



LAWS OF MALAYSIA

Act A1414

**DOMESTIC VIOLENCE (AMENDMENT)
ACT 2012**

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LAWS OF MALAYSIA**Act A1414****DOMESTIC VIOLENCE (AMENDMENT)
ACT 2012**

An Act to amend the Domestic Violence Act 1994.

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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 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

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”—

- (i) by substituting for the word “any” the word “one or more”;
- (ii) by deleting the word “or” at the end of paragraph (d);
- (iii) in paragraph (e), by substituting for the comma a semicolon;

(iv) by inserting after paragraph (e) the following paragraphs:

“(f) causing psychological abuse which includes emotional injury to the victim;

(g) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim’s consent or if the consent is given, the consent was unlawfully obtained; or

(h) in the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance,”; and

(v) by inserting after the words “by a person” the words “, whether by himself or through a third party,”;

(b) by substituting for the definition of “incapacitated adult” the following definition:

‘ “incapacitated adult” means a person who is wholly or partially incapacitated or infirm, by reason of permanent or temporary physical or mental disability or ill-health or old age, who is living as a member of the family of the person alleged to have committed the domestic violence, and includes any person who was confined or detained by the person alleged to have committed the domestic violence;’;

(c) by inserting after the definition of “shared residence” the following definition:

‘ “social welfare officer” means a social welfare officer of the Ministry or Department responsible for welfare services and includes an assistant social welfare officer;’;

(d) in the definition of “enforcement officer”, by substituting for the words “welfare officer from the Department of Social Welfare” the words “social welfare officer”;

(e) by inserting after the definition of “other member of the family” the following definition:

‘ “police officer” has the same meaning assigned to it in the Police Act 1967 [Act 344];’;

(f) in the definition of “protection order”, by substituting for the words “Part II” the words “section 5”;

(g) by inserting after the definition of “incapacitated adult” the following definition:

‘ “interim protection order” means an order issued under section 4;’;

(h) by inserting after the definition of “shared residence” the following definition:

‘ “shelter” means any home, institution or any other suitable place of which the occupier or owner is willing to receive a victim temporarily;’;
and

(i) by substituting for the definition of ‘ “safe place” or “shelter” ’ the following definition:

‘ “safe place” means any home or institution maintained or managed by the Ministry or Department responsible for welfare services or by any other agency or voluntary organization approved by the Minister for the purposes of this Act;’.

Substitution of section 3

3. The principal Act is amended by substituting for section 3 the following section:

“Act to be read together with Penal Code, etc.

3. This Act shall be read together with the Penal Code [Act 574] or any other written law involving offences relating to domestic violence.”.

Amendment of Part II

4. The heading of Part II of the principal Act is amended by inserting before the words “PROTECTION ORDER” the words “INTERIM PROTECTION ORDER AND”.

Amendment of section 4

5. Section 4 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) An interim protection order shall be made by way of an application to the court.”; and

(b) by inserting after subsection (2) the following subsections:

“(3) The court in making an interim protection order under subsection (1) may include a provision prohibiting the person against whom the order is made from inciting any other person to commit domestic violence against the spouse or former spouse or a child or an incapacitated adult or any other member of the family, as the case may be, of the person against whom the order is made.

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

(a) upon the completion of the investigations; or

(b) when a criminal proceeding relating to the commission of an offence involving domestic violence is instituted against the person against whom the order is made.”.

Amendment of section 5

6. Section 5 of the principal Act is amended—

(a) in subsection (1), by substituting for the word “proceedings” the words “an application”; and

(b) by substituting for subsection (2) the following subsection:

“(2) The court in making a protection order under paragraph (1)(a), (b) or (c) may include a provision prohibiting the person against whom the order is made from inciting any other person to commit domestic violence against the protected person or persons.”.

Amendment of section 6

7. Subsection 6(1) of the principal Act is amended—

(a) by substituting for paragraph (b) the following paragraph:

“(b) prohibiting or restraining the person against whom the order is made from—

- (i) entering any protected person’s safe place, shelter, place of residence or shared residence or alternative residence, as the case may be;
 - (ii) entering any protected person’s place of employment or school;
 - (iii) entering any other institution where any protected person is placed;
 - (iv) going near any protected person at a distance of at least fifty metres or at a distance the court thinks reasonable; or
 - (v) making personal contact with any protected person other than in the presence of an enforcement officer or such other person as may be specified or described in the order;”;
- and

(b) in paragraph (d), by substituting for the words “written or telephone communication” the words “communication by any means”.

