

DOMESTIC ABUSE ORDINANCE, 2017

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ST HELENA

A BILL

FOR

AN ORDINANCE

to make provision for protection orders to safeguard persons in domestic relationships and relevant children from domestic abuse; and for connected and incidental matters.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

**PART 1
PRELIMINARY**

Short title and commencement

1. This Ordinance may be cited as the Domestic Abuse Ordinance, 2017, and comes into operation on such day as the Governor may appoint by order.

Interpretation

2. (1) Any reference in this Ordinance to a person as P, C or A refers to the person as specified in section 3(2).

(2) In this Ordinance—

“court” means the Magistrates’ Court and the Supreme Court;

“domestic relationship” means a relationship between two persons in any of the following ways:

- (a)** they are or were married to each other, including marriage according to any law, custom or religion;
- (b)** persons who have had parental responsibility for a relevant child, or who have had a residence order or special guardianship order under the Welfare of Children Ordinance 2008 with respect to a relevant child, whether or not at the same time;
- (c)** they are relatives;
- (d)** they are or were in an engagement or dating relationship which includes an actual or perceived (by one or both) romantic, intimate or sexual relationship of any duration; or

- (e) they share or shared the same household or residence other than merely by reason of one of them being the other's employee, tenant, lodger or boarder;

“domestic abuse” means any controlling or abusive behaviour that harms the health, safety or well-being of a person or any relevant child in the care of the person and includes—

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to property;
- (i) entry into the person's residence without consent, where the parties to the domestic relationship do not share the same residence;
- (j) unlawful detainment;
- (k) threats to commit any of the above; or
- (l) encouraging, causing or inciting another person to commit any of the above;

“economic abuse” includes—

- (a) the deprivation or threatened deprivation of any or all economic or financial resources to which a person is entitled under the law or which a person requires out of necessity, including household necessities and mortgage or rent repayments of a shared household; or
- (b) the disposal or threatened disposal of household effects or other property in which a person has an interest;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct and includes—

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain;
- (c) repeated exhibition of obsessive possessiveness, or jealousy which is such as to constitute serious invasion of a person's privacy, liberty, integrity or security; or
- (d) threatened or actual publication of material of a sexual nature with the intention to cause embarrassment or distress.

“family proceedings” means any matter heard by the court under the Welfare of Children Ordinance, 2008, or under the court's inherent jurisdiction;

“harassment” means engaging in a pattern of conduct that occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person such as where such conduct induces the fear of harm or causes the person alarm or distress and includes—

- (a) watching or loitering outside of or near the building or place where a person resides, works or carries on a business, studies or happens to be;
- (b) repeatedly making telephone calls, whether or not the conversation ensues;
- (c) repeatedly sending electronic mail or text messages;
- (d) repeatedly sending, delivering or causing the delivery of letters, packages, facsimiles or other objects to a person's home or place of work; or
- (e) repeatedly posting material on social media;

“interim monetary relief” means compensation for monetary losses suffered or expenses that will be incurred by P or C as a result of domestic abuse, and includes—

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) moving and accommodation expenses;
- (d) legal expenses;
- (e) interim expenses; or

(f) maintaining P and any relevant children.

“intimidation” means uttering, conveying or causing any person to receive a threat which induces fear;

“parental responsibility” has the meaning assigned in the Welfare of Children Ordinance, 2008;

“relative” in relation to a person means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse or former spouse;
- (b) the brother, sister, uncle, aunt, niece, nephew, first cousin (whether of the full blood or of the half blood) of that person or of that person’s spouse or former spouse; and

“relevant child” means—

- (a) a person under the age of 18 who ordinarily or periodically resides with either party to the domestic relationship, whether or not the child is a child of the person to whom the application relates and the respondent, or either of them; and
- (b) any other child whose interests the court considers relevant;

“respondent” means a person who is or has been in a domestic relationship with the person to whom the application for a protection order relates;

“serve” or **“service”** in relation to any document means personal delivery of the document to the person;

“sexual abuse” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person;

“shared household” means a household where P and the respondent live or lived together in a domestic relationship;

“stalking” means repeatedly following, pursuing or accosting a person directly or via electronic or other means.

PART II PROTECTION ORDERS

Application for protection order

3. (1) The court may, on application by a person referred to in subsection (2), make a protection order if the court is satisfied that the respondent has committed, or is likely to commit, an act of domestic abuse against a person who is or was in a domestic relationship with the respondent or a relevant child.

