

LEGISLATIVE COUNCIL BRIEF

Domestic Violence Ordinance
(Chapter 189)

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

INTRODUCTION

A At the meeting of the Executive Council on 12 June 2007, the Council ADVISED and the Chief Executive ORDERED that the Domestic Violence (Amendment) Bill 2007 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. The Domestic Violence Ordinance (DVO) enables a party to a marriage, or a man and a woman in cohabitation, to obtain quick and temporary relief from molestation by applying to the court for an injunction order containing any or all of the following provisions :

- (a) a provision restraining the other party from molesting the applicant or any child living with the applicant (a non-molestation order);
- (b) a provision excluding the other party from the matrimonial home or from a specified part of the matrimonial home, or from a specified area (an exclusion order); and
- (c) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home (an entry order).

The DVO also empowers the court to attach a power of arrest to a non-molestation order or an exclusion order, if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned.

3. In response to public concern over domestic violence, the Administration has conducted a review of the DVO and has identified a number of areas for further improvement. Under the existing DVO :

- (a) only persons in current spousal or cohabitation relationships can apply for an injunction order for himself/herself or any child living together with him/her, despite the report of cases of violence that involve former spouses/cohabitants and persons in non-spousal familial relationships;
- (b) only a child living with the applicant is entitled to the protection;
- (c) a child cannot on his/her own apply for an injunction order;
- (d) the court has no power to vary an existing custody or access order in respect of a child when granting an exclusion order;
- (e) the court can attach a power of arrest to an injunction order only if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned;
- (f) restrictions are imposed on the court's power to grant an exclusion order, in that the validity of the order cannot exceed 3 months for the first instance, and that the order may be extended only once, for a maximum of another 3 months only; and
- (g) similar restrictions are imposed as regards the power of arrest attached.

4. Against the above, we propose to amend the DVO in the following ways to enhance protection for victims of domestic violence :

- (a) extending its coverage to include persons formerly in spousal/cohabitation relationships and their children; to parent-son/daughter, parent-son/daughter-in-law, and

grandparent-grandson/granddaughter relationships; and to other extended familial relationships including between a person and his/her brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, niece and cousin;

- (b) enabling a “next friend” of a child under the age of 18 to apply for an injunction order on behalf of the child;
- (c) removing the requirement that the child has to be living together with the applicant to be entitled to protection under the DVO;
- (d) enabling the court to vary or suspend an existing custody or access order in respect of the child concerned when the court makes an exclusion order under the DVO;
- (e) empowering the court to also attach a power of arrest if it reasonably believes that the respondent will likely cause bodily harm to the applicant or the child concerned; and
- (f) extending the maximum duration of the injunction order and the related power of arrest from a maximum of six months to two years.

5. In addition to the proposals above, to facilitate rehabilitation of the abusers which will be conducive to the better prevention of recurrence of domestic violence, we propose that the court may, in granting a non-molestation order under the DVO, require the abuser to attend an anti-violence programme as approved by the Director of Social Welfare (DSW), seeking to change his/her attitude and behaviour that lead to the granting of the injunction order.

THE BILL

6. The main provisions of the Bill are :

- (a) **Clause 4** amends section 3 of the DVO by enabling the court to grant an injunction if it is satisfied that the former spouse or former cohabitant of the applicant has molested him/her, or the natural, adoptive or step children of the applicant, or of the

respondent. When the court grants a non-molestation order, it may require the respondent to participate in a programme aimed at changing the attitude and behaviour of the abuser as approved by DSW;

- (b) **Clause 5** adds a new provision to define the familial relationship and to empower the court to grant an injunction on application by a person (or his “next friend” if that person is under the age of 18), if the person has been molested his/her relative as specified. The court may grant a non-molestation, exclusion or entry order as appropriate, and may, if a non-molestation order is granted, require the respondent to participate in a programme aimed at changing the attitude and behaviour of the abuser as approved by DSW;
- (c) **Clause 7** amends section 5 by empowering the court to also attach an authorization of arrest¹ to a non-molestation order or an exclusion order if it reasonably believes that the respondent will likely cause bodily harm to the applicant or the minor concerned;
- (d) **Clause 8** amends section 6 by extending the maximum validity of an injunction order and an authorization of arrest to 24 months;
- (e) **Clause 9** amends section 7 by enabling the court to, on an application, extend an injunction order or an authorization of arrest for as many times as necessary, with the overall validity period not exceeding 24 months;
- (f) **Clause 10** adds a new provision to empower the court, in granting an exclusion order under the DVO, to vary or suspend an existing custody or access order in respect of the child concerned; and
- (g) **Clauses 13 to 17** make consequential and technical amendments to the Domestic Violence Rules (Cap. 189 sub. leg. A).

¹ It is proposed to rename “a power of arrest” as “an authorization of arrest” to more accurately reflect the nature of the document and in line with the terminology adopted in other ordinances.

B

Marked-up versions of the DVO and the Domestic Violence Rules as amended by the Bill are at **Annex B**.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows :

| | |
|--|----------------|
| Publication in the Gazette | 15 June 2007 |
| First Reading and commencement of Second Reading Debate | 27 June 2007 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

C

8. The financial, civil service and economic implications are set out in **Annex C**. The proposal has no productivity, environmental or sustainability implications.

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the current binding effect of the DVO and the subsidiary legislation made thereunder.

PUBLIC CONSULTATION

10. Between May and October 2006, the Administration consulted the Social Welfare Advisory Committee, the Women's Commission, the Elderly Commission, representatives of the District Fight Crime Committee, and the Chairmen and Vice-chairmen of the District Councils on our preliminary proposals for amending the DVO. We also sought the views of the two Working Groups on Elder Abuse and on Combating Violence, and the Committee on Child Abuse under the Social Welfare Department.

