

Chapter:	189	DOMESTIC AND COHABITATION RELATIONSHIPS VIOLENCE ORDINANCE	Gazette Number	Version Date
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		Long title	L.N. 265 of 2009	01/01/2010
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DOMESTIC AND COHABITATION RELATIONSHIPS VIOLENCE ORDINANCE*

To provide protection of persons from violence in domestic and cohabitation relationships and for matters ancillary thereto.

(Amended 18 of 2009 s. 3)
[19 December 1986] L.N. 305 of 1986

(Originally 48 of 1986)

Note:

* This Ordinance was amended by the Domestic Violence (Amendment) Ordinance 2009 (18 of 2009). The saving provision contained in section 17 of that Amendment Ordinance reads as follows—

"17. Saving provision

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

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

Commencement date: 1 January 2010.

Section:	1	Short title	L.N. 265 of 2009	01/01/2010
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This Ordinance may be cited as the Domestic and Cohabitation Relationships Violence Ordinance.

(Amended 18 of 2009 s. 4)

Section:	2	Interpretation and application	L.N. 265 of 2009	01/01/2010
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(1) In this Ordinance, unless the context otherwise requires-

"applicant" (申請人) means a person who applies for an injunction to be granted under section 3, 3A or 3B; (Added 18 of 2009 s. 5)

"cohabitation relationship" (同居關係)—

- (a) means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship; and
- (b) includes such a relationship that has come to an end; (Added 18 of 2009 s. 5)

"matrimonial home" (婚姻居所) includes a home in which the parties to a marriage ordinarily reside together whether or not it is occupied at the same time by other persons; (Amended 17 of 2008 s. 3)

"minor" (未成年人) means a person under the age of 18 years; (Added 17 of 2008 s. 3)

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

party to that relationship; (Added 18 of 2009 s. 5)

"respondent" (答辯人) means the person against whom an injunction is granted or sought to be granted under section 3, 3A or 3B;. (Added 17 of 2008 s. 3. Amended 18 of 2009 s. 5)

"specified minor" (指明未成年人) means a minor—

- (a) who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned; or
- (b) who is living with the applicant concerned. (Added 18 of 2009 s. 5)

(Amended 17 of 2008 s. 3)

(2) (Repealed 18 of 2009 s. 5)

Section:	3	Power of District Court to grant injunction: spouses and former spouses*	L.N. 265 of 2009	01/01/2010
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(1) On an application by a person the District Court, if it is satisfied that the applicant or a specified minor has been molested by the spouse or former spouse of the applicant and subject to section 6, may grant an injunction containing any or all of the following provisions— (Amended 17 of 2008 s. 4)

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision restraining the respondent from molesting any specified minor;
- (c) a provision prohibiting the respondent— (Amended 17 of 2008 s. 4)
 - (i) (where the applicant has been molested by the respondent) from entering or remaining in—
 - (A) the residence of the applicant;
 - (B) a specified part of the residence of the applicant; or
 - (C) a specified area whether or not the residence of the applicant is in that area, whether or not the residence is the common residence or matrimonial home of the applicant and the respondent;
 - (ii) (where the specified minor has been molested by the respondent) from entering or remaining in—
 - (A) the residence of the specified minor;
 - (B) a specified part of the residence of the minor; or
 - (C) a specified area whether or not the residence of the minor is in that area, whether or not the residence is the common residence of the minor and the respondent;
- (d) a provision requiring the respondent to permit— (Amended 17 of 2008 s. 4)
 - (i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence or matrimonial home of the applicant and the respondent or in a specified part of such common residence or matrimonial home; or
 - (ii) (where the specified minor resides with the respondent) the minor to enter and remain in the common residence of the minor and the respondent or in a specified part of such common residence,

whether or not any other relief is being sought in the proceedings.

(1A)A court may in an injunction containing a provision mentioned in subsection (1)(a) or (b) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction. (Added 17 of 2008 s. 4)

(2) In exercising its power to grant an injunction containing a provision mentioned in subsection (1)(c) or (d) the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any specified minor and to all the circumstances of the case.

(3) (Repealed 18 of 2009 s. 6)

(Amended 17 of 2008 s. 4)

[cf. 1976 c. 50 s. 1 U.K.]