(2) An application for an order under subsection (1) may be made by—

- (a) a person (P) to whom the application relates; or
- (b) another person (A), including—
 - (i) a police officer;
 - (ii) social worker;
 - (iii) any other person who has a material interest in the well-being of P or a relevant child (C) who makes the application on behalf of P or C; or
 - (iv) a person with whom C normally resides or resided on a regular basis, or any other relative of C.

(3) An applicant may request that his or her physical address or that of any other person be omitted from the order.

Ex parte application

4. (1) The court may make an interim protection order without the respondent having been given notice of the proceedings if—

- (a) it is necessary or appropriate to do so in order to ensure the safety and protection of P or C; and
- (b) the court is satisfied that the respondent has committed, is committing or is likely to commit, an act of domestic abuse against P or C.

(2) In determining whether to exercise its powers under subsection (1), the court must have regard to all the circumstances, including—

- (a) any risk of significant harm to P or C, attributable to conduct of the respondent, if the order is not made immediately;
- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
- (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that P or C will be seriously prejudiced by the delay in effecting service.

Terms of protection order

5. (1) An interim or final protection order prohibits the respondent from committing an act of domestic abuse against P or C.

(2) An interim or final protection order may be expressed to refer to domestic abuse in general or particular acts of domestic abuse.

(3) When making an interim or final protection order, the court may impose such restrictions it considers necessary to protect P and C from acts of domestic abuse by the respondent, including prohibiting the respondent from—

- (a) encouraging any person to commit an act that, if committed by the respondent, would amount to an act of domestic abuse against P or C;
- (b) entering the residence of P;
- (c) entering the place of employment of P;
- (d) entering the place of schooling or care of C;
- (e) coming within a specified distance from P or C;
- (f) taking possession of, damaging, converting or otherwise dealing with property that P or C may have an interest in or is reasonably used by P or C;
- (g) entering the shared household;
- (h) entering a specified part of the shared household; or
- (i) committing any other act as specified in the order.

(4) When making a protection order, the court may impose such conditions it considers necessary and just, including—

- (a) directing the respondent to return specific property that is in the respondent's possession or under his or her control, to P or C;
- (b) imposing on P and/or the respondent obligations as to—
 - (i) the repair and maintenance of the shared household; or
 - (ii) the discharge of rent, mortgage payments or other outgoings affecting the shared household;
- (c) possession or use of furniture or other contents of the shared household;

- (d) ordering P, the respondent or a third party joined to any proceedings to take reasonable steps to keep the shared household and any furniture or other contents secure;
- (e) ordering the respondent to pay interim monetary relief to a specified person for the benefit of P and/or C, comprising of a lump sum if the court considers that to be reasonable and/or, where there is no existing order relating to maintenance, periodic payments until such time as an obligation for support is determined under any other law; or
- (f) any additional condition deemed necessary to provide for and to protect P and C.

Matters to be considered

6. (1) In deciding whether to grant an interim or final protection order and, if so, the form, prohibitions and conditions of the order, the court must have regard to all the circumstances, including—

- (a) the nature, history or pattern of the act of domestic abuse that has occurred;
- (b) the need to secure the health, safety and welfare of P and C;
- (c) the housing needs and housing resources of each of the parties to the domestic relationship and of any relevant child;
- (d) the income, assets and financial obligations of each of the parties to the domestic relationship in relation to each other, to any relevant child and generally;
- (e) the likely effect of any order or of any decision by the court not to exercise its powers on the health, safety or well-being of the parties to the domestic relationship and of any relevant child;
- (f) the conduct of the parties to the domestic relationship in relation to each other and otherwise;
- (g) the nature of the domestic relationship, the length of the relationship, whether there were any children of both parties or children for whom both had parental responsibility and the level of commitment involved in the relationship;
- (h) the length of time that has elapsed since the parties to the domestic relationship ceased to live together, if applicable;
- (i) the existence of any pending proceedings between the parties to the domestic relationship for a financial order under the Matrimonial Causes Ordinance, Cap. 81, or the Welfare of Children Ordinance, 2008;
- (j) the views of any person joined as an intervenor pursuant to section 18(1) and any action they will take if such an order is made; and
- (k) any other matter that the court considers relevant in the circumstances of the case.

(2) If the court is satisfied that P or C is likely to suffer significant harm attributable to conduct of the respondent if an order regulating the use of a shared household in favour of P or C is not made, the court must make the order, unless it appears to the court that—

- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
- (b) the harm likely to be suffered by the respondent or any relevant child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by P or C if the order is not made.

