

# House of Representatives

# Supplementary Order Paper

Thursday, 15 October 2009

## Domestic Violence (Enhancing Safety) Bill

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### *Proposed amendments*

Hon Simon Power, in Committee, to move the following amendments:

*New clause 4A*

To insert the following clause after *clause 4* (after line 3 on page 4):

**4A Confidentiality of information disclosed to programme provider**

Section 43(4)(c)(i) is amended by omitting “section 49(1)(c)” and substituting “**section 49A**”.

*Clause 5(1): new section 49*

To omit this section (lines 7 to 15 on page 4) and substitute the following section:

**“49 Offence to breach protection order**

- “(1) Every person commits an offence who breaches a protection order by—
- “(a) doing any act in contravention of the protection order;
  - or
  - “(b) failing to comply with any condition of the protection order.
- “(2) It is a defence in a prosecution for an offence under **subsection (1)** if the defendant proves that he or she had a reasonable excuse for breaching the protection order.
- “(3) Every person who is convicted on indictment of an offence against this section is liable to imprisonment for a term not exceeding 2 years.
- “(4) To avoid doubt, a failure to comply with a direction made under section 32(1) or (2) to attend a specified programme is not a breach of a protection order under **subsection (1)(b)**.”

*Clause 6: new section 50*

To omit this section (lines 29 to 34 on page 4) and substitute the following section:

**“50 Power to arrest for breach of protection order**

Where a protection order is in force, any constable may arrest, without warrant, any person who the constable has good cause to suspect has—

“(a) contravened the protection order; or

“(b) failed to comply with any condition of the protection order.”

*Clause 7: new section 124FA*

*Subsection (1)*: to insert after “order” in the first place where it appears (line 6 on page 8) “issued under **section 124B**”.

*Subsection (2)*: to insert after “order” in the first place where it appears (line 8 on page 8) “issued under **section 124B**”.

*Clause 7: new section 124FB*

*Subsection (1)*: to insert after “Police safety order” (line 11 on page 8) “under **section 124B**”.

*Clause 7: new section 124IB*

*Subsection (1)(a)(ii)*: to omit this subparagraph (line 30 on page 11) and substitute the following subparagraph:

“(ii) served by a constable or officer of the Court as soon as practicable; or

*Subsection (1)(b)(ii)*: to omit this subparagraph (line 36 on page 11) and substitute the following subparagraph:

“(ii) served by a constable or officer of the Court as soon as practicable; or

*Schedule*

To omit the Schedule (on page 21) and substitute the following Schedule:

**Schedule****s 7A****Regulations amended****Domestic Violence Rules 1996 (SR 1996/148)**

Schedule 1, form DV 16, the heading “**(a) Standard conditions prohibiting domestic violence and contact**”, paragraph 2(e): insert “electronic message,” after “telephone,”.

Schedule 1, form DV 16, under “**Important information for respondent/associated respondent**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“You commit an offence if you breach the order by—

“(a) doing an act in contravention of this order; or

**Domestic Violence Rules 1996 (SR 1996/148)—continued**

“(b) failing to comply with any condition in this order.

“You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

**“Consequences of failing to comply with direction**

“You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

Schedule 1, form DV 16, under “**Important information for protected persons**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“The respondent or associated respondent commits an offence if he or she—

“(a) does any act in contravention of this order; or

“(b) fails to comply with any condition in this order.

“The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

**“Consequences of failing to comply with direction**

“The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

Schedule 1, form DV 17, the heading “**(a) Standard conditions prohibiting domestic violence and contact**”, paragraph 2(e): insert “electronic message,” after “telephone,”.

**Domestic Violence Rules 1996 (SR 1996/148)—continued**

Schedule 1, form DV 17, “**Important information for respondent/associated respondent**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“You commit an offence if you breach the order by—

“(a) doing an act in contravention of this order; or

“(b) failing to comply with any condition in this order.

“You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

“**Consequences of failing to comply with direction**

“You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

Schedule 1, form DV 17, under “**Important information for protected persons**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“The respondent or associated respondent commits an offence if he or she—

“(a) does any act in contravention of this order; or

“(b) fails to comply with any condition in this order.

“The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

“**Consequences of failing to comply with direction**

“The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

**Domestic Violence Rules 1996 (SR 1996/148)**—*continued*

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

**Family Courts Rules 2002 (SR 2002/261)**

Schedule 5, form DV 14, paragraph 1(b)(v): insert “electronic message,” after “telephone,”.

Schedule 5, form DV 14, under “**Important information for respondent (or associated respondent)**” the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“You commit an offence if you breach the order by—

“(a) doing an act in contravention of this order; or

“(b) failing to comply with any condition in this order.

“You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

“**Consequences of failing to comply with direction**

“You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

Schedule 5, form DV 14, under “**Important information for protected persons**”, the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“The respondent or associated respondent commits an offence if he or she—

“(a) does any act in contravention of this order; or

“(b) fails to comply with any condition in this order.

“The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not

**Family Courts Rules 2002 (SR 2002/261)—continued**

available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

**“Consequences of failing to comply with direction**

“The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

Schedule 5, form DV 15, paragraph 1(b)(v): insert “electronic message,” after “telephone,”.

Schedule 5, form DV 15, under “**Important information for respondent (or associated respondent)**”, the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“You commit an offence if you breach the order by—

“(a) doing an act in contravention of this order; or

“(b) failing to comply with any condition in this order.

“You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

**“Consequences of failing to comply with direction**

“You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

Schedule 5, form DV 15, under “**Important information for protected persons**”, the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

“The respondent or associated respondent commits an offence if he or she—

“(a) does any act in contravention of this order; or

“(b) fails to comply with any condition in this order.

“The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

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**Family Courts Rules 2002 (SR 2002/261)—continued**

“The maximum penalty for this offence is 2 years’ imprisonment.

“If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

**“Consequences of failing to comply with direction**

“The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

“The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.”

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**Explanatory note**

This Supplementary Order Paper amends the Domestic Violence (Enhancing Safety) Bill by—

- inserting *new clause 4A* to amend a cross-reference in section 43 of the Domestic Violence Act 1995. This amendment is consequential on clause 5, which substitutes *new sections 49 and 49A*:
- amending clauses 5 and 6 to substitute *new sections 49 and 50*. These new sections give effect to technical amendments that ensure better consistency of language and improve clarity:
- amending clause 7, *new sections 124FA and 124FB* to clarify that these provisions apply to Police safety orders issued under *new section 124B*:
- amending clause 7, *new section 124IB*, to provide that a Police safety order issued pursuant to a direction of the Court may be served by an officer of the Court as well as a constable:
- substituting a *new Schedule*, which incorporates the amendments required to forms DV 16 and DV 17 of the Domestic Violence Rules 1996, and to forms DV 14 and DV 15 of the Family Courts Rules 2002, consequential on the new penalty structure in *new sections 49 and 49A* for the offences of breaching a protection order and failing to comply with a direction.