

DOMESTIC VIOLENCE (AMENDMENT) ORDINANCE 2008

CONTENTS

Section Page

PART 1

PRELIMINARY

- | | | |
|----|--------------------|------|
| 1. | Short title | A707 |
| 2. | Commencement | A707 |

PART 2

AMENDMENTS TO THE DOMESTIC VIOLENCE ORDINANCE

- | | | |
|-----|---|------|
| 3. | Interpretation and application | A707 |
| 4. | Power of District Court to grant injunction | A707 |
| 5. | Section added | |
| | 3A. Power of District Court to grant injunction: other
relatives | A711 |
| 6. | Court of First Instance may exercise powers of District Court
in certain cases | A715 |
| 7. | Arrest for breach of order | A715 |
| 8. | Limitations with respect to certain injunctions and powers of
arrest | A717 |
| 9. | Section substituted | |
| | 7. Court may extend injunctions and authorizations of
arrest | A719 |
| 10. | Section added | |
| | 7A. Court may vary or suspend custody or access order | A719 |
| 11. | Rules of practice and procedure | A721 |
| 12. | Injunctions not to be registered | A723 |

Section

Page

PART 3

CONSEQUENTIAL AND MINOR TECHNICAL AMENDMENTS
TO THE DOMESTIC VIOLENCE RULES

13.	Interpretation	A723
14.	Form of power of arrest	A723
15.	Service of power of arrest	A723
16.	Power of release on bail	A725
17.	Schedule substituted	
	Schedule Form of authorization of arrest	A725

PART 4

SAVING PROVISION

18.	Saving provision	A727
-----	------------------------	------

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 17 OF 2008



Donald TSANG
Chief Executive
19 June 2008

An Ordinance 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 2008.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Labour and Welfare 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 “provision” and substituting—
 - “prohibiting the respondent—
 - (i) (where the applicant has been molested by the respondent) from entering or remaining in—
 - (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 entering or remaining in—
 - (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—
(a) who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned; or
(b) who is living with the applicant 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 prohibiting the respondent from entering or remaining in—
 - (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 a court grants, pursuant to section 3 or 3A, or pursuant to any other power upon an application made by a party to a marriage against the other party to the marriage, an injunction containing—

- (a) a provision restraining any person from using violence against another person (“protected person”); or
- (b) a provision prohibiting any person from entering or remaining in 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 under subsection (1) an authorization of arrest to an injunction granted against a person unless—

- (a) it is satisfied that the person has caused actual bodily harm to the protected person; or
- (b) it reasonably believes that the person will likely cause actual 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(2) is amended by adding “or remaining in” after “entry into”.

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

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

(6) Section 5(4) is amended by adding “warning day or black rainstorm” after “gale”.

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 under section 3”;

- (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

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 actual 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.