



Relate

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The journal of developments in social services, policy and legislation in Ireland

Domestic Violence Bill 2017

The Domestic Violence Bill 2017 aims to update and consolidate the existing law in relation to domestic violence in Ireland. The Bill integrates the changes to the Domestic Violence Act 1996 resulting from subsequent legislation, including the changes made in the Domestic Violence (Amendment) Act 2002, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the Civil Law (Miscellaneous Provisions) Act 2011, the Courts and Civil Law (Miscellaneous Provisions) Act 2013 and the Children and Family Relationships Act 2015. The Bill will also enable Ireland to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence, more commonly known as the Istanbul Convention. These new provisions include the criminalisation of forced marriage and remove the underage marriage exemption to help protect minors against forced marriage. Ireland signed the Istanbul Convention in November 2015.

The Bill will improve the protections available to victims of domestic violence by introducing a new emergency barring order. It also aims to make the court process easier for victims of domestic violence, for example, by giving them the right to be accompanied to court by a family member, friend or support worker. A victim will also be able to give evidence by live television link. In addition, the Bill allows for restrictions on attendance at both civil and criminal court proceedings and protections for the victim's anonymity.

The Domestic Violence Act 1996 will be repealed when the 2017 Bill is enacted. However, many of the court orders described in this issue are available now under the 1996 Act.

The Bill is currently at the Committee Stage of the legislative process.

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Domestic violence court orders

Domestic violence is defined as the physical, sexual, emotional or mental abuse of one partner by the other in a relationship that may or may not be one of marriage or cohabitation. Domestic violence also includes the abuse of one family member by another.

Examples of domestic violence include the destruction of property; isolation from friends, family and other potential sources of support; threats to others including children; stalking; and control over access to money, personal items, food, transportation and the telephone.

Victims of domestic violence can apply for a number of court orders, depending on their specific circumstances. A breach of any order made under domestic violence legislation is a criminal offence.

Safety orders

A safety order is a court order prohibiting a violent person from doing one or more of the following:

- Using or threatening to use violence, molesting or frightening you or a dependent person
- Watching or besetting a place where you or a dependent person resides (if different)

The 2017 Bill will introduce a new prohibition through a safety order on following or communicating (including electronically) with you, for example, by text message or email.

A safety order does not oblige the violent person to leave the property if that person lives with you.

The following people can apply for a safety order:

- Spouse of the violent person
- Civil partner of the violent person
- Person living with the violent person in an intimate relationship (not the spouse or civil partner)
- Parent of the violent person, where the violent person is over 18 years of age and is not dependent on that parent
- Person living with the violent person where the basis of the relationship is not primarily contractual, for example, a lodger under the rent-a-room scheme
- Parent of a child whose other parent is the violent person
- The Child and Family Agency, Tusla, may also make the court application on behalf of a child of the violent person

The court will grant a safety order if it is satisfied that there are reasonable grounds for believing your safety or welfare (or that of a dependent person) requires it.

If a safety order has been granted, it may be varied by an application to the court by you or the violent person – or Tusla where Tusla originally applied for the order. The court may vary the order as it sees fit.

A safety order will be made for a specific time up to a maximum of five years. A further safety order can be granted during the period of the first safety order; this will come into effect on the day the first order expires.

Protection orders

An application for a protection order is usually made at the same time as the application for a safety order or a barring order, and acts as an interim measure before the application for a safety or barring order is determined. You can also apply for a protection order at any time between applying for a safety or barring order and the hearing for these orders.

The hearing of a protection order can take place without the need to notify the violent person beforehand. The court will grant a protection order if there are reasonable grounds for believing that your safety or welfare or that of a dependant is at risk.

A protection order may have the same effect as a safety order. A protection order will come into force as soon as the violent person is notified that the order has been made. As with a safety order, a protection order granted under the 2017 Bill may also prohibit the violent person following or communicating (including by electronic means) with the applicant.

A protection order will only last until the determination of a safety or barring order application.

Barring orders

A barring order is a court order that requires the violent person to leave the family home, and stay away from it, for as long as the court orders, up to a maximum of three years. A barring order may also prohibit all of the behaviours that may be prohibited by a safety order.