(3) Any powers contained within this Ordinance must not be exercised to make an order preventing a respondent from entering his or her own property, or allowing P to enter the respondent's property either solely or on a shared basis, where parties to the domestic relationship have never lived together in a shared household.

Undertaking by respondent

7. (1) Instead of making a protection order, the court may accept an undertaking from the respondent given on oath, that the respondent will not engage in conduct specified in the undertaking.

(2) The court must not accept an undertaking under subsection (1) where it appears to the court that—

- (a) the respondent has used or threatened violence against P or C; and
- (b) for the protection of P or C it is necessary to make a protection order so any breach thereof may be punishable under section 10(1).

(3) An undertaking remains in force for the period stated in the undertaking, but it may not exceed 3 years.

(4) A breach of an undertaking is enforceable as contempt of court as if the court had made an interim or final protection order in terms corresponding to those of the undertaking.

(5) No power of arrest is attached to an undertaking.

Provisions relating to orders

8. (1) The court may make an order pursuant to this Ordinance—

- (a) if an application for the order has been made in accordance with section 3; or
- (b) if, in any family or child protection proceedings to which the respondent is a party, the court considers that the order should be made for the benefit of any other party to those proceedings or any relevant child even though no such application has been made.

(2) Any order made under subsection (1)(b) ceases to have effect when the family or child protection proceedings have been finally disposed of.

(3) Any order made under this Ordinance comes into force upon the respondent being made aware directly or by letter, email, telephone or any other method of communication of the contents of the order.

(4) The court may make an interim order for such period as the court considers reasonable in order to obtain any evidence necessary to hear the matter.

(5) A final protection order may be made for such period as the court considers necessary, but in the event of an order protecting a relevant child, the order relating to the relevant child ceases upon the child reaching the age of 18 years.

(6) In any proceedings pursuant to this Ordinance, the court may make an order with the consent of all the parties to the proceedings.

Variation and revocation of order

9. (1) Where a final protection order is in force, any person permitted to apply under section 3 may make an application to the court for an order varying or revoking the original order.

(2) Where the final protection order regulates the use of a tenanted property, the landlord may apply under subsection (1) to vary or revoke the order.

(3) If the application to vary or revoke an order is made within 6 months from the date of the relevant order, the court may dismiss the application on the papers unless the applicant demonstrates a significant change in circumstances.

(4) In deciding the application under this section, the court must have regard to the matters specified in section 6.

Breach of order

10. (1) Subject to subsection (2), a person who without reasonable excuse does anything that he or she is prohibited from doing by an order under this Ordinance commits an offence.

Penalty: A fine of £1,000 or imprisonment for a term of 5 years, or both.

(2) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.

Powers of arrest

11. (1) Where an interim or final protection order is in force and a police officer believes on reasonable grounds that the respondent has committed or is committing a breach of the order, the police officer may detain and arrest the respondent without a warrant.

(2) If the respondent is arrested pursuant to subsection (1)—

(a) he or she must be brought before the court within 24 hours from the time of his or her arrest; and

(b) if the matter is not disposed of forthwith, the court before whom the respondent is brought may remand him or her.

(3) For the purposes of subsection (2)(a) no account is to be taken of Christmas Day, Good Friday or any Sunday.

(4) If at any time either P or A consider that the respondent has failed to comply with an order made under this Ordinance, P and/or A may apply to the court to issue a warrant for the arrest of the respondent.

(5) The court may not issue a warrant on an application under subsection (4), unless—

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the respondent has failed to comply with the order.

(6) If a person is brought before a court by virtue of a warrant issued under subsection (5) and the court does not dispose of the matter forthwith, the court may remand him or her.

(7) If a person remanded under this section is granted bail, he or she may be required by the court to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that such person does not interfere with witnesses or otherwise obstruct the course of justice.

PART III PROCEEDINGS

Conduct of proceedings

12. (1) No person may be present during the hearing of any proceedings under this Ordinance, other than—

- (a) an officer of the court;
- (b) parties to the proceedings and their representatives;
- (c) P and C, if the court deems it appropriate;
- (d) witnesses when permitted; or
- (e) any other person who is granted leave to be present by the court.

(2) Nothing in this section limits any other power of the court to hear proceedings in camera or to exclude any person from the courtroom.

