



ST HELENA

REVISED EDITION OF THE LAWS 2017

FAMILY, EDUCATION AND WELFARE

DOMESTIC ABUSE ORDINANCE, 2017¹

*Ordinance 17 of 2017 (published 21 December 2017)
In force 1 February 2018²*

No amendments to 21 December 2017

Subsidiary legislation:

COURTS (PROTECTION ORDERS) RULES, 2018

Legal Notice 1 of 2018

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 February 2018.

² Commencement Notice published as Gazette Notice No. 13 of 29 January 2018

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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.

**PART 1
PRELIMINARY**

Short title and commencement

1. This Ordinance may be cited as the Domestic Abuse Ordinance, 2017, and comes into operation on a day the Governor appoints by notice.

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 2 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) they are 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 course 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;

“Safeguarding Directorate” means the Department as defined in section 2 of the Welfare of Children Ordinance, 2008;

“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) with the permission of the court, 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) with the permission of the court, 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 any 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 any 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, 1961, 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 the person 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) if 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, if—

- (a)** an application for the order has been made in accordance with section 3; or
- (b)** 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; or
- (c)** in any criminal proceedings in which the defendant is acquitted, the court considers it necessary that an order should be made to protect any person or any relevant child even though no such application has been made.

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

(3) An 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.

Additional provisions relating to orders

8A. (1) Before an order is made under section 8(1)(c), both the prosecution and the defence may lead evidence that would be admissible in proceedings following an application under section 3.

(2) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(3) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (2) above.

(4) If the Court of Appeal allows an appeal against conviction it may remit the case to the Supreme Court to consider whether to proceed under this section.

(5) If—
 (a) the Supreme Court allows an appeal against conviction, or
 (b) a case is remitted to the Supreme Court under subsection (4),
 the reference in 8(1)(c) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(6) A person made subject to an order under section 8(1)(c) has the same right of appeal against the order as if he had been convicted of the offence in question before the court which made the order.

Variation and revocation of order

9. (1) Where a final protection order is in force, the respondent and 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 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 arrest and detain 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) The court may ask the Safeguarding Directorate to arrange for a suitable officer to ascertain the views of any relevant child and to make to the court a report, orally or in writing.

(5) If 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. (1) In any proceedings under this Ordinance, other than criminal proceedings, the court may receive such evidence as it thinks fit, whether it is admissible in a court of law or otherwise.

(2) The respondent may not cross-examine P in person.

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; or
- (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 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 must 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, or in the vicinity of the place of where, P resides or works or in the vicinity of the place of where a relevant child is cared for or attends school.

(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 for more than 3 weeks at a time.

Property rights

18. (1) If an application is filed to regulate a tenanted or mortgaged property, or if a third person has any interest in property which is subject to an application under this Ordinance, and the landlord, mortgagee or third party, as the case may be, attends a first or subsequent hearing, the court must consider whether the landlord, mortgagee or third party, as the case may be, should 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 transfers the legal ownership or legal tenancy of any party.

Rules

19. The Chief Justice may make rules of court to regulate the practice and procedure of the court, 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 within 28 days after the decision of the Court.

(2) A person entitled to apply for the variation or revocation of an order made under

this Ordinance 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 are 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.

DOMESTIC ABUSE ORDINANCE, 2017
(Section 19)

COURTS (APPEALS AND RULES) ORDINANCE, 2017
(Section 8)

COURTS (PROTECTION ORDERS) RULES, 2018

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 - Form A – Application for a protection order
 - Form B - Undertaking

Citation

1. These Rules may be cited as the Courts (Protection Orders) Rules, 2018.

Application for protection order

2. (1) An application for a protection order under section 3 of the Ordinance must be made in the form set out in Form A in the Schedule and must be accompanied by a draft of the order applied for and a signed statement stating—

- (a) the facts on which the application is based;
- (b) the nature of the alleged domestic abuse;
- (c) in the case of an application made on behalf of a person or relevant child, details of the material interest the applicant has in the well-being of the person or relevant child; and
- (d) in the case of a request under section 3(3) of the Ordinance to omit any address, the reason why the address or addresses should be omitted.