The following people can apply for a barring order:

- Spouse of the violent person
- Civil partner of the violent person
- Person living with the violent person in an intimate relationship (not the spouse or civil partner) for a period

of at least six months during the nine months prior to the application for the barring order (this time constraint is lifted in the 2017 Bill)

- Parent of the violent person, where the violent person is over 18 years of age and is not dependent on that parent
- Tusla may also make the court application on behalf of a child of the violent person

The court will grant a barring order if it is satisfied that there are reasonable grounds for believing that your safety or welfare (or that of a dependent person) requires it.

The court will not grant a safety order at a hearing for a barring order unless an application for a safety order has also been made. This situation can arise where the court is not satisfied that a barring order is necessary based on the evidence. The court will not grant a barring order where the applicant has only applied for a safety order.

If you are not the spouse or civil partner of the violent person, the court will not grant a barring order where your right to the family home is less than the right of the violent person, for example, if you are the partner of the violent person and the violent person owns the property in which you both reside. If a child is involved, Tusla may make the court application on behalf of a child of the violent person. The court will not make this order unless the other parent remains or can care for them elsewhere.

If you left the family home before applying to the court because of the behaviour of the violent person, you will be treated as if you still reside in the family home.

A barring order can last for up to three years. This can be extended on application to the court before the expiration of the first order. If a barring order has been granted, it may be varied by an application to the court. The court may vary the order as it sees fit.

Interim barring orders

An interim barring order can have the same effect and prohibit the same behaviours as a barring order (see above). The same people can apply for an interim barring order as may apply for a barring order (see above).

Applications can be made for an interim order at the same time as a barring order, or at any time when waiting for a decision on whether to grant a barring order. The court will grant an interim barring order if it believes that there is an immediate risk of significant harm to you or a dependent person and a protection order would not be sufficient protection.

If you are not the spouse or civil partner of the violent person, the court will not grant an interim barring order where your right to the family home is less than the right of the violent person.

You can apply to the court for an interim barring order without telling the violent person first. The court will only grant an interim barring order in these circumstances if it thinks that the order is necessary in the interests of justice.

If you apply to the court for an interim barring order without notifying the violent person, you must swear an affidavit or a document known as an 'information,' which includes details of the incidents of violence and the reason why you require protection on an emergency basis. You must also give your evidence under oath. If the interim barring order is granted, a copy of the court order, a copy of the affidavit and a note of the evidence that was given at the hearing must be sent to the violent person as soon as possible.

An interim barring order granted without notifying the violent person will last for up to eight working days. A hearing with the violent person will have to be held in that time and the court will decide at that hearing whether to make a barring order.

An interim barring order will cease to have effect once the court decides on your barring order application, regardless of whether the barring order is granted or not.

If an interim barring order has been granted, it may be varied by an application to the court. The court may vary the order as it sees fit.

Emergency barring orders

The 2017 Bill proposes to introduce a new domestic violence order known as an emergency barring order. An application cannot be made for this order until the Bill is enacted.

The court will grant an emergency barring order where there are reasonable grounds to believe that there is an immediate risk of significant harm to you or a dependent person. This order is different from an interim barring order as you are not required to have any legal or beneficial right to the property, and any right you do have to the property can be less than the right of the violent person.

You may apply for an emergency barring order if you have lived in an intimate and committed relationship with the violent person, not necessarily as their spouse or civil partner, or where you are the parent of the violent person.

An emergency barring order can have the same effect as an interim barring order (see page 3) and can be varied in the same way after it is made.

If you apply for an emergency barring order without notifying the violent person you must swear an affidavit, which should state whether the dwelling in question is also the place of business of the violent person. If the court makes an emergency barring order, you must send a copy of the court order, a copy of the affidavit and a note of the evidence that you gave at the hearing to the violent person as soon as possible.

An emergency barring order will remain in force for a period of not more than eight working days. After the order has expired, no further emergency barring order may be granted until a period of one month has passed from the date the previous order expired, unless the court is satisfied that there are exceptional circumstances.

After an order is made

Any order granted will take effect as soon as it is notified to the violent person. If the violent person is present at the hearing, the order will take effect immediately. If the violent person cannot be found, the order becomes effective as soon as they return and are told of the order, or it can be served by post by a summons server personally. The court can also deem service good where it believes that the person is sufficiently aware of the order.

