



# **LAWS OF MALAYSIA**

**Act A1538**

**DOMESTIC VIOLENCE (AMENDMENT) ACT 2017**

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# LAWS OF MALAYSIA

## Act A1538

### DOMESTIC VIOLENCE (AMENDMENT) ACT 2017

An Act to amend the Domestic Violence Act 1994.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

#### **Short title and commencement**

**1.** (1) This Act may be cited as the Domestic Violence (Amendment) Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

#### **Amendment of section 2**

**2.** The Domestic Violence Act 1994 [*Act 521*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in the definition of “domestic violence”, by inserting after paragraph (e) the following paragraphs:

“(ea) dishonestly misappropriating the victim’s property which causes the victim to suffer distress due to financial loss;

- (*eb*) threatening the victim with intent to cause the victim to fear for his safety or the safety of his property, to fear for the safety of a third person, or to suffer distress;
- (*ec*) communicating with the victim, or communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise;”;
- (*b*) by inserting after the definition of “court” the following definition:
- ‘ “Director General” means the Director General of Social Welfare and includes the State Director of Social Welfare of each of the States;’; and
- (*c*) by inserting after the definition of “domestic violence” the following definition:
- ‘ “emergency protection order” means an order issued under section 3A;’.

## **New Part IA**

**3.** The principal Act is amended by inserting after Part I the following Part:

### **“PART IA**

#### **EMERGENCY PROTECTION ORDER**

### **Emergency protection order**

**3A.** (1) A social welfare officer duly authorized in writing by the Director General may, in an application involving a complaint of domestic violence referred to in paragraph (*a*) or (*b*) of the definition of “domestic violence” under section 2, issue an emergency protection order.

(2) An application for an emergency protection order may be made at any time whether or not an interim protection order or a protection order has been previously made or an

application for an interim protection order or a protection order is still pending.

(3) An application for an emergency protection order shall be made *ex-parte* by—

- (a) the victim;
- (b) the victim's counsel; or
- (c) in the case where the victim is a child or an incapacitated adult, the guardian, relative or person responsible for the care of such child or incapacitated adult, or a social welfare officer other than an authorized social welfare officer.

(4) An application for an emergency protection order may be made in any district where—

- (a) the victim resides;
- (b) the person against whom the protection is sought resides;
- (c) the alleged domestic violence occurred; or
- (d) the victim is placed temporarily.

(5) Upon receipt of the application for an emergency protection order, the application shall be heard by the authorized social welfare officer immediately and the issuance of the emergency protection order, if any, shall be made, where practicable, within two hours after the application is made.

(6) For the purpose of an application for an emergency protection order, a police report relating to the domestic violence is not required.

(7) The authorized social welfare officer, in making an emergency protection order under subsection (1), may issue one or more of the following orders:

- (a) prohibiting the person against whom the order is made from using domestic violence referred to in paragraph

(a) or (b) of the definition of “domestic violence” under section 2 against his or her spouse or former spouse, a child, an incapacitated adult or any other member of the family, as the case may be;

(b) prohibiting the person against whom the order is made from inciting any other person to commit domestic violence referred to in paragraph (a) or (b) of the definition of “domestic violence” under section 2 against his or her spouse or former spouse, a child, an incapacitated adult or any other member of the family, as the case may be; or

(c) prohibiting the person against whom the order is made from entering any protected person’s safe place, shelter, place of residence, shared residence or alternative residence, as the case may be.

(8) An emergency protection order shall be valid for the period of seven days from the date of issuance of the order, and enforceable when a copy of the order is served on the person against whom the order is made in accordance with section 3B.

(9) The emergency protection order issued shall not be affected by the issuance of an interim protection order or a protection order.

### **Service of emergency protection order**

**3B.** (1) The authorized social welfare officer who issued the emergency protection order under subsection 3A(1) shall forward a copy of the order, where practicable within ten hours of the issuance of the emergency protection order, to the officer in charge of the police district where the person against whom the order is made resides or any other police officer under his command.

(2) The officer in charge of the police district or any other police officer under his command referred to in subsection (1) shall serve a copy of the emergency protection order personally on the person against whom the order is made, where practicable, within twelve hours upon receiving a copy of the order.

**Substituted service for emergency protection order**

**3c.** If the officer in charge of the police district or any other police officer under his command referred to in subsection 3B(1) is not able to serve a copy of the emergency protection order on the person against whom the order is made personally within twelve hours of receiving a copy of the order, the service of the emergency protection order shall be effected—

- (a) by leaving a copy of the order at the last known address of the person against whom the order is made; or
- (b) by any other manner as the authorized social welfare officer may direct.

**Proof of service of emergency protection order**

**3d.** The officer in charge of the police district or any other police officer under his command referred to in subsection 3B(1) shall file proof of service of the copy of the emergency protection order effected under section 3B or 3C with the authorized social welfare officer, and communicate the service effected to the victim, within twelve hours of service.

**Contravention of emergency protection order**

**3e.** (1) Any person who willfully contravenes an emergency protection order or any provision of the order shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Any person who willfully contravenes an emergency protection order by using violence on a protected person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) Any person who is convicted for a second or subsequent violation of an emergency protection order under subsection (2) shall be punished with imprisonment for a period of not less than seventy-two hours and not more than two years, and shall also be liable to a fine not exceeding five thousand ringgit.

**Record of applications and emergency protection orders**

**3F.** (1) The authorized social welfare officer shall maintain a record of all applications for emergency protection orders and emergency protection orders issued by the authorized social welfare officer under this Act.