Note:

* (Amended 17 of 2008 s. 4)

Section:	3A	Power of District Court to grant injunction: other relatives	L.N. 265 of 2009	01/01/2010
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(1) The District Court may, on an application made by a person, if satisfied that the applicant has been molested by a relative of the applicant, grant an injunction against that relative. (Amended 18 of 2009 s. 7)

(2) In subsection (1), “relative” (親屬) means—

- (a) the applicant’s father, mother, grandfather or grandmother (whether natural or adoptive);
- (b) the applicant’s step-father, step-mother, step-grandfather or step-grandmother;
- (c) the applicant’s father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the applicant’s spouse;
- (d) the applicant’s grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the applicant’s spouse;
- (e) the applicant’s son, daughter, grandson or granddaughter (whether natural or adoptive);
- (f) the applicant’s step-son, step-daughter, step-grandson or step-granddaughter;
- (g) the applicant’s son-in-law or daughter-in-law who is the spouse of the applicant’s natural child, adoptive child or step-child;
- (h) the applicant’s grandson-in-law or granddaughter-in-law who is the spouse of the applicant’s natural grandchild, adoptive grandchild or step-grandchild;
- (i) the applicant’s brother or sister (whether of full or half blood or by virtue of adoption);
- (j) the brother or sister (whether of full or half blood or by virtue of adoption) of the applicant’s spouse;
- (k) the applicant’s step-brother or step-sister;
- (l) the step-brother or step-sister of the applicant’s spouse;
- (m) the applicant’s uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);
- (n) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the applicant’s spouse; or
- (o) the spouse of any person mentioned in paragraph (i), (j), (k), (l), (m) or (n).

(3) A minor who applies for an injunction under subsection (1) shall apply by his next friend.

(4) Subject to section 6, an injunction granted under subsection (1) may, whether or not any other relief is being sought in the proceedings, contain any or all of the following provisions—

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision prohibiting the respondent from entering or remaining in—
 - (i) the residence of the applicant;
 - (ii) a specified part of the residence of the applicant; or
 - (iii) a specified area whether or not the residence of the applicant is in that area, whether or not the residence is the common residence of the applicant and the respondent;
- (c) (where the applicant resides with the respondent) a provision requiring the respondent to permit the applicant to enter and remain in—
 - (i) the common residence of the applicant and the respondent; or
 - (ii) a specified part of such common residence.

(5) A court may in an injunction containing a provision mentioned in subsection (4)(a) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction.

(6) In exercising its power to grant an injunction containing a provision mentioned in subsection (4)(b) or (c), the District Court shall have regard to—

- (a) (where the applicant resides with the respondent) who has—
 - (i) the legal or beneficial interest in; or
 - (ii) a contractual or legal right to occupy, the common residence of the applicant and the respondent;
- (b) (where the applicant resides with the respondent) the impact of the injunction on the relationship between the applicant, the respondent and their other family members who reside with them;
- (c) the conduct of the applicant and the respondent, both in relation to each other and otherwise;
- (d) the respective needs and financial resources of the applicant and the respondent; and

(e) all the circumstances of the case.

(Added 17 of 2008 s. 5)

Section:	3B	Power of District Court to grant injunction: cohabitants and former cohabitants	L.N. 265 of 2009	01/01/2010
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(1) On an application by a party to a cohabitation relationship, the District Court, if it is satisfied that the applicant or a specified minor has been molested by the other party to the cohabitation relationship and subject to section 6, may grant an injunction containing any or all of the following provisions—

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision restraining the respondent from molesting the specified minor;
- (c) a provision prohibiting the respondent—
 - (i) (where the applicant has been molested by the respondent) from entering or remaining in—
 - (A) the residence of the applicant;
 - (B) a specified part of the residence of the applicant; or
 - (C) a specified area whether or not the residence of the applicant is in that area, whether or not the residence is the common residence of the applicant and the respondent;
 - (ii) (where the specified minor has been molested by the respondent) from entering or remaining in—
 - (A) the residence of the specified minor;
 - (B) a specified part of the residence of the minor; or
 - (C) a specified area whether or not the residence of the minor is in that area, whether or not the residence is the common residence of the minor and the respondent;
- (d) a provision requiring the respondent to permit—
 - (i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence of the applicant and the respondent or in a specified part of such common residence; or
 - (ii) (where the specified minor resides with the respondent) the minor to enter and remain in the common residence of the minor and the respondent or in a specified part of such common residence,

whether or not any other relief is being sought in the proceedings.

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

- (a) whether the parties are living together in the same household;
- (b) whether the parties share the tasks and duties of their daily lives;
- (c) whether there is stability and permanence in the relationship;
- (d) the arrangement of sharing of expenses or financial support, and the degree of financial dependence or interdependence, between the parties;
- (e) whether there is a sexual relationship between the parties;
- (f) whether the parties share the care and support of a specified minor;
- (g) the parties’ reasons for living together, and the degree of mutual commitment to a shared life;
- (h) whether the parties conduct themselves towards friends, relatives or other persons as parties to a cohabitation relationship, and whether the parties are so treated by their friends and relatives or other persons.