When the court makes, varies or discharges an order it will send a copy of the order to the following:

- The applicant for the order
- The violent person
- Tusla, if the agency made the application
- The member of the Garda Síochána in charge of the Garda station for the applicant's area
- The member of the Garda Síochána in charge of the Garda station for the area where the violent person resides if different from the applicant's area

If either party is not satisfied with the decision of the District Court they can appeal that decision to the Circuit Court. If the appeal is of a safety or a barring order, the appeal may stop the order coming into force.

An appeal of a protection, interim barring or emergency barring order will not stop the order from coming into force. However, the court can discharge an order if it sees fit.

If a violent person breaches an order they will be guilty of

a criminal offence. If a person is found guilty of such an offence, the punishment is a class B fine (up to €4,000) or imprisonment for up to 12 months, or both. This finding will not affect any contempt of court proceedings that may be held.

If a member of the Garda Síochána has reasonable cause for believing that such an offence is being committed, that Garda may arrest the violent person without a warrant. The Garda may also enter a dwelling without a warrant to make such an arrest.

Applying for a domestic violence order

All domestic violence orders can be applied for at the local District Court. If you are applying for a barring order or a safety order, you will be given a hearing date and a summons for the hearing will be sent to the violent person.

If you want a protection order or an interim barring order, the judge will hear your case on the day you make your application for a barring order or safety order. If you do not want a protection order or an interim barring order immediately, you can apply for one at any time before your case is heard. When the 2017 Bill is enacted you will also be able to apply for an emergency barring order during this time.

Court hearings

Domestic violence hearings are held in private. The only people present in the courtroom will be the judge and court secretary, the parties and their legal representatives.

The 2017 Bill will allow either party to be accompanied by one other individual, for example, a support worker for victims of domestic violence. The court may ask this person to leave if it sees fit.

The proceedings will be more informal and judges, barristers and solicitors will not wear wigs or gowns.

The Bill will allow evidence to be given by live television link. Evidence can also be video or audio recorded. The court may refuse this facility if it sees fit.

Section 23 of the 2017 Bill will allow the court to seek the views of a child under the age of 18 years when an order is being sought on behalf of that child. The decision to request this evidence will depend on the child's age and maturity. The court may also appoint an expert to ascertain and convey the child's views.

Supports for the parties

The Bill will introduce a requirement on the Courts Service to provide information and contact details for domestic violence support services to anyone who is applying for a domestic violence order.

The court may recommend that a violent person engages with a programme or service to address any issues including:

- A programme for perpetrators of domestic violence
- An addiction service
- A counselling or psychotherapy service
- A financial planning service

At a subsequent application to the court, for example, to vary an order, the court may consider any effort made by the violent person to engage with such a programme. The court will also consider the views of the victim in relation to the ongoing behaviour of the violent person.

Forced marriage

The 2017 Bill introduces new criminal offences regarding forced marriage. A person will commit an offence if they use violence, threats, undue influence or any form of coercion or duress for the purpose of causing another person to enter into a marriage. It will also be an offence to remove a person from the State with the intention that the person will be forced into marriage abroad.

The punishment for this offence on summary conviction will be a class A fine (up to €5,000) or imprisonment for up to 12 months, or both. The punishment for this offence on indictment will be a fine or a term of imprisonment for up to seven years, or both.

Underage marriage

Section 31 of the Family Law Act 1995 provides that a marriage where either of the parties is below the age of 18 years will not be valid unless an exemption has been obtained. The 2017 Bill will repeal this provision and it will no longer be possible to obtain an exemption.

Criminal Justice (Victims of Crime) Bill 2016

The EU Victims' Rights Directive came into force on 16 November 2015. The Directive strengthens the protections for victims of crime, particularly where they may be at risk of retaliation for making a complaint. The Criminal Justice (Victims of Crime) Bill 2016 is the legislation that will incorporate the Directive into Irish law. Until the Bill is enacted, the Directive itself has direct effect in Ireland.

The primary aim of this legislation is to formalise the rights of victims of crime. Under the legislation, victims have a right to certain information about the investigation of the offence and any subsequent prosecution. Victims may also be individually assessed so that any special measures necessary to protect them from secondary and repeat victimisation, intimidation or retaliation can be put in place during the investigation and during the court process. In court proceedings, the possibility of giving evidence through live television link or from behind a screen will be extended to all victims where necessary.

Other measures in the 2016 Bill ensure that the vulnerability of child victims is recognised, and that, where a specific need to protect a victim is identified, a court may exclude the public from proceedings and restrict questioning regarding the victim's private life.

