

No. 43 of 2022.

Family Protection (Amendment) Act 2022.

Certified on : 19 JUL 2022



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No. 43 of 2022.

AN ACT

entitled

Family Protection (Amendment) Act 2022,

Being an Act to amend the ***Family Protection Act 2013*** to increase the penalty for offences and for related purposes,

MADE by the National Parliament to come into operation -

- (a) in respect of Sections 12A and 12B - by notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister; and
- (b) in respect of the remainder of the Act - upon certification.

1. INTERPRETATION (AMENDMENT OF SECTION 2).

The Principal Act is amended in Section 2 by -

- (a) inserting the following new definitions in alphabetical order:

“assault” means -

- (a) the striking, touching, moving or otherwise the application of force of any kind to a person by another, either directly or indirectly without his consent, or with his consent if the consent is obtained under duress, by fraud or a false promise; or
- (b) by any bodily act or gesture, an attempt or threat to apply force of any kind to a person by another without his consent, under such circumstances that the person making the attempt or threat has an actual or apparent present ability to apply such force and for the purposes of this definition, the “application of force” includes the application of heat, light, sound, electrical force, gas odour or any other substance or thing if applied to such a degree as to cause any injury or personal discomfort;

“authorised person” means a person appointed under Section 12A;

“counselling” means a process where a neutral person as counsellor assists or guides a person or persons to talk about and resolve their personal, interpersonal, social and psychological problems in a safe, trusted and confidential environment;

“exclusive occupancy” means the right of a person to live in or occupy a residence to the exclusion of one or more other persons;

“mediation” means a confidential, trusted and safe dispute resolution process where the participants, with the assistance of a neutral person as mediator -

- (a) listen to and are heard by each other; and
- (b) work out what the disputed issues are; and
- (c) work out what everyone agrees on; and
- (d) work out what is important to each person; and
- (e) aim to reach a workable agreement; and
- (f) develop options to resolve each issue; and
- (g) develop options and take into account each person’s needs and desires; and

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- (h) discuss what everyone could do as a way of assessing the options and exploring what might lead to an outcome that everyone can accept;

“property” means -

- (a) real property, including-
 - (i) land and anything created on, growing on or affixed to land; and
 - (ii) buildings and crops; and
- (b) personal property, including -
 - (i) any assets and anything that can be the subject of ownership; and
 - (ii) personal possession, documents, funds, money and other financial resources such as bank credits and deposits, cheques, money orders, shares, securities, bonds and letters of credit;

“psychological abuse” means behaviour towards another person that torments, intimidates, harasses or is offensive to the other person and includes -

- (a) repeated verbal abuse, derogatory remarks or humiliation; or
- (b) coercing, deceiving or controlling a person without their consent in a way that denies that person economic or financial autonomy or withholds the financial support necessary for meeting reasonable living expenses; or
- (c) preventing a person from making or keeping connections with the person’s family, friends or culture, including cultural or spiritual ceremonies or practices; or
- (d) causing or threatening to do harm to another person or their animal;

“sexual abuse” includes -

- (a) any conduct that is sexual in nature that abuses, humiliates, degrades or otherwise violates the dignity of a person; or
- (b) any conduct that forces, coerces, blackmails, bribes or intimidates a person to engage in sexual acts with or in front of another person; or
- (c) publication of a statement or other material relating to a person or purporting to relate to or originate from a person to another using the internet, e-mail or another form of electronic communication; or
- (d) unlawful publication of intimate material including photograph, texts, video, voice or audio recording or other image or picture with the purpose to harass, frighten, intimidate, threaten or abuse another person;

“stalking” means doing any of the following conduct in addition to the conduct specified in Section 5(2) -

- (a) publication of a statement or other material relating to a person or purporting to relate to or originate from a person to another using the internet, e-mail or another form of electronic communication; or
- (b) tracing or intercepting the person’s mail or communication through the use of the internet, by e-mail or through another form of electronic communication; or
- (c) making derogatory comments to other persons about a person or interfering with property in the person’s possession;” and

- (b) repealing Paragraph (f) in the definition of “family member” and replacing it with the following:

“(f) any other person who is treated as a family member;”.

