


<p>EXPLANATORY NOTE to the</p> <p>Domestic Abuse Ordinance</p>	<p>Prepared by the Attorney General on 11.09.2017</p>	
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1. These Explanatory Notes relate to the Domestic Abuse Bill and have been prepared to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by a legislative committee, Executive Council or Legislative Council.
2. The Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
3. These Notes might be best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Purpose of the Bill:

4. This Bill is proposed in order to give the courts specific powers to protect victims of domestic abuse in St Helena. It is proposed to provide this protection to both adults and children from domestic abuse by using protection orders and undertakings.
5. Protection orders will safeguard adults and children from domestic abuse. This Bill will allow a victim of abuse to make an application to the court for a protection order. Another person (such as a police officer, social worker or a relative of a child) can also apply for a protection order on behalf of a child or adult who is a victim of abuse..
6. Protection orders can prohibit specific abusive behaviour, or domestic abuse generally. A protection order can also prevent the abuser entering into all or part of the victim's home. The breach of a protection order is a criminal offence and the police can arrest the abuser; thereby immediately preventing further abuse.

Policy Background:

7. In recent years the Safe Haven and Safeguarding Directorate have raised awareness of domestic abuse on St Helena. Currently, most victims of domestic abuse are women and children. These women, and their children, usually live in the abuser's home and must move to other parts of the island to escape the abuse. This causes significant upheaval for these victims. The measures in this Bill will help the victims to stay in their homes and may require the abuser to find alternative accommodation.

8. Currently, the police can only prosecute domestic abuse where it includes violence. They cannot prevent further violence. The police also cannot protect victims from further abuse, including controlling behaviour and emotional harm. There are currently no specific laws which give the police the powers to protect victims in this way and this Bill will give the courts and police more powers to prevent ongoing domestic abuse.

Clause 1 – Short title:

9. This is the title of the Bill and is cited as the Domestic Abuse Ordinance 2017.

Clause 2 – Interpretation:

10. The interpretation section defines the meaning of the listed words when used in the Bill. This precisely sets out the types of relationships and types of behaviour to which the provisions apply.
11. The letter A is used throughout the Bill to refer to the person who has made the application to the court. The letter P is used to refer to the person in need of protection and the letter C is used to refer to a relevant child (that is a child who lives with one of the parties to the relationship or another child that the court considers relevant). The respondent is the alleged abuser.
12. The types of relationship to which the provisions apply has been defined very widely so as to ensure that protection can be provided to all victims of abuse and not just those in traditional relationships. It includes all romantic or intimate relationships and all relationships where people share a home other than where it is because one is the employee, tenant, lodger or boarder of the other.
13. The definition of domestic abuse then follows. It includes a wide range of behaviours and gives examples so that it is clear to all when the court can intervene.

Clause 3 – Application for protection order:

14. This clause gives the court the power to make a protection order if it is satisfied that the respondent committed, or is likely to commit, domestic abuse.
15. An application can be made by an adult victim of domestic abuse. It can also be made by another person (such as police officer, social worker or a relative of the child) on behalf of an adult victim or child. This is an important provision as some victims of abuse are unwilling (either through fear or misplaced loyalty) to seek protection for themselves. Where appropriate, another person can ask the court to protect the victim.

16. The applicant can request that their address or the address of any other person is omitted from the order. In extreme cases, this is necessary to prevent any reprisals that may occur as a result of the application for the protection order.

Clause 4 – Ex parte application

17. This clause allows the court to make an interim protection order without the knowledge of the respondent. This will be necessary when the person needs immediate protection and their safety is in danger.
18. An interim order gives the same protection as a final protection order but is limited in time. Interim orders are a short-term measure to protect P or C whilst the court gathers the evidence it needs to go ahead with a final protection order (see clause 8 (4)). Breaching an interim order constitutes the same offence as breaching a final protection order and the punishments are shown in clause 10.
19. Before making an interim order, the court must be satisfied that the respondent has committed, or is likely to commit, an act of domestic abuse against P or C. The court will also consider the risk of harm to the victim, whether the applicant will be deterred from seeking protection if an order is not made immediately and whether the respondent is deliberately trying to obstruct the court process.