Right to information

A victim of crime is any person who has suffered physical, mental, emotional harm or economic loss directly caused by a criminal offence. Where a victim has died as a result of a criminal offence, the family of the victim may nominate one family member to exercise the rights of that victim.

If you are the victim of a crime, on your first contact with the Garda Síochána or the Garda Síochána Ombudsman Commission (GSOC), you will be entitled to the following information where relevant:

- Victim support services
- The procedure for making a complaint about an offence
- Where queries can be directed
- The availability of translation services
- Your role in the criminal justice system
- How you can obtain protection, if necessary, and the protection measures available
- Any scheme relating to compensation for injuries suffered as a result of a crime

- Your right to give evidence or make submissions
- The power of the court to award you compensation
- The procedures for making a complaint against a State body for any breaches of the Bill
- Restorative justice schemes
- The types of cases in which legal advice and legal aid may be available to you
- Any entitlement to expenses arising from your participation in any proceedings relating to the offence

You may ask to receive this information in writing or electronically. The information should be provided to you as soon as possible.

Information about the investigation and prosecution

If you are the victim of an alleged offence that is being investigated, you will be contacted by the investigating authority and told of your rights to information about the investigation and prosecution processes.

You are entitled to request information about:

- The arrest or charging of a person
- The releasing on bail or remanding in custody of a person
- A copy of any statement you may have made
- Any decision to discontinue an investigation or not to prosecute
- The offences the accused person will be charged with and the date of trial
- Where a person is convicted of an offence, information on their sentencing and any appeal
- Any release or escape of the person from custody or prison

If a decision is made by the Garda Síochána or the Director of Public Prosecutions not to prosecute a person for an alleged offence, you will have a right to request a review of that decision.

None of your rights to information require the Garda Síochána or other justice authority to disclose information to you that might interfere with an investigation or put any person at risk. Where information is not provided to a victim, a record of the reasons for that decision must be kept.

Reporting an offence

If you are contacting the Garda Síochána or the Garda Síochána Ombudsman Commission to report an offence,

you are entitled to be accompanied by another person, for example a friend, family member or legal representative. This person may be asked to leave the room by the investigator where their presence could interfere with the investigation or where it is not in your best interests as the victim. If this happens, someone else may accompany you instead.

When you make a complaint, you will be given a written acknowledgment of that complaint by the investigating authority. This acknowledgment should include the basic facts of the alleged offence, and how you can raise any queries about your complaint during the investigation.

If the offence happened in a different country, the Garda Síochána will transmit the details to the relevant authority in that country.

Victim interviews

If the investigating authority wants to interview a victim, this should be done as soon as practicable after the complaint is made. A victim may be accompanied by another person during an interview.

A medical examination of a victim will only be carried out where it is strictly necessary for the purposes of the investigation, for example, following the allegation of a sexual offence.

Victim assessment

The investigating authority will carry out an assessment of a victim as part of their investigations. This assessment will identify any need the victim has for protection measures or other special measures. The assessment of a victim will be based on various factors including their age, gender, vulnerability and the nature of the alleged offence.

Protection measures may include advice about the personal safety of the victim or the protection of property, advice about safety orders or barring orders, and the making of an application to remand the alleged offender in custody or seeking to have conditions attached to bail. This is particularly relevant if there is a risk of repeat offences against a victim.

Special measures during investigations may include interviews being conducted by a specially trained person and in premises designed for the purpose of conducting interviews. Special measures in court proceedings may include allowing a victim to give evidence via live television link, through an intermediary, or from behind a screen or other similar device. The court may also exclude members

of the public from proceedings and restrict questioning regarding a victim's private life.

A child will be presumed to have protection needs and any assessment carried out will consider the best interests of the child.

A senior investigating officer will direct that any necessary measures are carried out.

Further assessments may be carried out as necessary, for example, if the victim's circumstances change significantly.

All victims who have suffered harm directly caused by an offence will be entitled to make a victim impact statement.

Victims and compensation

Victims of crime may be entitled to compensation for what has happened.

Court-ordered compensation

If a person is found guilty of a criminal offence, the court may decide that the offender must pay compensation to the victim. This may be one of a number of conditions that the court has imposed on the offender so that they can avoid a prison sentence. The court may ask the Probation Service to supervise the payment of any compensation.