11. The LegCo Subcommittee on Strategy and Measures to Tackle Family Violence established under the Panel on Welfare Services also discussed the preliminary proposals on various occasions between May and September 2006. Deputations from the social welfare sector, women's groups, the Law Society of Hong Kong and other stakeholders were invited to attend and give comments.

12. We consulted the LegCo Panel on Welfare Services on 8 January 2007. The Panel, while supporting the direction of our legislative proposals, urged the Administration to expand the scope of the DVO to cover different familial relationships, whether spousal and non-spousal. We have since re-visited our package of amendments. The views of the Panel and the concerned stakeholders in this regard have been taken on board in the Bill as appropriate.

PUBLICITY

13. A press release will be issued on 13 June 2007. A spokesman will be made available to answer media enquiries.

BACKGROUND

14. Domestic violence is a subject of public concern. The number of first reported domestic violence cases to the SWD has increased over the past years :

- (a) the number of battered spouse cases has increased from 3,034 in 2002 to 4,424 cases in 2006;
- (b) the number of child abuse cases has increased from 520 in 2002 to 806 cases in 2006; and
- (c) there were 329 and 528 elder abuse cases in 2004 and 2005 respectively; with 522 cases in 2006.

The number of domestic violence cases reported to the Police increased from 2,401 in 2003 to 4,704 in 2006. Among them, the number of criminal cases rose from 799 to 1,811 over the same period.

15. In the past few years, the Administration has put in place a series of preventive, supportive and specialised services to enhance support for victims of domestic violence and families in need. A total of HK\$1.4 billion has been allocated for this purpose this year. We will continue to strengthen multi-disciplinary collaboration, promote family education and the building of community support networks, and reach out to vulnerable families to help them address their problems early.

16. On the legislation front, our criminal legislative framework seeks to sanction all acts of violence, irrespective of the relationships between the abusers and the victims, and independent of where the acts of violence occur. The framework comprises :

- (a) the **Offences Against The Person Ordinance** (Cap. 212), imposing criminal sanctions on, inter-alia, murder, manslaughter, attempts to murder, wounding or inflicting grievous bodily harm, exposing child whereby life is endangered, ill-treatment or neglect by those in charge of child or young person, assaults occasioning actual bodily harm and common assaults; and
- (b) the **Crimes Ordinance** (Cap. 200), imposing criminal sanctions on acts of intimidation, arson, destroying or damaging property, and sexual offences including rape, incest, indecent assaults etc.

17. The civil legislative framework seeks to provide civil remedies to victims of domestic violence. In addition to the DVO, the framework comprises :

- (a) the **Protection of Children and Juveniles Ordinance** (Cap. 213), empowering the court to grant a supervision order or appoint legal guardian in respect of a child or juvenile who is in need of care or protection as defined under the Ordinance; and
- (b) the **Mental Health Ordinance** (Cap. 136), empowering the Guardianship Board established under the Ordinance to make an emergency guardianship order if it has reason to believe that a mentally incapacitated person is in danger, or is being or likely to be maltreated or exploited and it is necessary to make immediate provision to protect that person.

ENQUIRIES

18. Any enquiry on this brief can be addressed to Miss Hinny Lam, Principal Assistant Secretary for Health, Welfare and Food (Women) at telephone number 2136 2766.

Health, Welfare and Food Bureau
13 June 2007

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

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A BILL

To

Amend the Domestic Violence Ordinance to -

- (a) enable application for, and granting of, injunctions under the Ordinance against -
 - (i) molestation by former husbands, former wives or former partners in cohabitation relationships between persons of opposite sex;
 - (ii) molestation of persons by their children, parents, grandchildren, grandparents, brothers, sisters, uncles, aunts, nephews, nieces and cousins or by the spouses of such relatives or by such relatives of their spouses;
- (b) enable a court to require persons against whom injunctions are granted under the Ordinance to participate in programmes approved by the Director of Social Welfare;
- (c) allow minors to apply for injunctions under the Ordinance by next friends;
- (d) extend the power of a court to attach an authorization of arrest;
- (e) extend the maximum validity period of an injunction or an authorization of arrest to 24 months;
- (f) empower a court to vary or suspend a custody order or an access order in certain circumstances,

and to make consequential amendments and minor technical amendments to the Ordinance and the Domestic Violence Rules.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Domestic Violence (Amendment) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Health, Welfare and Food by notice published in the Gazette.

PART 2

AMENDMENTS TO THE DOMESTIC VIOLENCE ORDINANCE

3. Interpretation and application

(1) Section 2(1) of the Domestic Violence Ordinance (Cap. 189) is amended by repealing the definition of "child".

(2) Section 2(1) is amended, in the definition of "matrimonial home", by repealing the full stop and substituting a semicolon.

(3) Section 2(1) is amended by adding -

"minor" (未成年人) means a person under the age of 18 years;

"respondent" (答辯人) means the person against whom an injunction is granted or sought to be granted under section 3 or 3A."

- (4) Section 2(2) is amended -
 - (a) in the English text, by repealing "and" where it last appears and substituting a comma;
 - (b) by adding "and "spouse" (配偶) (except in section 3A(2))" before "shall be".

4. Power of District Court to grant injunction

- (1) Section 3 is amended, in the heading, by adding "**spouses and former spouses**" at the end.