(2) The record shall contain—

- (a) the names, gender and relationship of the parties;
- (b) the domestic violence alleged, whether it involved any weapon, or resulted in personal injuries and whether the injuries inflicted required medical treatment; and
- (c) the effective date and terms of each order issued.”.

**Amendment of section 4**

**4.** Section 4 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsections:

“(3A) An interim protection order issued under subsection (1) may, where the court is satisfied that it is necessary for the protection and personal safety of the spouse or former spouse, child, incapacitated adult or any other member of the family, as the case may be, provide for any one or more of the orders specified in paragraphs 6(1)(a) to (f).

(3B) For the purpose of making the orders under subsection (3A), the provisions in subsections 6(3), (4) and (5) shall apply.

(3C) The orders provided under subsection (3A) shall have effect for the duration of the interim protection order.”; and

(b) by substituting for subsection (4) the following subsection:

“(4) An interim protection order shall cease to have effect—

- (a) upon the protected person being informed in writing by a police officer about the completion of the investigations and that there is no further action to be taken against the person against whom the order is made;
- (b) upon the institution of a criminal proceeding against the person against whom the order is made if, upon being informed in writing by a police officer that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made, no application for a protection order is made by the protected person within seven days after being so informed; or
- (c) upon the determination of an application for a protection order by the court if, upon being informed in writing by a police officer that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made, the application for the protection order is made by the protected person within seven days after being so informed.”.

#### **Amendment of section 5**

**5.** Paragraph 5(1)(a) of the principal Act is amended by substituting for the word “complainant” the word “victim”.

#### **Amendment of section 6**

**6.** Section 6 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the word “complainant” the word “victim”;

- (ii) in paragraph (a)—
    - (A) by deleting the words “or a specified part of the shared residence”; and
    - (B) by deleting the words “or specified part thereof”;
  - (iii) in paragraph (e), by inserting the word “and” at the end of the paragraph;
  - (iv) in paragraph (f), by substituting for the comma at the end of the paragraph a full stop; and
  - (v) by deleting the words “to have effect for such period, not exceeding twelve months from the date of the commencement of such order, as may be specified in the protection order.”; and
- (b) by inserting after subsection (1) the following subsection:
- “(1A) For the purpose of subsection (1), the orders provided in the protection order shall have effect for such period not exceeding twelve months from the date of the commencement of such order as may be specified in the protection order.”.

### **Amendment of Part III**

7. The principal Act is amended by substituting for the heading of Part III the following heading:

“COMPENSATION AND REHABILITATION PROGRAMME”.

### **Amendment of section 11**

8. Section 11 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“**Rehabilitation programme, etc.**”;

(b) by substituting for subsection (1) the following subsection:

“(1) The court may, in an application in which a protection order is sought, in addition to issuing a protection order, make an order that one or more of the parties to the dispute be referred to a rehabilitation programme, provided that an order to refer the victim to a rehabilitation programme shall be made only with the consent of the victim.”;

(c) by deleting subsections (1A) and (1B);

(d) in subsection (2), by substituting for the words “one or both of the orders under subsection (1) or (1B)” the words “the order under subsection (1)”;

(e) in subsection (3), by deleting the words “or (1B)”; and

(f) by substituting for subsection (4) the following subsection:

“(4) In this section, “rehabilitation programme” means the programme provided by the Ministry responsible for welfare services for the purposes of family and community development.”.

### **Amendment of section 12A**

**9.** Section 12A of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

**“*Ex-parte* application for interim protection order”;**

(b) in paragraph (a), by substituting for the word “applicant” the word “victim”;

(c) in paragraph (b), by substituting for the word “applicant’s” the word “victim’s”; and

(d) in paragraph (c), by substituting for the word “applicant” the word “victim”.

**Substitution of section 13**

**10.** The principal Act is amended by substituting for section 13 the following section:

**“When protection order may be sought**

**13.** (1) A protection order may be sought—

- (a) within seven days after the victim has been informed in writing by a police officer under paragraph 4(4)(b) that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made; or
- (b) at any stage of the criminal proceedings under the Penal Code or any other written law where the accused is charged with an offence involving domestic violence whether or not an interim protection order or emergency protection order has been sought and issued against the accused.

(2) A protection order under subsection (1) may be sought in particular—

- (a) as a condition of the accused’s release on bail; or
- (b) upon the compounding of the offence referred to in subsection (1) under section 260 of the Criminal Procedure Code [*Act 593*].”.

**New section 13A**

**11.** The principal Act is amended by inserting after section 13 the following section:

**“Application for protection order**

**13A.** A protection order sought under section 13 shall be made by—

- (a) the victim;
- (b) the victim’s counsel;

- (c) a social welfare officer on behalf of the victim; or
- (d) a police officer on behalf of the victim.”.

**Amendment of section 14**

**12.** Section 14 of the principal Act is amended—

- (a) in paragraph (a), by substituting for the word “complainant” the word “victim”; and
- (b) in paragraph (d), by substituting for the word “complainant” the word “victim”.

**Amendment of section 17**

**13.** Subsection 17(2) of the principal Act is amended by inserting after the words “the court” the words “, and communicate the service effected to the victim,”.

**Amendment of section 17A**

**14.** Subsection 17A(4) of the principal Act is amended by substituting for the word “applicant” the word “victim”.

**Amendment of section 19**

**15.** Subsection 19(2) of the principal Act is amended—

- (a) in paragraph (b), by substituting for the full stop at the end of the paragraph a semicolon; and
- (b) by inserting after paragraph (b) the following paragraphs:
  - “(c) informing the victim on the status of the investigations relating to the offence involving domestic violence; and

- (d) informing the victim on the status of application for an interim protection order or a protection order, including the service of the order, and the relevant court dates relating to the application.”.