Clause 5 – Terms of protection order

20. This clause explains the conditions that the court can impose when making the protection order. All protection orders will have a condition which forbids the respondent from committing domestic abuse against P or C. This can be prohibiting domestic abuse generally or prohibiting specific acts of domestic abuse.
21. When making the protection order, the court can also impose other conditions that the respondent must follow. These conditions are to regulate the actions of the respondent. The court can impose conditions which stop the respondent from doing a particular act, being in a particular place, or to require him to pay for particular household outgoings. Clause 5 highlights examples of the potential conditions that the court can impose. The court can impose other conditions if it thinks that is appropriate.

The court must exercise its discretion in deciding what conditions are necessary. This is because the needs of each victim will be different.

Clause 6 – Matters to be considered

22. This clause outlines the circumstances that the court will consider when deciding whether to grant a final or interim protection order. These circumstances are set out in clause 6 (1) of the Bill.

23. The court must make an order which regulates the use of a shared home if it considers that P or C are likely to suffer significant harm by the respondent if it does not do so. However, this will not apply if the harm to the respondent of making an order would be greater than the harm to P or C. This might be the case if the respondent is disabled and the home has been specially adapted for his or her disability.
24. This power enables the court to address one of the main policy considerations behind this Bill, which is to help victims of domestic abuse to stay in their homes instead of having to move themselves and their children to other accommodation to escape the abuse.

Clause 7 – Undertaking by the respondent

25. This permits the court to accept undertakings. Undertakings are an alternative to a protection order and are given by the respondent voluntarily. An undertaking is a binding promise, given on oath, by the respondent that he or she will not do any act which is specified in the undertaking. When giving an undertaking, the respondent does not make any admission of abuse, he only makes binding promise not to commit domestic abuse and other specified acts in the undertaking.
26. Undertakings are a quicker alternative to a protection order, as the court does not need to hear and consider all the evidence that it would need to do when making a protection order. In practice, undertakings are expected to be used more frequently than protection orders as respondents prefer to agree not to behave in an abusive way than have to prove that they have not done so.
27. An undertaking is time limited and differs from a final protection order which can remain in force for as long as the court requires.
28. The undertaking is not an admission of guilt and would not appear on a vetting certificate. If the respondent breaches the undertaking, he will be in contempt of court and will be punished accordingly. However, unlike protection orders, the police cannot arrest a person for a breach of an undertaking without a warrant. The punishment listed in clause 10 (1) also does not apply to a breach of an undertaking. If the respondent breaches the undertaking, the court is then also likely to grant a protection order.

Clause 8 – Provisions relating to orders

29. This clause sets out the provisions and stipulations, including time limits, the court must follow in relation to making protection orders.
30. The court can make a protection order where an application has been made under clause 3. It may also make a protection order in an existing family or child protection case where the court considers that it should do so. This covers the situation where the court becomes aware of domestic abuse in the course of a case and enables the judge to make a protection order that lasts until the end of that case.

31. Any order made under this Bill will come into force, when the respondent has been made aware of the contents of the order, by whatever means that happens. This means that from that moment, the conditions set out in the order must be obeyed.

Clause 9 – Variation and revocation or order

32. This clause outlines how a final protection order can be varied or revoked. If the order is revoked, then the order is cancelled and ceases to have effect from the date of revocation. To vary the order means to change the conditions or other parts of the protection order.
33. Where a protection order is in force, any person allowed to apply under clause 3 can make an application for the court to vary or revoke the protection order. People allowed to apply under clause 3 include, an adult victim of domestic abuse and another person (such as police officer, social worker or relative of a child) on behalf of an adult victim (P) or child (C).
34. Where the protection order regulates the use of rented property, the landlord may also apply to revoke or vary the protection order. This provides a route for a landlord who is unhappy about the conditions the court has imposed to be heard.
35. If the application to vary or revoke is made within 6 months, the court can dismiss it without a hearing unless there has been a significant change in circumstances. This is to prevent repeated applications to the court by a party who is unhappy with the order made.
36. In deciding on applications to vary or revoke an order, the court must have regard for those matters set out in clause 6. Clause 6 sets out those matters which are considered by the court in creating the protection order. In effect the court is allowed to re-examine those circumstances in light of the application to vary or revoke the order.

Clause 10 – Breach of order

37. The protection order will set out the specific acts, or acts generally, of domestic abuse that the respondent must not do. If he or she does commit any of the acts which are specified in the order, without reasonable excuse, he or she commits an offence. This clause sets out the maximum penalties for breach of an order. These are a fine of £1,000 or imprisonment for up to 5 years, or both. This clause also states that these penalties do not apply to undertakings.