- (2) Section 3(1) is amended -
 - (a) by repealing "party to a marriage" and substituting "person";
 - (b) by repealing "a child living with the applicant" and substituting "a specified minor";
 - (c) by repealing "other party to the marriage" and substituting "spouse or former spouse of the applicant";
 - (d) in paragraph (a), by repealing "that other party" and substituting "the respondent";
 - (e) in paragraph (b), by repealing "that other party" and substituting "the respondent";
 - (f) in paragraph (b), by repealing "child living with the applicant" and substituting "specified minor";
 - (g) in paragraph (c), by repealing everything after "excluding" and substituting -
 - "the respondent -
 - (i) (where the applicant has been molested by the respondent) from -
 - (A) the residence of the applicant;

(B) a specified part of the residence of the applicant; or

(C) a specified area whether or not the residence of the applicant is in that area,

whether or not the residence is the common residence or matrimonial home of the applicant and the respondent;

(ii) (where the specified minor has been molested by the respondent) from -

(A) the residence of the specified minor;

(B) a specified part of the residence of the minor; or

(C) a specified area whether or not the residence of the minor is in that area, whether or not the residence is the common residence of the minor and the respondent;";

(h) in paragraph (d), by repealing everything after "requiring" and substituting -

"the respondent to permit -

(i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence or matrimonial home of the applicant and the respondent or in a specified part of such common residence or matrimonial home; or

(ii) (where the specified minor resides with the respondent) the minor to enter and remain in the common residence of the minor and the

respondent or in a specified part of such common residence,".

(3) Section 3 is amended by adding -

"(1A) A court may in an injunction containing a provision mentioned in subsection (1)(a) or (b) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction.".

(4) Section 3(2) is amended -

(a) by repealing "the exercise of its jurisdiction" and substituting "exercising its power";

(b) by repealing "child living with the applicant" and substituting "specified minor".

(5) Section 3 is amended by adding -

"(3) In this section, "specified minor" (指明未成年人) means a minor who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned.".

5. Section added

The following is added -

"3A. Power of District Court to grant injunction: other relatives

(1) The District Court may, on an application made by a person ("the applicant"), if satisfied that the applicant has

been molested by a relative of the applicant, grant an injunction against that relative.

- (2) In subsection (1), "relative" (親屬) means -
- (a) the applicant's father, mother, grandfather or grandmother (whether natural or adoptive);
 - (b) the applicant's step-father, step-mother, step-grandfather or step-grandmother;
 - (c) the applicant's father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the applicant's spouse;
 - (d) the applicant's grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the applicant's spouse;
 - (e) the applicant's son, daughter, grandson or granddaughter (whether natural or adoptive);
 - (f) the applicant's step-son, step-daughter, step-grandson or step-granddaughter;
 - (g) the applicant's son-in-law or daughter-in-law who is the spouse of the applicant's natural child, adoptive child or step-child;
 - (h) the applicant's grandson-in-law or granddaughter-in-law who is the spouse of the applicant's natural grandchild, adoptive grandchild or step-grandchild;
 - (i) the applicant's brother or sister (whether of full or half blood or by virtue of adoption);

- (j) the brother or sister (whether of full or half blood or by virtue of adoption) of the applicant's spouse;
- (k) the applicant's step-brother or step-sister;
- (l) the step-brother or step-sister of the applicant's spouse;
- (m) the applicant's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);
- (n) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the applicant's spouse; or
- (o) the spouse of any person mentioned in paragraph (i), (j), (k), (l), (m) or (n).

(3) A minor who applies for an injunction under subsection (1) shall apply by his next friend.

(4) Subject to section 6, an injunction granted under subsection (1) may, whether or not any other relief is being sought in the proceedings, contain any or all of the following provisions -

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision excluding the respondent from -
 - (i) the residence of the applicant;
 - (ii) a specified part of the residence of the applicant; or
 - (iii) a specified area whether or not the residence of the applicant is in that area,

whether or not the residence is the common residence of the applicant and the respondent;

- (c) (where the applicant resides with the respondent) a provision requiring the respondent to permit the applicant to enter and remain in -
 - (i) the common residence of the applicant and the respondent; or
 - (ii) a specified part of such common residence.

(5) A court may in an injunction containing a provision mentioned in subsection (4)(a) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction.

(6) In exercising its power to grant an injunction containing a provision mentioned in subsection (4)(b) or (c), the District Court shall have regard to -

- (a) (where the applicant resides with the respondent) who has -
 - (i) the legal or beneficial interest in; or
 - (ii) a contractual or legal right to occupy, the common residence of the applicant and the respondent;
- (b) (where the applicant resides with the respondent) the impact of the injunction on the relationship between the applicant, the

respondent and their other family members who reside with them;

- (c) the conduct of the applicant and the respondent, both in relation to each other and otherwise;
- (d) the respective needs and financial resources of the applicant and the respondent; and
- (e) all the circumstances of the case."

6. Court of First Instance may exercise powers of District Court in certain cases

Section 4 is amended by adding "or 3A" after "section 3".

7. Arrest for breach of order

(1) Section 5(1) is repealed and the following substituted -

"(1) Where, on an application made pursuant to section 3 or 3A, a court grants (whether pursuant to the power conferred by this Ordinance or to any other power) an injunction containing -

- (a) a provision restraining the respondent from using violence against any person ("protected person"); or
- (b) a provision excluding the respondent from any premises or area,

the court may, subject to subsection (1A) and section 6, attach to the injunction an authorization of arrest in the prescribed form.

(1A) A court shall not attach an authorization of arrest under subsection (1) unless -

- (a) it is satisfied that the respondent has caused actual bodily harm to the protected person; or
- (b) it reasonably believes that the respondent will likely cause bodily harm to the protected person.

(1B) An authorization of arrest may be attached under subsection (1) to an injunction -

- (a) at the time the injunction is granted; or
- (b) at any time during the validity period of the injunction."

(2) Section 5(2) is amended by repealing "a power of arrest" and substituting "an authorization of arrest".

(3) Section 5(3)(a)(i) is amended by repealing "a power of arrest" and substituting "an authorization of arrest".