(3) A court may in an injunction containing a provision mentioned in subsection (1)(a) or (b) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that have led to the granting of the injunction.

(4) In exercising its power to grant an injunction containing a provision mentioned in subsection (1)(c) or (d), the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any specified minor and to all the circumstances of the case.

(Added 18 of 2009 s. 8)

Section:	4	Court of First Instance may exercise powers of District Court in certain cases	L.N. 265 of 2009	01/01/2010
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The Court of First Instance may exercise the powers conferred on the District Court under section 3, 3A or 3B- (Amended 17 of 2008 s. 6; 18 of 2009 s. 9)

- (a) in a case of urgency; or
- (b) where the Court of First Instance is satisfied that special circumstances are present which make it appropriate for the Court of First Instance rather than the District Court to exercise those powers. (Amended 25 of 1998 s. 2)

Section:	5	Arrest for breach of order	L.N. 265 of 2009	01/01/2010
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*(1)Where a court grants, pursuant to section 3, 3A or 3B, or pursuant to any other power upon an application made by a party to a marriage against the other party to the marriage, an injunction containing— (Amended 18 of 2009 s. 10)

- (a) a provision restraining any person from using violence against another person (“protected person”); or
- (b) a provision prohibiting any person from entering or remaining in any premises or area, the court may, subject to subsection (1A) and section 6, attach to the injunction an authorization of arrest in the prescribed form. (Replaced 17 of 2008 s. 7)

*(1A) A court shall not attach under subsection (1) an authorization of arrest to an injunction granted against a person unless-

- (a) it is satisfied that the person has caused actual bodily harm to the protected person; or
- (b) it reasonably believes that the person will likely cause actual bodily harm to the protected person. (Added 17 of 2008 s. 7)

*(1B) An authorization of arrest may be attached under subsection (1) to an injunction-

- (a) at the time the injunction is granted; or
- (b) at any time during the validity period of the injunction. (Added 17 of 2008 s. 7)

(2) Where under subsection (1) an authorization of arrest is attached to an injunction a police officer may arrest without warrant any person whom he reasonably suspects of being in breach of the injunction by reason of that person's use of violence or, as the case may be, his entry into or remaining in any premises or area specified in the injunction, and the police officer shall have all necessary powers including the power of entry by the use of reasonable force to effect that arrest.

(3) Where a person is arrested under subsection (2) he shall-

- (a) be brought-
 - (i) in the case of an authorization of arrest attached under subsection (1) to an injunction by the Court of First Instance, before the Court of First Instance; and
 - (ii) in the case of an authorization of arrest attached under that subsection to an injunction by the District Court, before the District Court,
before the expiry of the day after the day of his arrest; and
- (b) not be released within the period referred to in paragraph (a) except on the direction of the Court of First Instance or of the District Court, as the case may be,

but nothing in this section shall authorize his detention at any time after the expiry of the period mentioned in paragraph (a).

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap 1) shall not apply to this section except in so far as that section applies to a gale warning day or black rainstorm warning day.

(Amended 25 of 1998 s. 2; 17 of 2008 s. 7)
[cf. 1976 c. 50 s. 2 U.K.]

Note:

* This section was amended by section 7 of the Domestic Violence (Amendment) Ordinance 2008 (17 of 2008). The saving provision contained in section 18 of that Amendment Ordinance reads as follows—

“18. Saving provision

A power of arrest attached to an injunction under section 5(1) of the Domestic Violence Ordinance (Cap 189) before the commencement# of this Ordinance shall, upon such commencement, be regarded for all purposes as an authorization of arrest attached under that section as amended by this Ordinance.” .

Commencement date: 1 August 2008.

Section:	6	Limitations as regards injunctions and authorizations of arrest*	L.N. 265 of 2009	01/01/2010
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(1) A provision mentioned in section 3(1)(c) or (d), 3A(4)(b) or (c) or 3B(1)(c) or (d) contained in an injunction granted under section 3, 3A or 3B shall have effect for a period, not exceeding 24 months, as the court considers appropriate. (Replaced 17 of 2008 s. 8)

(2) An authorization of arrest attached under section 5(1) to an injunction shall—

- (a) have effect for a period, not exceeding 24 months, as the court considers appropriate; and
- (b) expire upon the expiry of the validity period of the injunction. (Replaced 17 of 2008 s. 8)

(3) Nothing in this Ordinance authorizes a court, on an application by a party to a cohabitation relationship— (Amended 18 of 2009 s. 11)