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2. DOMESTIC VIOLENCE OFFENCE (AMENDMENT OF SECTION 6).

Section 6 of the Principal Act is amended in Subsection (1) by repealing the penalty provision and replacing it with the following:

“Penalty: A fine not less than K1,000.00 and not exceeding K10,000.00 or imprisonment for a term not less than two years and not exceeding five years, or both.”.

3. NEW SECTION 6A.

The Principal Act is amended by inserting, immediately after Section 6, the following new section:

“6A. AGGRAVATED DOMESTIC VIOLENCE.

- (1) A person who commits an act of domestic violence -
- (a) in relation to a person under 18 years of age; or
 - (b) in the presence of a person under 18 years of age; or
 - (c) in relation to a person with special needs or a person living with disability; or
 - (d) in relation to a pregnant woman; or
 - (e) in relation to a person incapable of resisting; or
 - (f) using a dangerous or offensive weapon or instrument; or
 - (g) whilst under the influence of a drug or controlled substance or alcohol; or
 - (h) repetitively,

is guilty of an offence of aggravated domestic violence.

Penalty: Imprisonment for a term not less than five years and not exceeding seven years.

(2) It is not a defence to an offence under Subsection (1) that the defendant has paid an amount of money or given other valuable consideration, in accordance with his custom, to the complainant.

4. CONDITIONS RELATING TO COUNSELLING AND MEDIATION (REPEAL AND REPLACEMENT OF SECTION 11).

Section 11 of the Principal Act is repealed and replaced with the following:

“11. CONDITIONS RELATING TO COUNSELLING AND MEDIATION.

(1) When making a protection order, the Court may also direct either or both the defendant and the complainant to participate in -

- (a) counselling; or
- (b) mediation; or
- (c) both counselling and mediation.

(2) The Court may order counselling or mediation, or both counselling and mediation at any time that a family protection order is in force or an application for a family protection order has been made.

(3) The Court may also include a family member of the complainant or defendant in a direction under Subsection (1).”.

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5. COURT MAY MAKE INTERIM PROTECTION ORDER (AMENDMENT OF SECTION 12).

Section 12 of the Principal Act is amended by repealing Subsection (5) and replacing it with the following:

“(5) A Court may make an interim protection order even though an application was also made under Section 7 for a protection order.”.

6. NEW SECTIONS 12A AND 12B.

The Principal Act is amended by inserting, immediately after Section 12, the following new sections:

“12A. APPOINTMENT OF AUTHORISED PERSONS.

- (1) The Minister may appoint a person to be an authorised person for a period of up to 12 months and may reappoint the authorised person, if the person -
- (a) applies to the Minister to be appointed as an authorised person; and
 - (b) satisfies the appointment guidelines of authorised persons as prescribed; and
 - (c) is at least 30 years of age; and
 - (d) is a fit and proper person of good reputation and character; and
 - (e) has good standing in the community.
- (2) The appointment guidelines of authorised persons shall be prescribed.
- (3) A person is a fit and proper person where he or she holds a certificate signed by the Attorney-General certifying that he or she is a fit and proper person.
- (4) The certificate of a fit and proper person shall be in a prescribed form.
- (5) An application under Subsection (1)(a) shall -
- (a) be in a prescribed form; and
 - (b) contain the reasons for making the application; and
 - (c) have particulars of such a title or a position as is held in any capacity by the applicant; and
 - (d) such other particulars on the applicant’s suitability as may be prescribed or as the Minister may require.
- (6) The Minister shall keep a register for authorised persons.

12B. URGENT PROTECTION NOTICE, ETC.

- (1) An authorised person may issue an urgent protection notice against a defendant where there is an imminent risk that the defendant will commit an act of domestic violence against the complainant or a family member.
- (2) An authorised person may include the name of a family member or a person providing assistance to the complainant, in an urgent protection notice.

