

**DOMESTIC VIOLENCE (AMENDMENT)
BILL 2009**

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A BILL

To

Amend the Domestic Violence Ordinance so that the Ordinance applies to a cohabitation relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship; and to make consequential and technical amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Domestic Violence (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes 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 AND ITS SUBSIDIARY LEGISLATION

3. Long title amended

The long title to the Domestic Violence Ordinance (Cap. 189) is amended by repealing “domestic violence” and substituting “violence in domestic and cohabitation relationships”.

4. Short title amended

Section 1 is amended by repealing “Domestic Violence Ordinance” and substituting “Domestic and Cohabitation Relationships Violence Ordinance”.

5. Interpretation and application

(1) Section 2(1) is amended, in the definition of “respondent”, by repealing “or 3A.” and substituting “, 3A or 3B;”.

(2) Section 2(1) is amended by adding—

““cohabitation relationship” (同居關係)—

(a) means a relationship between 2 persons who live together as a couple in an intimate relationship; and

(b) includes such a relationship that has come to an end;

“party to a cohabitation relationship” (同居關係一方) does not include a person who is or was the spouse of the other party to that relationship;

“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.”.

(3) Section 2(2) is repealed.

6. Power of District Court to grant injunction: spouses and former spouses

Section 3(3) is repealed.

7. Section added

The following is added—

“3B. Power of District Court to grant injunction: cohabitants and former cohabitants

(1) On an application by a party to a cohabitation relationship (“the applicant”), the District Court, if it is satisfied that the applicant or a specified minor has been molested by the other party to the cohabitation relationship and subject to section 6, may grant an injunction containing any or all of the following provisions—

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision restraining the respondent from molesting the specified minor;
- (c) a provision 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 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;
- (d) a provision requiring the respondent to permit—
 - (i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence of the applicant and the respondent or in a specified part of such common residence; 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.

(2) In determining whether 2 persons (“the parties”) are in a cohabitation relationship, the court shall have regard to all the circumstances of the relationship including but not limited to any of the following factors that may be relevant in the particular case—

- (a) whether the parties are living together in the same household;
- (b) whether the parties share the tasks and duties of their daily lives;
- (c) whether there is stability and permanence in the relationship;

- (d) the arrangement of sharing of expenses or financial support, and the degree of financial dependence or interdependence, between the parties;
- (e) whether there is a sexual relationship between the parties;
- (f) whether the parties have any children and how they act towards each other's children;
- (g) the motives of the parties in living together;
- (h) whether such a relationship exists between the parties in the opinion of a reasonable person with normal perceptions.

(3) 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 have led to the granting of the injunction.

(4) In exercising its 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 specified minor and to all the circumstances of the case.”.

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

Section 4 is amended by repealing “or 3A” and substituting “, 3A or 3B”.

9. Arrest for breach of order

Section 5(1) is amended by repealing “or 3A” and substituting “, 3A or 3B”.

10. Limitations as regards injunctions and authorizations of arrest

(1) Section 6(1) is amended—

- (a) by repealing “or 3A(4)(b) or (c)” and substituting “, 3A(4)(b) or (c) or 3B(1)(c) or (d)”;
- (b) by repealing “3 or 3A” and substituting “3, 3A or 3B”.

(2) Section 6(3) is amended by repealing everything before “is satisfied” and substituting—

“(3) Nothing in this Ordinance authorizes a court, on an application by a party to a cohabitation relationship—

- (a) to grant an injunction containing a provision mentioned in section 3B(1)(c) or (d); or
 - (b) to attach to an injunction an authorization of arrest under section 5(1),
- unless the court”.

11. Court may extend injunctions and authorizations of arrest

Section 7(1)(a) is amended—

- (a) by repealing “3 or 3A” and substituting “3, 3A or 3B”;
- (b) by repealing “or 3A(4)(b) or (c)” and substituting “, 3A(4)(b) or (c) or 3B(1)(c) or (d)”.

12. Court may vary or suspend custody or access order

Section 7A(1)(a) is amended—

- (a) by repealing “3 or 3A” and substituting “3, 3A or 3B”;
- (b) by repealing “or 3A(4)(b)” and substituting “, 3A(4)(b) or 3B(1)(c)”.

13. Injunctions not to be registered

Section 10 is amended by repealing “or 3A(4)(b) or (c)” and substituting “, 3A(4)(b) or (c) or 3B(1)(c) or (d)”.

Domestic Violence Rules

14. Citation

Section 1 of the Domestic Violence Rules (Cap. 189 sub. leg. A) is amended by repealing “Domestic Violence Rules” and substituting “Domestic and Cohabitation Relationships Violence Rules”.

15. Form of authorization of arrest

The Schedule is amended by repealing “Domestic Violence Ordinance” where it twice appears and substituting “Domestic and Cohabitation Relationships Violence Ordinance”.

PART 3

SAVING PROVISION

16. Saving provision

The Domestic Violence Ordinance (Cap. 189) (including subsidiary legislation) as it was in force immediately before the commencement date of this Ordinance (“the pre-amended Ordinance”) continues to apply, as if this Ordinance had not been enacted, in all respects to—

- (a) any proceedings—
 - (i) that have been commenced under the pre-amended Ordinance; and
 - (ii) that have not been disposed of as at the commencement date;
- (b) a court order (whether an injunction or any other order)—
 - (i) made under the pre-amended Ordinance; and
 - (ii) in force as at the commencement date;
- (c) a court order (whether an injunction or any other order) made in the proceedings mentioned in paragraph (a) on or after the commencement date; and
- (d) any further proceedings that are connected with a court order mentioned in paragraph (b) or (c).