(4) Section 5(3)(a)(ii) is amended by repealing "a power of arrest" and substituting "an authorization of arrest".

8. Limitations with respect to certain injunctions and powers of arrest

(1) Section 6 is amended, in the heading, by repealing "**with respect to certain injunctions and powers**" and substituting "**as regards injunctions and authorizations**".

(2) Section 6(1) and (2) is repealed and the following substituted -

"(1) A provision mentioned in section 3(1)(c) or (d) or 3A(4)(b) or (c) contained in an injunction granted under section 3 or 3A shall have effect for a period, not exceeding 24 months, as the court considers appropriate.

(2) An authorization of arrest attached under section 5(1) to an injunction shall -

- (a) have effect for a period, not exceeding 24 months, as the court considers appropriate; and
- (b) expire upon the expiry of the validity period of the injunction."

(3) Section 6(3) is amended -

- (a) by repealing "by one of the parties to a relationship to which this Ordinance applies" and substituting "made";
- (b) by repealing "a power of arrest" and substituting "an authorization of arrest";
- (c) by repealing "that relationship" and substituting "the cohabitation relationship";
- (d) by repealing "that power of arrest" and substituting "that authorization of arrest".

9. Section substituted

Section 7 is repealed and the following substituted -

"7. Court may extend injunctions and authorizations of arrest

(1) Subject to subsection (4), a court may, on an application -

- (a) extend the validity period of an injunction granted under section 3 or 3A that contains a provision mentioned in section 3(1)(c) or (d) or 3A(4)(b) or (c); or

- (b) (where an authorization of arrest is attached under section 5(1) to the injunction) extend the validity period of the authorization of arrest,

for such further period as the court considers appropriate.

(2) The court may extend an injunction or an authorization of arrest under subsection (1) only during the validity period of the injunction concerned.

(3) An application under subsection (1) may be made by -

- (a) the applicant of the injunction concerned;
- (b) (where the applicant of the injunction concerned is a minor) the minor applying by his next friend.

(4) The validity period of an injunction or an authorization of arrest may not be extended under subsection (1) beyond the second anniversary of the date on which the injunction was granted."

10. Section added

The following is added -

"7A. Court may vary or suspend custody or access order

(1) If -

- (a) a court grants, under section 3 or 3A, an injunction containing a provision mentioned in section 3(1)(c) or 3A(4)(b) that concerns a minor; and

(b) at the time the court determines the application for the injunction, there is in force -

(i) a court order that grants the custody of the minor to the respondent to the injunction; or

(ii) a court order that allows the respondent to the injunction to have access to the minor,

the court may vary or suspend the court order in such manner as the court considers necessary for giving effect to the provision.

(2) In subsection (1)(b), "court order" (法庭命令) means -

(a) in relation to the application of subsection (1) to the District Court, an order made by the District Court; and

(b) in relation to the application of subsection (1) to the Court of First Instance, an order made by the Court of First Instance or the District Court.

(3) In considering varying or suspending a court order under subsection (1), the court shall -

(a) regard the welfare of the minor as the first and paramount consideration; and

(b) in having such regard, give due consideration to -

(i) the wishes of the minor if, having regard to the age and understanding of the minor

and to the circumstances of the case, it is practicable to do so; and

(ii) any material information, including any report of the Director of Social Welfare available to the court at the hearing.

(4) If a court order is varied under subsection (1), the order shall, notwithstanding any other Ordinance or rule of law, have effect subject to such variation.

(5) A variation of a court order under subsection (1) in respect of an injunction shall be signified by attaching to the injunction a copy of the order endorsed with the particulars of the variation.

(6) A variation or suspension of a court order made in respect of an injunction shall cease to have effect upon the expiry of the validity period of the injunction."

11. Rules of practice and procedure

Section 8(e) is amended by repealing "a power of arrest" and substituting "an authorization of arrest".

12. Injunctions not to be registered

Section 10 is amended by adding "or 3A(4)(b) or (c)" before "shall not".

PART 3

CONSEQUENTIAL AND MINOR TECHNICAL AMENDMENTS TO THE DOMESTIC VIOLENCE RULES

13. Interpretation

(1) Rule 2 of the Domestic Violence Rules (Cap. 189 sub. leg. A) is amended -

- (a) in paragraph (a) of the definition of "judge", by repealing "and a deputy judge" and substituting ", a deputy judge of the Court of First Instance and a recorder";
- (b) in the definition of "judge", in the English text, by repealing "accordingly;" and substituting "accordingly.";
- (c) by repealing the definition of "power of arrest";
- (d) by adding -

"authorization of arrest" (逮捕授權書) means an authorization of arrest attached to an injunction under section 5(1) of the Ordinance;"

14. Form of power of arrest

(1) Rule 4 is amended, in the heading, by repealing "**power of arrest**" and substituting "**authorization of arrest**".

(2) Rule 4 is amended by repealing "A power of arrest shall be in Form 1" and substituting "An authorization of arrest shall be in the form set out".

15. Service of power of arrest

(1) Rule 5 is amended, in the heading, by repealing "**power of arrest**" and substituting "**authorization of arrest**".

(2) Rule 5 is amended by repealing "power of arrest or order relating thereto" and substituting "authorization of arrest and the injunction to which it is attached".

(3) Rule 5(b) is amended by repealing "party on whose application the power of arrest or order" and substituting "person on whose application the injunction".

16. Power of release on bail

(1) Rule 6(1) is amended by repealing "a power of arrest" and substituting "an authorization of arrest".

(2) Rule 6(2) is amended, in the English text, by repealing "paragraph" and substituting "subsection".

(3) Rule 6(3) is amended, in the English text, by repealing "paragraph" and substituting "subsection".

