



An Bille um Fhoréigean Baile, 2017
Domestic Violence Bill 2017

Meabhrán Mínitheach agus Airgeadais
Explanatory and Financial Memorandum



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DOMESTIC VIOLENCE BILL 2017

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to amend and consolidate the law in relation to domestic violence. The Bill consolidates the provisions contained in the Domestic Violence Act 1996, the Domestic Violence (Amendment) Act 2002 and relevant provisions of 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 also includes new provisions which must be enacted in order for Ireland to be able to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence, more commonly known as the Istanbul Convention. Ireland signed the Istanbul Convention in November 2015. These new provisions include allowing a person to apply for an emergency barring order where that person has lived in an intimate and committed relationship with the respondent without being their spouse or civil partner or where that person is the parent of an adult respondent, and the inclusion of a provision to criminalise forced marriage. The Bill also removes the underage marriage exemption in order to help to protect minors against forced marriage, as requiring both intended spouses to be at least 18 should assist in ensuring that potential spouses have the maturity to withstand parental or other pressure to marry a particular person.

Provisions of the Bill

Section 1 is a standard provision providing for the short title of the Bill and its commencement.

Section 2 provides for the definition of terms used in the Bill.

Section 3 provides for the repeal of the Acts that are to be replaced by this Bill.

Section 4 is a standard provision regarding expenses incurred in the administration of the Bill.

Section 5 (Safety order) provides that safety orders can be sought by a spouse or former spouse, by a civil partner or former civil partner, by a person who lived with the respondent in an intimate and committed relationship, by a parent of an adult respondent, by a person who lives with the respondent in a primarily non-contractual relationship, or by a person who has had a child with the respondent. The actions that can be prohibited through a safety order include using or threatening the use of violence against, molesting or putting in fear, watching or besetting a place

where the applicant or a dependant resides and following or communicating (including electronically) with the applicant or a dependant. The main change from the Domestic Violence Act 1996 is that this provision has been expanded to include prohibition on communicating with the applicant or a dependant by electronic means. Safety orders can remain in place for 5 years (or for a shorter period if the court so specifies) and before the expiration of that period another safety order can be made for a further period of up to 5 years.

Section 6 (Barring order) provides that barring orders can be sought by a spouse or former spouse, by a civil partner or former civil partner, by a person who lived with the respondent in an intimate and committed relationship, or by a parent of an adult respondent. The court may make a barring order to direct a respondent to either leave a place or to prevent them from entering a place where the applicant or a dependant resides. The actions that can be prohibited through a barring order include using or threatening the use of violence against, molesting or putting in fear, attending at, or in the vicinity of, or watching or besetting a place where the applicant or a dependant resides and following or communicating (including electronically) with the applicant or a dependant. Barring orders can remain in place for 3 years (or for a shorter period if the court so specifies) and before the expiration of that period another barring order can be made for a further period of up to 3 years.

Section 7 (Interim barring order) provides for the making of interim barring orders where there are reasonable grounds to believe that there is an immediate risk of significant harm to the applicant or a dependant and the making of a protection order would not be sufficient to protect them. The court can make an interim barring order to direct a respondent to either leave a place or to prevent them from entering a place where the applicant or a dependant resides. The actions that can be prohibited through an interim barring order include using or threatening the use of violence against, molesting or putting in fear, attending at, or in the vicinity of, or watching or besetting a place where the applicant or a dependant resides and following or communicating (including electronically) with the applicant or a dependant. An interim barring order may be made *ex parte*, in which case it shall have effect for a period not exceeding 8 working days. The applicant for an *ex parte* interim barring order must swear an affidavit or an information and this shall state whether the property from which it is sought to bar the respondent on an interim basis is also the respondent's place of business. An interim barring order shall cease to have effect once the application for a barring order has been determined.