Clause 11 – Powers of arrest

38. This clause grants powers of arrest to the police. A police officer can detain and arrest the respondent, without a warrant, if a protection order, or an interim 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 usual provisions apply as to the time by which the respondent who has been arrested must be brought before the court.

39. This clause is important in achieving the policy objectives of this Bill. The power of arrest allows the police to intervene and arrest the respondent if he is in breach of the conditions set out in the protection order. Arresting the respondent immediately stops the domestic abuse and prevents further abuse, at least for a short period of time. The police will no longer have to wait for physical violence to be used in order to arrest the respondent and will be able to be much more effective in preventing domestic abuse.
40. In addition to the power of arrest without warrant granted to the police, P or the applicant can apply to the court for a warrant to arrest the respondent due to his or her breach of the protection order. The court will then determine whether the respondent has failed to comply with the order. If it is satisfied of the breach, the court may issue a warrant for the respondent's arrest.

Clause 12 – Conduct of proceedings

41. This clause specifies how the proceedings will take place in any hearing regarding protection orders, interim orders or undertakings. This clause specifies that these hearings are not open to the public and limits the people who can be present in the court room. The court also has the power to hear proceedings in private in the judge's chambers. The court can exclude any person from the courtroom.
42. This clause also explains who can be present at proceedings and whose views will be taken into account during proceedings. These include a parent of any child involved and, where appropriate, the views of the children.

Clause 13 – Evidence

43. This clause specifies that the court can receive any evidence that it thinks is necessary whether that would normally be admissible or not. However, the usual rules of evidence will apply to any criminal proceedings for breach of a protection order.

Clause 14 – Standard of proof

44. Before the judge decides whether to grant a protection order or not, he must resolve any disputes of fact; that means he must decide whether to accept the applicant's or the respondent's version of events. In doing so, the standard of proof that the court must apply is the ordinary civil standard, the balance of probabilities. This means that a court will be satisfied if the occurrence of the event, story or fact, was more likely than not. In essence, the court will accept the version of events which is more likely to be true. Once the judge has accepted the facts, he can then apply the test set out in clause 3 in deciding whether to make a protection order or not, based on those facts.

Clause 15 – Publication

45. This clause explains when and to whom a person may publish matters in these proceedings. It also sets out a criminal offence and penalty for breaching the clause. As these proceedings

contain private and sensitive allegations and facts, this Bill restricts what can be published about the proceedings.

Clause 16 – Bail

46. This clause explains the considerations that the court must take into account when granting bail for an offence committed under this Bill. The court must consider the need to protect P or C and the welfare of any child when deciding whether to grant bail.
47. The court can add conditions to bail, and if a police officer has reasonable grounds to believe that a person has breached his bail conditions, then he can arrest that person without warrant.

Clause 17 – Remand for medical examination or report

48. This clause provides a power for the court to remand a respondent who has been arrested for breach of a protection order for the purpose of obtaining medical report or a probation report. The court may exercise this power when it believes that such a report is necessary for the creation of a protection order and that remanding the person is necessary to obtain such a report.

Clause 18 – Property rights

49. If the court is being asked to make a protection order that regulates a property which is tenanted, mortgaged or in which another person has an interest, then the landlord, mortgagee or that other person may apply to the court for permission to attend the first (or any subsequent) hearing. If they do attend, the court must consider whether they should be joined into the application as an intervenor. An intervenor isn't a party to the proceedings, but can make representations to the court in regards to his interest in the property.
50. If the court makes an order allowing one party to use or possess property under these provisions, this does not change the legal rights that a third party may have in that property, for example a landlord or a mortgagee. The court cannot, in any proceedings under this Bill, transfer legal ownership of property or any legal tenancy.

Clause 19 – Rules

51. This clause allows the Chief Justice to make rules of the court to regulate the manner in which such applications are made and determined.

Clause 20 – Appeals

52. This clause sets out who, when and how a person can appeal a decision. Any person who is a party may appeal on any grounds. A landlord, mortgagee or another person with an interest in property who is entitled to apply to revoke or vary the protection order may only appeal on limited grounds. The appeal must be made within 28 days.

53. If an appeal is made, the Supreme Court or the Court of Appeal can make any orders which are necessary given the decision on appeal.
54. When an appeal has been lodged, the protection order will remain in force unless the court orders otherwise. The respondent is required to comply with the protection order whilst the appeal is pending.