(2) An application referred to in sub-rule (1)—

- (a) may be accompanied by supporting statements of persons who have knowledge of the facts alleged;
- (b) may be brought outside the ordinary hours of the court.

(3) An application for an interim protection order under section 4 of the Ordinance must be accompanied by a signed statement—

- (a) containing the information required in section 4(2); and
- (b) stating how the grounds in section 4(1) are met.

(4) If the court receives evidence in the absence of the respondent and that evidence is not contained within the statement, the court must ensure a full note thereof is made and served on the respondent at the same time as the interim protection order and/or notice of hearing.

Applications requiring permission

3. (1) Where the application is made by a person to whom section 3(2)(b)(iii) or (iv) of the Ordinance applies, the application must be referred to the judge in the first instance to consider whether permission should be granted.

(2) Permission must be granted where the court is satisfied that the evidence accompanying the application would, if taken at its highest, be a proper basis for making the order sought.

(3) Permission must be refused if the court is not so satisfied and no further applications for permission may be made by that person unless there has been a material change of circumstances.

First hearing

4. (1) Irrespective of whether an order is made, the court must list the matter for a first hearing no later than 21 days after the date of the application or, if permission is required, the date upon which permission was granted.

(2) If the respondent does not appear at the first hearing and the court has satisfactory evidence that the application has been served upon the respondent, the court may—

- (a)* proceed to hear and determine whether a final protection order should be granted; or
- (b)* having received a reasonable excuse for the non-appearance of the respondent, adjourn the hearing upon such terms as the court deems just.

(3) If the applicant does not appear in person or is not represented at the first hearing and the respondent appears in court, the court may—

- (a)* dismiss the application; or
- (b)* having received a reasonable excuse for the non-appearance of the applicant, adjourn the hearing upon such terms as the court deems just.

(4) The respondent must, not less than 7 days before the date of first hearing, file and serve a signed statement and any evidence he or she intends to rely upon in response to the application.

(5) At the first hearing the court may—

- (a)* decide the matter on the papers;
- (b)* decide the matter on the basis of submissions;
- (c)* allow oral evidence from one or all parties and witnesses who have provided statements;
- (d)* some or all of the above;
- (e)* adjourn the matter—
 - (i)* for the reasons set out in sub-rule (1) or (3);
 - (ii)* to enable further evidence to be obtained as deemed necessary and proportionate in the interests of justice; or
 - (iii)* for any reason the court deems necessary and proportionate in the interests of justice.

(5) If the court proceeds at first hearing to hear the matter, the court may—

- (a) make a final protection order; or
 - (b) dismiss the application and, where applicable, discharge any interim protection order in force.
- (6) Where the matter is adjourned—
- (a) the court may make or continue an interim protection order pending the next hearing; and
 - (b) the court may make such directions as it considers necessary and proportionate to enable the application to be concluded at the adjourned hearing.

Undertaking by respondent

5. (1) Before accepting an undertaking by a respondent under section 7 of the Ordinance, the court must explain to the respondent—

- (a) the purpose, terms, effect and duration of the undertaking; and
- (b) the consequences of failing to comply with the undertaking.

(2) The undertaking must be in the form set out in Form B in the Schedule and the content of the undertaking may include all matters referred to in section 5 of the Ordinance.

(3) The Clerk of the Court must serve a copy of the undertaking on the respondent at court on the same day that the respondent makes the undertaking.

Interim or final protection order

6. When an interim or final protection order is granted in the presence of the respondent, the court must explain to the respondent—

- (a) the purpose, terms, effect and duration of the order;
- (b) the consequences of failing to comply with the order; and
- (c) the means by which the order may be varied or revoked.