17. Schedule substituted

The Schedule is repealed and the following substituted -

"SCHEDULE [s. 4]

FORM OF AUTHORIZATION OF ARREST

(Heading as in Originating Summons)

[set out the injunction here]

AUTHORIZATION OF ARREST

And the Judge -

- * being satisfied that the Respondent has caused actual bodily harm to(name).....,
- * reasonably believing that the Respondent will likely cause bodily harm to(name).....,

this authorization of arrest is attached to the above injunction whereby any police officer may arrest without warrant a person whom he reasonably suspects of being in breach of the injunction as described in section 5(2) of the Domestic Violence Ordinance (Cap. 189).

This authorization of arrest expires at 12 midnight on the day of unless extended under section 7 of the Domestic Violence Ordinance (Cap. 189).

* Delete where inappropriate."

PART 4

SAVING PROVISION

18. Saving provision

A power of arrest attached to an injunction under section 5(1) of the Domestic Violence Ordinance (Cap. 189) before the commencement of this Ordinance shall, upon such commencement, be regarded for all purposes as an authorization of arrest attached under that section as amended by this Ordinance.

Explanatory Memorandum

The purpose of this Bill is to amend the Domestic Violence Ordinance (Cap. 189) ("the principal Ordinance"). The purposes of the amendment are set out in the long title to the Bill.

Part 1 of the Bill

2. Part 1 of the Bill provides for the short title (clause 1) and commencement (clause 2).

Part 2 of the Bill

3. Part 2 of the Bill contains amendments to the principal Ordinance.

4. Clause 3 amends section 2 of the principal Ordinance to add new definitions and to introduce a new defined term for persons under the age of 18 years.

5. Clause 4 expands the scope of section 3 of the principal Ordinance. The right to apply for an injunction is extended to former spouses and persons who used to be partners in cohabitation relationships between persons of opposite sex. A court is enabled to include in an injunction a provision requiring the respondent to participate in a programme approved by the Director of Social Welfare.

6. Clause 5 adds a new section 3A to the principal Ordinance to empower the Court of First Instance or District Court to grant, on application, an injunction against a person who is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin of the applicant or the spouse of such relatives of the applicant or such relatives of the applicant's spouse. A minor may apply in his own right by his next friend.

7. An injunction granted under the proposed section 3A of the principal Ordinance may contain provisions that are similar to those contained in an injunction granted under section 3 of the principal Ordinance.

8. Clause 7 amends section 5 of the principal Ordinance. Section 5 as amended extends the power of a court to attach an authorization of arrest to an injunction.

9. Clause 8 amends section 6 of the principal Ordinance. The more significant amendment is to extend the maximum validity period of an injunction and an authorization of arrest attached to it.

10. Clause 9 replaces section 7 of the principal Ordinance with a new section 7. The maximum validity period of an injunction or an authorization of arrest attached to it as extended is increased from 6 months to 24 months.

11. Clause 10 adds a new section 7A to the principal Ordinance. The proposed section empowers a court to vary or suspend a court order that grants the custody of, or allows access to, a minor if it grants an injunction containing a provision that excludes the respondent from certain places.

Part 3 of the Bill

12. Part 3 of the Bill contains consequential and minor technical amendments to the Domestic Violence Rules (Cap. 189 sub. leg. A) ("the Rules").

13. Clause 13 amends rule 2 of the Rules to -

- (a) add the definition of "authorization of arrest";
- (b) expand the definition of "judge" to include a recorder of the Court of First Instance;

(c) repeal the definition of "power of arrest".

14. Clauses 14 to 17 make consequential amendments and minor technical amendments to the Rules.

Part 4 of the Bill

15. Clause 18 is a saving provision.

CHAPTER 189

DOMESTIC VIOLENCE

To provide protection of persons from domestic violence and for matters ancillary thereto.

[19 December 1986]

1. Short title

This Ordinance may be cited as the Domestic Violence Ordinance.

2. Interpretation and application

(1) In this Ordinance, unless the context otherwise requires —

~~"child" (兒童) means a person under the age of 18 years;~~

“matrimonial home” (婚姻居所) includes a home in which the parties to a marriage ordinarily reside together whether or not it is occupied at the same time by other persons~~;~~

~~*“minor” (未成年人) means a person under the age of 18 years;*~~

~~*“respondent” (答辯人) means the person against whom an injunction is granted or sought to be granted under section 3 or 3A.*~~

(2) Subject to section 6(3) this Ordinance shall apply to the cohabitation of a man and a woman as it applies to marriage and references in this Ordinance to “marriage” (婚姻) ~~and~~ “matrimonial home” (婚姻居所) ~~and~~ ~~*“spouse” (配偶) (except in section 3A(2))*~~ shall be construed accordingly.

3. Power of District Court to grant injunction: ~~*spouses and former spouses*~~

(1) On an application by a ~~party to a marriage~~ ~~person~~ the District Court, if it is satisfied that the applicant or a ~~child living with the applicant~~

specified minor has been molested by the ~~other party to the marriage~~ spouse or former spouse of the applicant and subject to section 6, may grant an injunction containing any or all of the following provisions –

- (a) a provision restraining ~~that other party~~ the respondent from molesting the applicant;
- (b) a provision restraining ~~that other party~~ the respondent from molesting any ~~child living with the applicant~~ specified minor;
- (c) a provision excluding ~~that other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area~~ the respondent –

(i) (where the applicant has been molested by the respondent) from –

(A) the residence of the applicant;

(B) a specified part of the residence of the applicant; or

(C) a specified area whether or not the residence of the applicant is in that area,

whether or not the residence is the common residence or matrimonial home of the applicant and the respondent;

(ii) (where the specified minor has been molested by the respondent) from –

(A) the residence of the specified minor;

(B) a specified part of the residence of the minor; or

(C) a specified area whether or not the residence of the minor is in that area, whether or not the residence is the common residence of the minor and the respondent;

(d) a provision requiring ~~that other party~~ the respondent to permit –

(i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence or matrimonial home of the applicant and the respondent or in a specified part of the such common residence or matrimonial home; or

(ii) (where the specified minor resides with the respondent) the minor to enter and remain in the common residence of the minor and the respondent or in a specified part of such common residence,

whether or not any other relief is being sought in the proceedings.