(3) Where an application is made on behalf of a child, the parent, guardian, person with parental responsibility for the child or person with whom the child normally resides or resided on a regular basis may be a party to the proceedings.

(4) Nothing in this section prevents a person, including a child, on whose behalf an application for an order is made, from being heard in the proceedings and the court must take account of his or her views.

(5) Where a child expresses his or her views, the court must take account of those views having regard to the age and maturity of the child and the ability of the child to express his or her views.

Evidence

13. In any proceedings under this Ordinance, other than criminal proceedings, the court may receive such evidence as it deems fit, whether it is admissible in a court of law or otherwise.

Standard of proof

14. Every question of fact arising in any proceedings under this Ordinance, other than criminal proceedings, must be decided on a balance of probabilities.

Publication

15. (1) Subject to subsection (4), no person may, except with leave of the court, make public—

- (a) any report of proceedings under this Ordinance, other than criminal proceedings; and
- (b) any documentation filed within proceedings under this Ordinance, other than criminal proceedings.

(2) A person who contravenes subsection (1) commits an offence.
Penalty: A fine of £500 or imprisonment for a term of 2 years, or both.

- (3) Nothing in this section limits—
 - (a) the provisions of any other enactment relating to the prohibition or regulation of publication of reports or particulars relating to judicial proceedings; or
 - (b) the power of the court to punish any contempt of court.
- (4) This section does not apply where the information is disclosed for the purpose of—
 - (a) obtaining legal advice;
 - (b) obtaining any form of treatment;
 - (c) informing any third person who is named in the documentation; and,
 - (d) informing the landlord, mortgagor or any other person who has an interest in the property of the existence of the proceedings.

Bail

16. (1) Notwithstanding any other law relating to bail, where a court is required to determine whether to grant bail in respect of an offence committed under this Ordinance, the court must consider—

- (a) the need to protect P, C or A;
- (b) the welfare of any relevant child; and
- (c) any hardship that may be caused to the respondent or other members of the family if bail is not granted.

(2) Notwithstanding any other law relating to bail, the court in granting bail may order that it be granted subject to the conditions, as the court consider appropriate, that the respondent may not—

- (a) commit domestic abuse against P or C or encourage or instruct any other person to do so; or
- (b) be present on the premises in which P resides or works or in the vicinity of the place of where he or she resides or works.

(3) If a police officer believes on reasonable grounds that a person who has been granted bail subject to one or more conditions, has failed to comply with a bail condition, the police officer may arrest the person without a warrant.

Remand for medical examination or report

17. (1) If the court considers that a medical report or a report from a probation officer is required, any power to remand a person under section 11(2)(b) and 11(6) may be exercised for the purpose of enabling a medical examination or probation report to be made.

(2) If a power is exercised under subsection (1), the adjournment may not be more than 3 weeks at a time.

Property rights

18. (1) Where an application is filed to regulate a tenanted or mortgaged property, or a third person has any interest in property which is subject to an application under this Ordinance, and that landlord, mortgagee or third party attends a first or subsequent hearing, the court must consider whether he or she must be joined as an intervenor.

(2) The rights in respect of any property conferred on a person by an order made under this Ordinance, are subject to the rights of any third person entitled to benefits of the property which were in force prior to the application to court under this Ordinance.

(3) Nothing in this Ordinance must be construed as to transfer the legal ownership or legal tenancy of any party.

Rules

19. The Chief Justice may make rules of the court for the purpose of regulating the practice and procedure of the court and to prescribe the forms to be used with respect to any proceedings under this Ordinance and to provide for such matters as are necessary for giving full effect to the provisions of this Ordinance.

PART IV APPEALS

Appeals

20. (1) A person may appeal to the Supreme Court within 28 days after the decision of the Magistrates' Court.

(2) A person entitled to apply for the variation or revocation of an order made under this Ordinance by the Magistrates' Court may only appeal against—

- (a) the making of any such order;
- (b) the refusal by the court to make such an order; or
- (c) the revocation or variation by the court of such an order.

(3) On an appeal under subsection (1) the Supreme Court or the Court of Appeal may make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just.

(4) Subject to the court otherwise directing, the operation of an order is not suspended by virtue of an appeal made pursuant to this section and every order may be enforced in the same manner and in all respects as if no appeal pursuant to this section were pending.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

The purpose of this Ordinance is to make provision for, and prescribe the procedures for obtaining, protection orders where persons in domestic relationships and relevant children are suffering or are likely to suffer domestic abuse.