Amendment of section 7

8. Section 7 of the principal Act is amended—

- (a) in subsection (1), by substituting for the word “may” the word “shall”; and
- (b) by substituting for subsection (2) the following subsection:

“(2) If a power of arrest is attached by virtue of subsection (1), a police officer shall arrest without warrant the person against whom the order is made when one or more of the following situations arise:

- (a) when there is a report of domestic violence lodged by a person who is protected under the interim protection order or protection order to any police officer;
- (b) when the police officer has reasonable cause to believe that the person against whom the order is made is in breach of—
 - (i) the order issued under subsection 4(1) or 5(1); or
 - (ii) any order made pursuant to paragraph 6(1)(a) or (b); or
- (c) when the person against whom the order is made enters into any place prohibited under the order.”.

Amendment of section 10

9. Section 10 of the principal Act is amended by substituting for paragraph 10(2)(a) the following paragraph:

“(a) the pain and suffering of the victim, and the nature and extent of physical injury or psychological abuse which includes emotional injury suffered;”.

Amendment of section 11

10. Section 11 of the principal Act is amended—

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

“(1) The court may, in an application in which a protection order is sought, instead of or in addition to issuing a protection order, make an order to refer the parties concerned to a conciliatory body.”;

(b) by inserting after subsection (1) the following subsections:

“(1A) The conciliatory body referred to in subsection (1) shall submit a report together with its recommendation to the court within one month from the date of referral.

(1B) The court may, after considering the report and recommendation submitted to it under subsection (1A), order that one or more parties be referred to rehabilitative therapy, psychotherapy or such other reconciliatory counselling as it deems appropriate.”;

(c) in subsection (2), by substituting for the words “paragraph (1)(a) or (b)” the words “subsection (1) or (1B)”; and

(d) in subsection (3), by inserting after the words “subsection (1)” the words “or (1B)”.

Amendment of Part IV

11. The heading of Part IV of the principal Act is amended by inserting after the words “PROCEDURE ON” the words “INTERIM PROTECTION ORDERS AND”.

New sections 12A and 12B

12. The principal Act is amended by inserting after section 12 the following sections:

“*Ex-parte* application

12A. An interim protection order sought under section 12 shall be made *ex-parte* by—

- (a) the applicant;
- (b) the applicant’s counsel; or
- (c) a social welfare officer on behalf of the applicant.

Setting aside an interim protection order

12B. The person against whom an interim protection order is made may apply to set aside the order within fourteen days from the date the order is served.”.

Substitution of section 14

13. The principal Act is amended by substituting for section 14 the following section:

“Filing in of application

14. Notwithstanding the provisions of any written law on the territorial jurisdiction of a court, an application for a protection order or an interim protection order involving a complaint of domestic violence may be filed in any district where—

- (a) the complainant resides;
- (b) the person against whom the protection is sought resides;

- (c) the alleged violence occurred; or
- (d) the complainant is placed temporarily,

and the application shall be heard by the court as soon as practicable.”.

Amendment of section 15

14. Section 15 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “Complaints” the word “Application”; and
- (b) by substituting for the words “a complaint, such complaint” the words “an application under section 14, such application”.

Amendment of section 16

15. Section 16 of the principal Act is amended by substituting for the word “complaints”, wherever it appears, the word “applications”.

Substitution of section 17

16. The principal Act is amended by substituting for section 17 the following section:

“Proof of service of protection order

17. (1) Within twenty-four hours of the issuance of a protection order or interim protection order, as the case may be, the court in which the order is issued shall forward a copy of the order to the officer in charge of the police district where the offender 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 file proof of service of a copy of the order with the court within seven days of service.”.

New section 17A

17. The principal Act is amended by inserting after section 17 the following section:

“Substituted service

17A. (1) If the officer in charge of the police district or any other police officer under his command referred to in section 17 is not able to serve a copy of the protection order or the interim protection order on the offender personally after three attempts, the officer concerned shall immediately apply to the court in writing for a substituted service of the order.

(2) Upon receipt of the application under subsection (1), the court shall make an order for a substituted service of the protection order or interim protection order—

(a) by leaving a copy of the order at the last known address of the offender;

(b) by posting a copy of the order at the court’s notice board; or

(c) by any other manner as the court may direct.

(3) The substituted service of a copy of the order made under subsection (2) shall be effected by the court and shall be deemed to be good and sufficient service of the order on the offender.

(4) The substituted service effected under subsection (3) shall be communicated to the applicant by the court as soon as practicable.”.

New section 18A

18. The principal Act is amended by inserting after section 18 the following section:

“Seizable offences

18A. Offences involving domestic violence shall be deemed to be seizable offences.”.

Amendment of section 19

19. Paragraph 19(1)(a) of the principal Act is amended by substituting for the words “a complaint” the words “an application for interim protection order”.

Amendment of section 20

20. Paragraph 20(2)(b) of the principal Act is amended by substituting for the word “complaint” the word “application”.