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(3) An urgent protection notice issued under Subsection (1) is valid for up to 14 days from the date the notice is issued.

(4) An authorised person may issue an urgent protection notice notwithstanding an application made under Section 7 for a family protection order.

(5) The urgent protection notice immediately ceases when a family protection order is enforced against the defendant.

(6) A person who breaches a condition of an urgent protection notice commits an offence.

Penalty: A fine not less than K5,000.00 and not exceeding K10,000.00 or imprisonment for a term not less than 12 months and not exceeding seven years, or both.”.

7. COMMENCEMENT AND DURATION OF AN INTERIM PROTECTION ORDER (AMENDMENT OF SECTION 14).

Section 14 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:

“(2) An interim protection order remains in force for up to 30 days and may be renewed only once for a further 30 days.”.

8. NEW DIVISION TITLE.

The Principal Act is amended by inserting, immediately after Section 15, the following new division title:

“Division 4. - Protection Orders.”.

9. OFFENCE TO BREACH FAMILY PROTECTION ORDER (AMENDMENT OF SECTION 20).

Section 20 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) A person who breaches a condition of a family protection order, is guilty of an offence.

Penalty: A fine not less than K5,000.00 and not exceeding K10,000.00 or imprisonment for a term not less than 12 months and not exceeding seven years, or both.”.

10. NEW SECTIONS 20A AND 20B.

The Principal Act is amended by inserting, immediately after Section 20, the following new sections:

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“20A. BREACH OF AN INTERIM PROTECTION ORDER AT THE VILLAGE COURT AND URGENT PROTECTION NOTICE.

(1) If a person breaches any part of an interim protection order or an urgent protection notice under this Act, the complainant shall apply to the District Court to enforce the order or notice.

(2) Before deciding to enforce an interim protection order made by a Village Court, or an urgent protection notice issued by an authorised officer, a District Court shall be satisfied that -

- (a) the Village Court or the authorised person acted within its jurisdiction and powers; and
- (b) the interim protection order or urgent protection notice was justified in the circumstances; and
- (c) the interim protection order or urgent protection notice has been breached.”.

20B. OBSTRUCTION OF SERVICE PROVIDER.

A person who obstructs or threatens a counsellor, health practitioner or other persons providing assistance to a complainant, commits an offence.

- Penalty:
- (a) in the case of obstruction, imprisonment for a term not exceeding 12 months; and
 - (b) in the case of a threat, imprisonment for a term not exceeding three years.”.

11. NEW SECTION 22A.

The Principal Act is amended by inserting, immediately after Section 22, the following new section:

“22A. COURT OF JURISDICTION.

A court with jurisdiction under this Act may also exercise that jurisdiction under other laws.”.

12. FEES (REPEAL AND REPLACEMENT OF SECTION 25).

Section 25 of the Principal Act is repealed and replaced with the following:

“25. FEES.

(1) Notwithstanding the provisions of any other law, policy, practice or procedure, no fees or charges are payable to -

- (a) a court in relation to the making of an application for a family protection order and any other proceedings that are made by the complainant under this Act or the Regulation; or
- (b) an authorised person in relation to issuance of an urgent protection notice.

(2) Unless otherwise specified, the remedies under this Act and the Regulation are in addition to and not in substitution for other remedies that are available under other laws.”.

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13. NEW SECTION 25A.

The Principal Act is amended by inserting, immediately after Section 25, the following new section:

“25A. POWER TO MAKE RULES OF COURT.

The Chief Magistrate may make rules of the Court, consistent with the Act and the Regulation, prescribing all matters that are necessary or convenient to be prescribed in relation to the practice and procedure of proceedings under this Act and the Regulation in the District Courts, including the forms to be used in such proceedings.”.

I hereby certify that the above is a fair print of the *Family Protection (Amendment) Act 2022*, which has been made by the National Parliament.

Clerk of the National Parliament.

19 JUL 2022

I hereby certify that the *Family Protection (Amendment) Act 2022*, was made by the National Parliament on 20 January 2022.

Speaker of the National Parliament.

19 JUL 2022