The court will consider the means of the offender and the facts of the case in deciding whether to make a compensation order. Compensation may be paid in instalments if the court considers this reasonable.

Compensation orders will generally not be made for offences committed with the use of a vehicle in a public place.

Scheme of Compensation for Personal Injuries Criminally Inflicted

If you are injured as a result of a crime, you may be eligible for compensation under the Scheme of Compensation for Personal Injuries Criminally Inflicted. This Scheme is funded by the Department of Justice and Equality and administered by the Criminal Injuries Compensation Tribunal.

The Scheme may compensate someone for injuries directly caused by a crime of violence, or in assisting or attempting to assist in the prevention of a crime or the saving of a human life. No criminality is necessary for the awarding of compensation for saving a human life.

A person may also be entitled to compensation where they were injured while giving assistance to a member of the Garda Síochána in certain circumstances.

The Scheme only covers out-of-pocket expenses and bills. It does not compensate victims for pain and suffering.

The following may claim for compensation:

- The person who was injured (victim)
- Any person responsible for the maintenance of the victim who has suffered a financial loss or incurred additional expenses as a result of the victim's injury
- Any dependant of the victim when the victim has died

Time limit for making a claim

There is no time limit for making a claim for compensation where the victim has died as a result of the injury inflicted. In all other cases, the time limit for making a claim is three months from the date of the incident. The Tribunal may not impose this time limit if you can provide a reasonable explanation for the delay.

Applicants can download a form available online at justice.ie. The printed and completed form should then be submitted to the Tribunal by posting it to their offices at Second Floor, Montague Court, 7-11 Montague Street, Dublin 2, D02 FT96.

Alternatively, applicants can phone or write to the office of the Tribunal, giving information including their name and address and the date and location of the incident. An application form will be sent out, and should be completed and returned to the Tribunal. Any receipts or vouchers for expenses should be sent along with the form.

No legal representation is needed. The Tribunal will not pay any legal expenses.

If the claim is for less than €317, an officer of the Tribunal can make a decision on the application. If the claim is for more than €317, a member of the Tribunal will make a decision on the application. The Tribunal may, at its discretion, consider a claim at a hearing in person where three members of the Tribunal will make the decision on the application.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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The role of the Garda Síochána

In all cases, the Tribunal will look for a Garda report on the crime. You should report the crime to the Garda Síochána as soon as possible. If you delay in reporting the crime you may not be considered for compensation until the Tribunal is satisfied that you have co-operated fully with the Garda Síochána.

Compensation

The Tribunal may reduce the amount of compensation or give no compensation at all if it is satisfied that you were partly or wholly to blame for the incident, for example, if you provoked the attack. The Tribunal may also reduce the amount of compensation because of your behaviour, character or way of life. If you have a criminal record, this may be taken into account.

The Tribunal will also deduct the amount of any sums paid to you by a compensation order from any compensation awarded. Compensation will be reduced by the value of your entitlement to social welfare benefits payable as a result of the injury. Compensation will also be reduced by any entitlements you have to sick pay from your employer.

No compensation will be paid:

- If the loss is less than €63.49
- If you and the assailant were living together as part of the same household when you suffered the injury
- If your injury is the result of a traffic offence, unless the Tribunal decides that there was a deliberate attempt to run you down
- If you do not give all reasonable assistance to the Tribunal

Compensation is usually paid in one payment. The Tribunal may make an initial payment and postpone the final award until it becomes clearer what the long-term effect of an injury is likely to be. The Tribunal may invest the money for applicants under the age of 18 until they become an adult. The Tribunal may have the money placed in a trust for applicants no longer able to manage their affairs.

Appealing the decision of the Tribunal

If the original decision was made by an officer of the Tribunal, the decision can be appealed to a single member of the Tribunal. If the decision was made by a single member of the Tribunal, this can be appealed to an informal hearing by three members of the Tribunal. The single member who made the initial decision will not sit on the Appeal Tribunal.

You must present your case before the Tribunal, although you may have legal representation at your own expense if you wish. The Tribunal may at its discretion pay the necessary and reasonable expenses of any witnesses.

The decision of the three-member Tribunal is final. Appeals are held in private.

Compensation in cross-border cases

If you are injured as a result of a crime while visiting another EU member state, you should contact the Tribunal for advice on making a claim for compensation to the EU member state where the incident took place.

The information in *Relate* is intended as a general guide only and is not a legal interpretation