.

- (f) Convey to the Judiciary that the same judge for making a custody or access order in respect of a child should best be arranged to make an exclusion order under the DVO, if the Bill was enacted**

The Administration has conveyed Members' suggestion to the Judiciary for consideration.

**Labour and Welfare Bureau /
Social Welfare Department
September 2007**

Comparison of the Key Provisions of Domestic Violence-Related Legislation

	Hong Kong	UK	New Zealand	Singapore
1. Legislation dealing with domestic violence	<ul style="list-style-type: none"> Domestic Violence Ordinance (Cap.189), to be amended by Domestic Violence (Amendment) Bill 2007 	<ul style="list-style-type: none"> Family Law Act 1996, as amended by the Domestic Violence, Crime and Victims Act 2004 	<ul style="list-style-type: none"> Domestic Violence Act 1995 	<ul style="list-style-type: none"> Women’s Charter
2. Nature of legislation	<ul style="list-style-type: none"> Civil 	<ul style="list-style-type: none"> Civil 	<ul style="list-style-type: none"> Civil 	<ul style="list-style-type: none"> Civil
3. Definition of “domestic violence”	<ul style="list-style-type: none"> Not defined in the legislation Working definition included in the various procedural guidelines issued by the Social Welfare Department 	<ul style="list-style-type: none"> Not defined in the legislation. 	<ul style="list-style-type: none"> The term “domestic violence” is defined in the legislation. 	<ul style="list-style-type: none"> The term “family violence” is defined in the legislation.
4. Scope of relationships covered	<ul style="list-style-type: none"> Spouses and former spouses Cohabitants and former cohabitants of opposite sex Parents and children 	<ul style="list-style-type: none"> Spouses and former spouses Cohabitants and former cohabitants Persons living or formerly living in the same 	<ul style="list-style-type: none"> Spouses and former spouses Cohabitants and former cohabitants Biological parents of the same offspring 	<ul style="list-style-type: none"> Spouses and former spouses Parents and children Brothers and sisters Relative who in the opinion of the court

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	<ul style="list-style-type: none"> • Grandparents and grandchildren • Brothers and sisters • Uncles and aunts, nephews and nieces, and cousins (including the spouse of a person's above relatives, or such relatives of the person's spouse) 	<p>household</p> <ul style="list-style-type: none"> • Persons who have agreed to marry one another • Persons who have or have had an intimate personal relationship with each other which is or was of significant duration • Both are either a parent or a person who has/had parental responsibilities in relation to the same child • Relatives (including parents, grandparents, children and grandchildren, and brothers, sisters, uncles, aunts, nephews and nieces, whether by blood or by marriage, of the person or of the person's spouse) 	<ul style="list-style-type: none"> • Family members (by blood, marriage or adoption) • Persons ordinarily sharing a household • Persons in a close personal relationship 	<p>should be regarded as a member of the family</p>
<p>5. Whether a minor can apply for an injunction order</p>	<ul style="list-style-type: none"> • A minor (i.e. a person who is under the age of 18) shall apply for an injunction by his "next friend". 	<ul style="list-style-type: none"> • A child (i.e. a person who is under the age of 16) may not apply for a non-molestation order or an occupation order except with the leave of the court. 	<ul style="list-style-type: none"> • A child (i.e. a person who is under the age of 17) may make an application for a protection order by a representative pursuant to rules of court. 	<ul style="list-style-type: none"> • In the case of a child (i.e. a person who is below the age of 21 years) or an incapacitated person, an application may be made by a guardian or relative or person responsible for the care of the child or

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				incapacitated person, or by any person appointed by the Minister.
6. Types of injunction orders available	<ul style="list-style-type: none"> • Non-molestation order • Exclusion order • Entry order <p>[Remarks: Section 48A of District Court Ordinance provides that “the court may award damages in addition to or in substitution for an injunction or specific performance where it has jurisdiction to entertain an application for an injunction or specific performance”.]</p>	<ul style="list-style-type: none"> • Non-molestation order • Occupation order 	<ul style="list-style-type: none"> • Protection order • Occupation order • Tenancy order • Ancillary furniture order • Furniture order 	<ul style="list-style-type: none"> • Protection order

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7. Duration of injunction order	<ul style="list-style-type: none"> • Non-molestation order: no time limit specified in the legislation • Exclusion order or Entry order: maximum two years 	<ul style="list-style-type: none"> • Non-molestation order: for a specified period or until further order • Occupation order: <ul style="list-style-type: none"> – for persons entitled to occupy the property such as current spouse: for a specified period, until the occurrence of a specified event or until further order – for former spouse or cohabitant or former cohabitant without existing right to occupy the property: for a specified period not exceeding 6 months, and <ul style="list-style-type: none"> ▪ (for former spouse) may be extended on one or more occasions for a further specified period not 	<ul style="list-style-type: none"> • Protection order: continuously in force until it is discharged • Occupation order: for such period(s) as the Court thinks fit • Tenancy order: the court may, on the application of a party against whom a tenancy order is made, if it thinks fit, subsequently make an order discharging the tenancy order and re-vesting the tenancy accordingly • Ancillary furniture order: for 6 months or for such period as the Court thinks fit, but expires if the occupation order or tenancy order to which the order relates expires or is discharged • Furniture order: for 6 months or for such period as the Court thinks fit 	<ul style="list-style-type: none"> • A protection order may be made for such term as may be specified in the order

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		<p>exceeding 6 months, or</p> <ul style="list-style-type: none"> ■ for cohabitant or former cohabitant) may be extended on one occasion for a further specified period not exceeding 6 months. 		
8. Authorization of arrest	<ul style="list-style-type: none"> • The court may attach an authorization of arrest to an injunction order if – <ul style="list-style-type: none"> – it is satisfied that the respondent has caused actual bodily harm to the applicant or the minor concerned; or – it reasonably believes that the respondent will likely cause bodily harm to the 	<ul style="list-style-type: none"> • The court shall attach a power of arrest to an occupation or non-molestation order if it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child unless the court considers that the applicant or child will be adequately protected without the power of arrest. 	<ul style="list-style-type: none"> • The legislation provides that any member of the Police may arrest, without warrant, any person whom the member of the Police has good cause to suspect has committed a breach of a protection order. This does not apply, however, where the suspected breach is non-compliance with a direction to attend a specified programme on the specified occasions. 	<ul style="list-style-type: none"> • Not specifically provided for in the legislation.

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	applicant or the minor concerned.			
9. Requirement to attend programme	<ul style="list-style-type: none"> The court may, in granting a non-molestation order, require the respondent to attend an anti-violence programme as approved by the Director of Social Welfare, seeking to change his / her behaviour that lead to the granting of the injunction order. 	<ul style="list-style-type: none"> Not provided in the legislation. 	<ul style="list-style-type: none"> When making a protection order, the court can direct the respondent to attend a specified programme. 	<ul style="list-style-type: none"> The court may include in a protection order an order referring the person against whom the order is made or the protected person or both or their children to attend counseling.