(1A) A court may in an injunction containing a provision mentioned in subsection (1)(a) or (b) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction.

(2) In ~~the exercise of~~ exercising its ~~jurisdiction~~ power to grant an injunction containing a provision mentioned in subsection (1)(c) or (d) the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any ~~child living with the applicant~~ specified minor and to all the circumstances of the case.

(3) In this section, “specified minor” (指明未成年人) means a minor who is a child (whether a natural child, adoptive child or step-child) of

the applicant or respondent concerned.

[cf 1976 c. 50 s. 1 U.K.]

**3A. Power of District Court to grant injunction:
other relatives**

(1) The District Court may, on an application made by a person (“the applicant”), if satisfied that the applicant has been molested by a relative of the applicant, grant an injunction against that relative.

(2) In subsection (1), “relative” (親屬) means –

- (a) the applicant’s father, mother, grandfather or grandmother (whether natural or adoptive);
- (b) the applicant’s step-father, step-mother, step-grandfather or step-grandmother;
- (c) the applicant’s father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the applicant’s spouse;
- (d) the applicant’s grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the applicant’s spouse;
- (e) the applicant’s son, daughter, grandson or granddaughter (whether natural or adoptive);
- (f) the applicant’s step-son, step-daughter, step-grandson or step-granddaughter;
- (g) the applicant’s son-in-law or daughter-in-law who is the spouse of the applicant’s natural child, adoptive child or step-child;
- (h) the applicant’s grandson-in-law or granddaughter-in-law who is the spouse of the applicant’s natural grandchild, adoptive grandchild or step-grandchild;

- (i) the applicant's brother or sister (whether of full or half blood or by virtue of adoption);
- (j) the brother or sister (whether of full or half blood or by virtue of adoption) of the applicant's spouse;
- (k) the applicant's step-brother or step-sister;
- (l) the step-brother or step-sister of the applicant's spouse;
- (m) the applicant's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);
- (n) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the applicant's spouse; or
- (o) the spouse of any person mentioned in paragraph (i), (j), (k), (l), (m) or (n).

(3) A minor who applies for an injunction under subsection (1) shall apply by his next friend.

(4) Subject to section 6, an injunction granted under subsection (1) may, whether or not any other relief is being sought in the proceedings, contain any or all of the following provisions –

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision excluding the respondent from –
 - (i) the residence of the applicant;
 - (ii) a specified part of the residence of the applicant; or
 - (iii) a specified area whether or not the residence of the applicant is in that area,
whether or not the residence is the common residence of the applicant and the respondent;

(c) (where the applicant resides with the respondent) a provision requiring the respondent to permit the applicant to enter and remain in –

(i) the common residence of the applicant and the respondent; or

(ii) a specified part of such common residence.

(5) A court may in an injunction containing a provision mentioned in subsection (4)(a) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction.

(6) In exercising its power to grant an injunction containing a provision mentioned in subsection (4)(b) or (c), the District Court shall have regard to –

(a) (where the applicant resides with the respondent) who has –

(i) the legal or beneficial interest in; or

(ii) a contractual or legal right to occupy,

the common residence of the applicant and the respondent;

(b) (where the applicant resides with the respondent) the impact of the injunction on the relationship between the applicant, the respondent and their other family members who reside with them;

(c) the conduct of the applicant and the respondent, both in relation to each other and otherwise;

(d) the respective needs and financial resources of the applicant and the respondent; and

(e) all the circumstances of the case.

4. Court of First Instance may exercise powers of District Court in certain cases

The Court of First Instance may exercise the powers conferred on the District Court under section 3 *or 3A*—

- (a) in a case of urgency; or
- (b) where the Court of First Instance is satisfied that special circumstances are present which make it appropriate for the Court of First Instance rather than the District Court to exercise those powers.

5. Arrest for breach of order

~~—(1)—Where, on an application by a party to a marriage, the Court of First Instance or the District Court grants an injunction (whether pursuant to jurisdiction conferred by this Ordinance or pursuant to any other jurisdiction) containing a provision, in whatever terms, which—~~

- ~~(a)—restrains the other party from using violence against the applicant or a child living with the applicant; or~~
- ~~(b)—excludes that other party from the matrimonial home or from a specified part of the matrimonial home or from a specified area,~~

~~the Court of First Instance or the District Court, as the case may be, if it is satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned, may, subject to section 6, at the same time as it grants the injunction or at any time during the period for which the injunction is granted, attach to the injunction a power of arrest in the prescribed form.~~

(1) Where, on an application made pursuant to section 3 or 3A, a court grants (whether pursuant to the power conferred by this Ordinance or to any other power) an injunction containing –

(a) a provision restraining the respondent from using violence against any person (“protected person”); or

(b) a provision excluding the respondent from any premises or area,

the court may, subject to subsection (1A) and section 6, attach to the injunction an authorization of arrest in the prescribed form.

(1A) A court shall not attach an authorization of arrest under subsection (1) unless –

(a) it is satisfied that the respondent has caused actual bodily harm to the protected person; or

(b) it reasonably believes that the respondent will likely cause bodily harm to the protected person.

(1B) An authorization of arrest may be attached under subsection (1) to an injunction –

(a) at the time the injunction is granted; or

(b) at any time during the validity period of the injunction.