Variation or revocation of order

7. (1) The person making an application to vary or revoke an order under section 9 of the Ordinance must apply in the form set out in Form C in the Schedule and—

- (a) file with the application a signed statement and any other evidence the person intends to rely upon; and
- (b) serve the application and any evidence filed, on each person who is a party to the proceedings in respect of which the original order was made.

(2) Upon receipt of an application referred to in sub-rule (1), the court must make such directions as it deems necessary and proportionate and to ensure that the matter is listed for a hearing within the shortest possible delay.

Service of documents

8. (1) Subject to sub-rule (6), the following documents must be served by the Clerk of the Court on the respondent or his or her representative no later than 7 days before the first hearing:

- (a) a copy of the application;
- (b) a copy of the signed statement;
- (c) a copy of any further evidence upon which the applicant relies;

- (d) a copy of notice of the first hearing; and
- (e) in the event that an interim protection order was made on an ex parte basis, a copy of the order and any notes of evidence if applicable.

(2) Where an application is filed—

- (a) on behalf of a person (P) by another person (A) as provided for in section 3(2)(b) of the Ordinance, the documents referred to in sub-rule (1) must also be served on P; or
- (b) in respect of a relevant child, the documents referred to in sub-rule (1) must also be served on the parent, guardian, person with parental responsibility for the child or the person with whom the relevant child normally resides or resided with on a regular basis.

(3) Where an application is filed to regulate a tenanted or mortgaged property, the documents referred to in sub-rule (1)(a) and (d) must also be served on the landlord or mortgagee.

(4) Where a person has any interest in property which is subject to an application under the Ordinance, the documents referred to in sub-rule (1)(a) and (d) must be served on that person.

(5) Upon the making or continuation of an interim protection order or the making of a final protection order, the Clerk of the Court must serve a copy of the order on—

- (a) the respondent or his or her representative;
- (b) any other person to whom the order applies, whether or not the person is a party to the proceedings;
- (c) any other person who is affected by the order, whether or not the person is a party to the proceedings;
- (d) the police directorate; and
- (e) the landlord, mortgagor or the person(s) with an interest in the property, where sub-rule (3) or (4) apply.

(6) The court may abridge time for service, dispense with the need for service, or substitute service of any documents and orders made during proceedings under the Ordinance if the court considers it is in the interests of justice to do so.

SCHEDULE

FORM A—APPLICATION FOR A PROTECTION ORDER

To be completed by the court

Date issued: Case number:

1.a Fill out this box if you are the person to whom the application relates (P)
[see section 3(1) of the Ordinance] and provide full details in [5] on page 2.

Name of the applicant:

1.b Fill out this box if you are a person other than P (A) and state in what capacity you make the application [see section 3(2) of the Ordinance] and provide full details in [5] on page 2.

I make this application in my capacity as [tick the appropriate box]:

- i. a police officer
- ii. a social worker
- iii. any other person who has a material interest in the wellbeing of P or C
- iv. a person with whom C normally resides/resided on a regular basis or a relative or C

Name of the applicant:

2.a Name of the respondent(s)

2.b Address of the respondent(s):

3. Name of any relevant child(ren): Please State: Full name of child(ren), date of birth, name of mother, name of father, whether father has parental responsibility

4. Name of any other party: Please State: Full name, date of birth, reason why this party should be joined

5. The applicant

Applicant's name and address (if withheld state the reasons for doing so. See section 3(4) of the Ordinance.

Contact telephone number

Email

Details of legal representative

Representative's name and address

Contact telephone number

Email

Reference No.

If the applicant is "A" provide additional information

6. The respondent

Respondent's name and address

Contact telephone number

Email

Details of legal representative

Representative's name and address

Contact telephone number

Email

Reference No.

7. The domestic relationship

This application is made because there is a domestic relationship in which (tick what is appropriate box to the present circumstances):

7.a. P is married to the respondent, including marriage according to any law, custom or religion;

7.b. P and the respondent have had parental responsibility for a relevant child;

7.c. P and the respondent have had a residence or special guardianship order in respect of a relevant child under the Welfare of Children Ordinance 2008;

7.d P and the respondent are engaged;

7.e P and the respondent are in a dating relationship that includes an actual/perceived (by one or both) romantic, intimate or sexual relationship of any duration;

7.f P and the respondent share/shared the same household/residence other than merely by reason of one of them being the other’s employee, tenant, lodger or boarder.