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

unless the court is satisfied that having regard to the permanence of the cohabitation relationship it is appropriate in all the circumstances to grant that injunction or attach that authorization of arrest. (Amended 17 of 2008 s. 8)

(Amended 18 of 2009 s. 11)

Note:

* (Amended 17 of 2008 s. 8)

Section:	7	Court may extend injunctions and authorizations of arrest	L.N. 265 of 2009	01/01/2010
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(1) Subject to subsection (4), a court may, on an application—

- (a) extend the validity period of an injunction granted under section 3, 3A or 3B that contains a provision mentioned in section 3(1)(c) or (d), 3A(4)(b) or (c) or 3B(1)(c) or (d); or (Amended 18 of 2009 s. 12)
- (b) (where an authorization of arrest is attached under section 5(1) to the injunction) extend the validity period of the authorization of arrest,

for such further period as the court considers appropriate.

(2) The court may extend an injunction or an authorization of arrest under subsection (1) only during the validity period of the injunction concerned.

(3) An application under subsection (1) may be made by—

- (a) the applicant of the injunction concerned;
- (b) (where the applicant of the injunction concerned is a minor) the minor applying by his next friend.

(4) The validity period of an injunction or an authorization of arrest may not be extended under subsection (1) beyond the second anniversary of the date on which the injunction was granted.

(Replaced 17 of 2008 s. 9)

Section:	7A	Court may vary or suspend custody or access order	L.N. 265 of 2009	01/01/2010
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(1) If—

- (a) a court grants, under section 3, 3A or 3B, an injunction containing a provision mentioned in section 3(1)(c), 3A(4)(b) or 3B(1)(c) that concerns a minor; and (Amended 18 of 2009 s. 13)
- (b) at the time the court determines the application for the injunction, there is in force—
 - (i) a court order that grants the custody of the minor to the respondent to the injunction; or
 - (ii) a court order that allows the respondent to the injunction to have access to the minor,

the court may vary or suspend the court order in such manner as the court considers necessary for giving effect to the provision.

(2) In subsection (1)(b), “court order” (法庭命令) means—

- (a) in relation to the application of subsection (1) to the District Court, an order made by the District Court; and
 - (b) in relation to the application of subsection (1) to the Court of First Instance, an order made by the Court of First Instance or the District Court.
- (3) In considering varying or suspending a court order under subsection (1), the court shall—
- (a) regard the welfare of the minor as the first and paramount consideration; and
 - (b) in having such regard, give due consideration to—
 - (i) the wishes of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and
 - (ii) any material information, including any report of the Director of Social Welfare available to the court at the hearing.
- (4) If a court order is varied under subsection (1), the order shall, notwithstanding any other Ordinance or rule of law, have effect subject to such variation.
- (5) A variation of a court order under subsection (1) in respect of an injunction shall be signified by attaching to the injunction a copy of the order endorsed with the particulars of the variation.
- (6) A variation or suspension of a court order made in respect of an injunction shall cease to have effect upon the expiry of the validity period of the injunction.

(Added 17 of 2008 s. 10)

Section:	8	Rules of practice and procedure	L.N. 265 of 2009	01/01/2010
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The Chief Justice may make rules for the purposes of this Ordinance in respect of the following matters-

- (a) the hearing and determination of applications under this Ordinance;
- (b) forms to be used in connection with any application or order under this Ordinance;
- (c) the service of documents;
- (d) the attendance of parties;
- (e) the release on bail of persons arrested under an authorization of arrest attached, under section 5(1), to an injunction; and (Amended 17 of 2008 s. 11)
- (f) the transfer of proceedings commenced in the Court of First Instance from the Court of First Instance to the District Court and of proceedings commenced in the District Court from the District Court to the Court of First Instance. (Amended 25 of 1998 s. 2)

Section:	9	Saving as to existing jurisdiction	L.N. 265 of 2009	01/01/2010
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The powers conferred under this Ordinance shall be in addition to and not in derogation from the powers of the Court of First Instance and the District Court.

(Amended 25 of 1998 s. 2)

Section:	10	Injunctions not to be registered	L.N. 265 of 2009	01/01/2010
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An injunction containing a provision mentioned in section 3(1)(c) or (d), 3A(4)(b) or (c) or 3B(1)(c) or (d) shall not be registered under the Land Registration Ordinance (Cap 128).

(Amended 17 of 2008 s. 12; 18 of 2009 s. 14)

Section:	11	Powers of the court to be exercised by a judge	L.N. 265 of 2009	01/01/2010
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(1) The powers conferred by this Ordinance on the Court of First Instance shall be exercised by a judge. (Amended 25 of 1998 s. 2)

(2) The powers conferred by this Ordinance on the District Court shall be exercised by a District Judge.