(2) Where under subsection (1) ~~a power~~ an authorization of arrest is attached to an injunction a police officer may arrest without warrant any person whom he reasonably suspects of being in breach of the injunction by reason of that person's use of violence or, as the case may be, his entry into any premises or area specified in the injunction, and the police officer shall have all necessary powers including the power of entry by the use of reasonable force to effect that arrest.

(3) Where a person is arrested under subsection (2) he shall –

(a) be brought –

(i) in the case of ~~a power~~ an authorization of arrest

attached under subsection (1) to an injunction by the Court of First Instance, before the Court of First Instance; and

(ii) in the case of ~~a power~~ an authorization of arrest attached under that subsection to an injunction by the District Court, before the District Court,

before the expiry of the day after the day of his arrest; and

(b) not be released within the period referred to in paragraph (a) except on the direction of the Court of First Instance or of the District Court, as the case may be,

but nothing in this section shall authorize his detention at any time after the expiry of the period mentioned in paragraph (a).

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this section except in so far as that section applies to a gale warning day.

[cf. 1976 c. 50 s. 2 U.K.]

**6. Limitations with respect to certain
as regards injunctions and powers
authorizations of arrest**

(1) A provision mentioned in section 3(1)(c) or (d) or 3A(4)(b) or (c) contained in an injunction granted under this Ordinance section 3 or 3A shall have effect for such a period, not exceeding 3 24 months, as the court considers necessary appropriate.

(2) A power An authorization of arrest attached under section 5(1) to an injunction shall –

(a) be granted have effect for such a period, not exceeding 3 24 months, as the court considers necessary appropriate; and

~~(b) lapse on expiry upon the expiry of the validity period for which of the injunction was granted.~~

(3) Nothing in this Ordinance shall authorize a court on an application ~~by one of the parties to a relationship to which this Ordinance applies~~ made by virtue of section 2(2) to grant an injunction containing a provision mentioned in section 3(1)(c) or (d), or, under section 5(1), attach to an injunction ~~a power~~ an authorization of arrest, unless that court is satisfied that having regard to the permanence of ~~that~~ the cohabitation relationship it is appropriate in all the circumstances to grant that injunction or attach that ~~power~~ authorization of arrest.

~~7. Power of court to grant extension~~

~~— A court may extend —~~

- ~~(a) an injunction granted under this Ordinance containing a provision mentioned in section 3(1)(c) or (d); or~~
- ~~(b) a power of arrest attached to an injunction under section 5(1), prior to the expiry of the period thereof for a further period so that the total period thereof does not exceed 6 months from the date when that injunction was granted or that power of arrest attached.~~

7. Court may extend injunctions and authorizations of arrest

(1) Subject to subsection (4), a court may, on an application —

- (a) extend the validity period of an injunction granted under section 3 or 3A that contains a provision mentioned in section 3(1)(c) or (d) or 3A(4)(b) or (c); or
- (b) (where an authorization of arrest is attached under section 5(1) to the injunction) extend the validity period of the authorization of arrest,

for such further period as the court considers appropriate.

(2) The court may extend an injunction or an authorization of arrest under subsection (1) only during the validity period of the injunction concerned.

(3) An application under subsection (1) may be made by –

(a) the applicant of the injunction concerned;

(b) (where the applicant of the injunction concerned is a minor) the minor applying by his next friend.

(4) The validity period of an injunction or an authorization of arrest may not be extended under subsection (1) beyond the second anniversary of the date on which the injunction was granted.

7A. Court may vary or suspend custody or access order

(1) If –

(a) a court grants, under section 3 or 3A, an injunction containing a provision mentioned in section 3(1)(c) or 3A(4)(b) that concerns a minor; and

(b) at the time the court determines the application for the injunction, there is in force –

(i) a court order that grants the custody of the minor to the respondent to the injunction; or

(ii) a court order that allows the respondent to the injunction to have access to the minor,

the court may vary or suspend the court order in such manner as the court considers necessary for giving effect to the provision.

(2) In subsection (1)(b), “court order” (法庭命令) means –

(a) in relation to the application of subsection (1) to the District Court, an order made by the District Court; and

(b) in relation to the application of subsection (1) to the Court of First Instance, an order made by the Court of First Instance or the District Court.

(3) In considering varying or suspending a court order under subsection (1), the court shall –

(a) regard the welfare of the minor as the first and paramount consideration; and

(b) in having such regard, give due consideration to –

(i) the wishes of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and

(ii) any material information, including any report of the Director of Social Welfare available to the court at the hearing.

(4) If a court order is varied under subsection (1), the order shall, notwithstanding any other Ordinance or rule of law, have effect subject to such variation.

(5) A variation of a court order under subsection (1) in respect of an injunction shall be signified by attaching to the injunction a copy of the order endorsed with the particulars of the variation.

(6) A variation or suspension of a court order made in respect of an injunction shall cease to have effect upon the expiry of the validity period of the injunction.

8. Rules of practice and procedure

The Chief Justice may make rules for the purposes of this Ordinance in respect of the following matters –

(a) the hearing and determination of applications under this

Ordinance;

- (b) forms to be used in connexion with any application or order under this Ordinance;
- (c) the service of documents;
- (d) the attendance of parties;
- (e) the release on bail of persons arrested under ~~a power~~ an authorization of arrest attached, under section 5(1), to an injunction; and
- (f) the transfer of proceedings commenced in the Court of First Instance from the Court of First Instance to the District Court and of proceedings commenced in the District Court from the District Court to the Court of First Instance.

9. Saving as to existing jurisdiction

The powers conferred under this Ordinance shall be in addition to and not in derogation from the powers of the Court of First Instance and the District Court.