8. A protection order is sought against the respondent because an act of domestic abuse [tick only one]

8.a Has been committed by the respondent

8.b is likely to be committed by the respondent

9. Domestic abuse means any controlling or abusive behaviour that harms the health, safety or wellbeing of a person (P) or any relevant child (C) in the care of the person [see section 2(2) of the Ordinance]. Tick all that applies in this case:

9.a physical abuse

9.b sexual abuse

9.c emotional, verbal or psychological abuse

9.d economic abuse

9.e intimidation;

9.f harassment;

9.g stalking

9.h damage to property;

9.i entry into the person’s residence without consent, where the parties to the domestic relationship do not share the same residence

9.j unlawful detainment

9.k threats to commit any of the above

9.l encouraging, causing or inciting another person to commit any of the above.

The applicant must provide evidence about the incidents of domestic abuse complained of in the statement and supporting documents.

10. Is this an ex parte application? Yes No

11. If you ticked “yes” please state on what grounds

12. Checklist

Please indicate what supporting documents you are enclosing with this application for a Protection Order. The documents specified below must be filed with the application. If you are NOT filing any of the documents listed below, explain the reason why the document is not attached and the date when you expect to file it.

12.1 Signed statement Attached Yes No

12.3 Draft Order Attached Yes No

12.3 Chronology Attached Yes No

12.4 Supporting Statement/s or Other documents Attached Yes No

Signature of the applicant

Date of the application

FORM B— UNDERTAKING

If you do not comply with this undertaking you may be held in contempt of court and imprisoned or fined, or your assets may be seized.

To be completed by the court

Date issued: Case number:

1.Name and address of the person making the undertaking:

2. Suitability of undertaking — section 7(2) of the Ordinance [tick the appropriate box]:

2.1 The respondent has used or threatened violence against P or C Yes No

2.2 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) Yes No

3. Declaration— Rule 4 Courts (Protection Orders) Rules, 2017

By signing at the end of this document, I declare that the Court has explained to me [tick the appropriate box]:

a. the purpose, terms, effect and duration of the undertaking; and

b. the consequences of failing to comply with the undertaking.

4. Duration — section 7(3)

This undertaking remains in force until [insert date] (it may not exceed 3 years from the date it was made)

5. Warning

I understand that 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. Yes No

6. The undertaking

I.....(insert full name) of(insert address) give this undertaking under oath that I will

6.a not encourage any person to commit an act that, if committed by myself, would amount to an act of domestic abuse against P or C;

6.b not enter the residence of..... (insert details)

6.c not enter the place of employment of (insert details)

6.d not enter the place of schooling or care of (insert details)

6.e not come within (insert distance)

of..... (insert details of P and/or C)

6.f not take possession of, damage, convert or otherwise deal with property that (insert details of P and/or C) have an interest in or that they reasonably use.

6.g not enter the shared household located at (insert details)

6.h not enter the following specified part/s of the shared household (insert details) located at(insert details)

6.i not commit any of the following [use a separate sheet if necessary]:

7. I undertake to do the following [tick any that applies and expand in the box below]:

7.a return the following items of property

.....(insert details)

to the following persons(insert details)

7.b repair or arrange and pay for the repair of.....(insert details)

7.c repair or arrange and pay for the repair of(insert details)

7.d discharge the rent / mortgage payments / outgoings (circle as appropriate):

.....(insert details) affecting the shared household;

7.e as follows [provide details below]:

8. I give this undertaking on oath and sign it

.....(signature of person giving the undertaking) on

.....(date) and confirm that(name of Clerk)

has given me a copy of this Undertaking as provided by Rule 4(3) of the Courts (Protection Orders) Rules, 2017.