PART 4

CONSEQUENTIAL AMENDMENTS

Rules of the High Court**17. Application**

Order 1, rule 2(2) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, in the Table, by repealing item 8 and substituting—

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| “(HK)8. Proceedings under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189). | Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), section 8.”. |
|--|---|

Rules of the District Court

18. Application

Order 1, rule 2(2A)(*ba*) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended by repealing “domestic violence proceedings” and substituting “proceedings under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189)”.

Land Titles Ordinance

19. Consequential amendments

(1) Schedule 3 to the Land Titles Ordinance (Cap. 585) is amended by repealing the heading immediately before section 79 and substituting “**Domestic and Cohabitation Relationships Violence Ordinance**”.

(2) Section 79 of Schedule 3 is amended by repealing “Domestic Violence Ordinance” and substituting “Domestic and Cohabitation Relationships Violence Ordinance”.

Explanatory Memorandum

This Bill seeks to amend the Domestic Violence Ordinance (Cap. 189) (“the Ordinance”) to provide for the meaning of “cohabitation relationship” for the Ordinance’s application to such a relationship whether the two parties to the relationship are of the same sex or of the opposite sex. Also, presentational changes are made to the structure of the Ordinance (“presentational changes”) with the view that applications for injunctions under the Ordinance made by parties to cohabitation relationships (including such relationships that have come to an end) and those made by parties to marriages or former marriages will fall within separate provisions of the Ordinance as amended by the Bill on its enactment.

Part 1 of the Bill

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

Part 2 of the Bill

3. Part 2 of the Bill contains amendments to the Ordinance and its subsidiary legislation.

4. Clause 3 amends the long title to the Ordinance to align it with the amendment of the short title to the Ordinance, and the presentational changes.
5. Clause 4 amends the short title to the Ordinance to reflect the presentational changes.
6. Clause 5—
 - (a) amends the definition of “respondent” in section 2(1) of the Ordinance to include a reference to the new section 3B, which is added by clause 7;
 - (b) amends section 2(1) of the Ordinance to add the definitions of “cohabitation relationship” and “party to a cohabitation relationship”—
 - (i) Definition of “cohabitation relationship”

As defined, 2 persons are in a cohabitation relationship if they live together as a couple in an intimate relationship. They may be of the same sex or of the opposite sex. The term is also defined to include such a relationship that has come to an end. Further provisions are included in the new section 3B(2) directing the court to have regard to all the circumstances of the case in determining whether a relationship has the quality that is required of a cohabitation relationship to which the Ordinance is applicable;
 - (ii) Definition of “party to a cohabitation relationship”

This definition ensures that application for an injunction made by a person under the Ordinance against that person’s spouse or former spouse does not fall within the new section 3B, which applies to cohabitation relationships exclusively;
 - (c) amends section 2(1) of the Ordinance to include the definition of “specified minor” (which is an existing definition set out in section 3(3) of the Ordinance) so that the definition applies to both section 3 and the new section 3B of the Ordinance;
 - (d) repeals section 2(2) of the Ordinance. In consequence of the repeal, section 3 of the Ordinance no longer applies to any cohabitation relationship.
7. Clause 6 repeals section 3(3) of the Ordinance. Section 3(3) contains the definition of “specified minor”, which is no longer necessary in view of the amended section 2(1) of the Ordinance.

8. Clause 7 adds a new section 3B to the Ordinance. Apart from subsection (2), the new section 3B in essence is the same as section 3 of the Ordinance—only that section 3 applies to the relationships of spouses or former spouses while the new section 3B applies to cohabitation relationships as defined in the Ordinance as amended (in both cases, the injunction sought may concern a specified minor). The new section 3B—

- (a) provides, in subsection (1), to the effect that a party to a cohabitation relationship may apply for an injunction (as specified in that subsection) against the other party to that relationship;
- (b) provides, in subsection (2), to the effect that in determining whether a relationship amounts to a cohabitation relationship (whether of the same sex or of the opposite sex) for the application of the Ordinance, the court shall have regard to all the circumstances of the relationship including but not limited to the factors listed in that subsection.

9. Clauses 8 and 9 amend the cross references to section numbers referred to in sections 4 and 5(1) of the Ordinance.

10. Clause 10 amends section 6 of the Ordinance. The amendments to subsection (1) of section 6 concern the cross references to section numbers referred to in that subsection. Section 6(3) of the Ordinance is amended in view of the repeal of section 2(2) of the Ordinance.

11. Clauses 11, 12 and 13 amend the cross references to section numbers referred to in sections 7(1)(a), 7A(1)(a) and 10 of the Ordinance.

12. Clauses 14 and 15 amend the Domestic Violence Rules (Cap. 189 sub. leg. A) to reflect the change of the short title to the Ordinance.

Part 3 of the Bill

13. Clause 16 is a saving provision.

Part 4 of the Bill

14. Clauses 17, 18 and 19 effect consequential amendments to other Ordinances.