10. Injunctions not to be registered

An injunction containing a provision mentioned in section 3(1)(c) or (d) or 3A(4)(b) or (c) shall not be registered under the Land Registration Ordinance (Cap. 128).

11. Powers of the court to be exercised by a judge

(1) The powers conferred by this Ordinance on the Court of First Instance shall be exercised by a judge.

(2) The powers conferred by this Ordinance on the District Court shall be exercised by a District Judge.

DOMESTIC VIOLENCE RULES

(Cap. 189, section 8)

[19 December 1986]

1. Citation

These rules may be cited as the Domestic Violence Rules.

2. Interpretation

In these rules, unless the context otherwise requires =

~~*“authorization of arrest” (逮捕授權書) means an authorization of arrest attached to an injunction under section 5(1) of the Ordinance;*~~

“judge” (法官) means =

(a) in relation to proceedings commenced in the Court of First Instance, the Chief Judge of the High Court, a Justice of Appeal, a judge of the Court of First Instance ~~and~~ a deputy judge *of the Court of First Instance and a recorder* of the Court of First Instance; ~~and~~

(b) in relation to proceedings commenced in the District Court, a District Judge and a deputy District Judge of the District Court,

and “court” (法院) shall be construed accordingly;.

~~*“power of arrest” (逮捕權書) means a power of arrest attached to an injunction under section 5(1) of the Ordinance.*~~

3. Application of Rules of High Court

Subject to these rules, the Rules of the High Court (Cap. 4 sub. leg.) shall apply to proceedings under the Ordinance as they apply to proceedings in the Court of First Instance with such modifications as are necessary for that purpose.

4. Form of ~~power~~ authorization of arrest

~~A power~~ An authorization of arrest shall be in Form 1 the form set out in the Schedule.

5. Service of ~~power~~ authorization of arrest

A copy of any ~~power~~ authorization of arrest ~~or order relating thereto~~ and the injunction to which it is attached shall be served on the Commissioner of Police by -

- (a) the Registrar of the High Court; or
- (b) the solicitor of the ~~party~~ person on whose application the power of arrest or order injunction is granted, if a judge, on being satisfied that the urgency of the case so requires, makes an order that service may be so effected.

6. Power of release on bail

(1) A judge may, on the application of a person arrested under ~~a~~ power an authorization of arrest, order that person to be admitted to bail and the recognizance of bail may be taken before the judge or, if the order so directs, before any magistrate.

(2) A judge may on admitting a person to bail under ~~paragraph~~ subsection (1) order that such sum of money as the judge may specify be deposited with the court by the person arrested, as a condition of admission to bail.

(3) If a person admitted to bail does not appear at the time and place required by the judge, the judge may order any sum deposited pursuant to an order under ~~paragraph~~ subsection (2) to be forfeited.

7. Transfer of proceedings

Proceedings begun in the Court of First Instance under the Ordinance may be transferred to the District Court if a judge of the Court of First Instance

is of the opinion that they should be heard and determined in the District Court.

8. Proceedings to be in chambers

All proceedings under the Ordinance shall be disposed of in chambers unless the judge hearing them otherwise directs.

~~SCHEDULE~~ ~~[rule 4]~~

~~Form 1~~

~~POWER OF ARREST~~

~~(Heading as in Originating Summons)~~

~~[here set out injunction]~~

~~POWER OF ARREST~~

~~— And the Judge being satisfied that the Respondent has caused actual bodily harm to the Applicant [or the child concerned], a power of arrest is attached to this order whereby any police officer may arrest without warrant a person whom he reasonably suspects of being in breach of the order.~~

~~— This power of arrest expires on the — day of — 19 — unless extended by an order under section 7 of the Domestic Violence Ordinance.~~

SCHEDULE [s. 4]

FORM OF AUTHORIZATION OF ARREST

(Heading as in Originating Summons)

[set out the injunction here]

AUTHORIZATION OF ARREST

And the Judge –

* being satisfied that the Respondent has caused actual bodily harm to

_____ (name) _____,

* reasonably believing that the Respondent will likely cause bodily

harm to _____ (name) _____,

this authorization of arrest is attached to the above injunction whereby any
police officer may arrest without warrant a person whom he reasonably
suspects of being in breach of the injunction as described in section 5(2) of the
Domestic Violence Ordinance (Cap. 189).

This authorization of arrest expires at 12 midnight on the _____ day of
_____ unless extended under section 7 of the Domestic Violence
Ordinance (Cap. 189).

* Delete where inappropriate.

(i) Financial and Civil Service Implications

Expanding the scope of protected persons under the DVO will result in an increase in the number of persons eligible to apply for injunction under the Ordinance. But it is difficult to project whether there will be a large increase in the number of applications made under the Ordinance generating additional workload for the Court and the Police. It is probable that there will be an increase in the number of persons seeking legal aid to apply for injunctive relief, which will in turn result in higher workload for the Legal Aid Department and higher legal aid expenditure. There may also be increased demand for housing assistance for persons subject to the exclusion order.

To implement the proposal to enable the court to require the abusers to participate in an anti-violence programme, the SWD will need to set up a small dedicated unit comprising one social work grade officer and one clerical staff to coordinate the programme, and non-governmental organisations will be engaged in delivering the programme.

Nonetheless, the exact staffing and financial implications are difficult to quantify at this stage, and will be assessed after the proposed legislation is in operation. If, in the light of the experience gained after the legislation has come into operation, additional resources are considered necessary for the implementation of the legislation on an on-going basis, we will seek additional resources in accordance with the established resources allocation procedures.

(ii) Economic Implications

The Bill will not only protect victims of domestic violence, but also prevent possible negative consequences for society. There will be savings in terms of burden on criminal justice system, health care, social services, civil legal services and economic output.