Section 8 (Emergency barring order) provides for the making of emergency barring orders where there are reasonable grounds to believe that there is an immediate risk of significant harm to the applicant or a dependant. A person may apply for an emergency barring order where that person has lived in an intimate and committed relationship with the respondent without being their spouse or civil partner or where that person is the parent of an adult respondent. The applicant may apply for an emergency barring order if they have no legal or beneficial interest in the place or an interest which is less than the legal and beneficial interest of the respondent. The court can make an emergency barring order to direct a respondent to either leave a place or to prevent them from entering a place where the applicant or a dependant resides. The actions that can be prohibited through an emergency barring order include using or threatening the use of violence against, molesting or putting in fear, attending at, or in the vicinity of, or watching or besetting a place where the applicant or a dependant resides and following or communicating (including electronically) with the

applicant or a dependant. An emergency barring order may be made ex parte and shall have effect for a period not exceeding 8 working days. Once the period granted in the emergency barring order has expired, no further emergency barring order may be made until a period of one month has elapsed from the date of expiry of the previous emergency barring order, unless the court is satisfied that there are exceptional circumstances. The applicant for an ex parte emergency barring order must swear an affidavit or an information and this shall state whether the property from which it is sought to bar the respondent on an emergency basis is also the respondent's place of business.

Section 9 (Protection order) provides for the making of protection orders where there are reasonable grounds for believing that the safety or welfare of the applicant or a dependant is at risk. The actions that can be prohibited through a protection order include using or threatening the use of violence against, molesting or putting in fear, watching or besetting a place where the applicant or a dependant resides and following or communicating (including electronically) with the applicant or a dependant. The applicant for an ex parte protection order must swear an affidavit or an information and this material is to be served on the respondent with a copy of the order.

Section 10 (Power of the Agency to apply for certain orders) enables the Child and Family Agency to apply for safety, barring and emergency barring orders on behalf of a person (or a dependant) whose safety or welfare it believes to be at risk of violence and who is being deterred or prevented from making an application because of this risk of violence.

Section 11 (Power to make care order or supervision order under Child Care Act 1991) provides that the court, in proceedings under this Bill other than proceedings in relation to section 10, may adjourn the proceedings where it appears that it may be appropriate for a care order or supervision order to be made under the Child Care Act 1991. The court may direct the Child and Family Agency to undertake an investigation into the dependent person's circumstances and may give directions in relation to the care and custody of the dependant while the investigations are being carried out. The Child and Family Agency shall consider if it should apply for a care order or supervision order, provide service or assistance to the dependent person's family or take any other type of action. Where the Agency undertakes an investigation but decides not to apply for a care order or supervision order it shall explain its reasons to the court and provide details of any service or assistance provided or actions taken.

Section 12 (Application of section 9(2) of Family Home Protection Act 1976) provides protection to a spouse against the disposal of household effects in the period between the making of an application for a barring order or a safety order and the determination of that application. If the order is made, it also covers the period while the order is in force.

Section 13 (Application of section 34(2) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) is similar to section 12 but it extends protection to civil partners against disposal of household effects, in line with the provisions of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Section 14 (Hearing of applications under Acts together) allows the court to hear proceedings under this Bill in tandem with proceedings on other family law matters. This includes proceedings under the Guardianship of Infants Act 1964, the Family Law (Maintenance of Spouses and Children) Act 1976, the Family Home Protection Act 1976, the Child Care Act 1991 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Section 15 (Taking effect of orders) provides that safety orders, interim barring orders, emergency barring orders, barring orders and protection orders shall take effect when the respondent is notified of the making of the order. Oral communication to the respondent together with production of the relevant order will be taken to be sufficient notification.

Section 16 (Copies of orders to be given to certain persons) provides that the court shall, on the making, varying or discharging of a safety order, barring order, interim barring order, emergency barring order or protection order cause a copy of the order to be given or sent to the applicant, the respondent, the Child and Family Agency (if they made the application for the order) and to An Garda Síochána.

Section 17 (Effect of appeal from order) provides that an appeal from a safety order or barring order can stay the operation of the order on such terms (if any) imposed by the court. An appeal from a protection order, interim barring order or an emergency barring order will not stay the operation of those orders.

Section 18 (Discharge of orders) provides for applications to be made to court for the discharge of safety orders, barring orders, interim barring orders, emergency barring orders or protection orders. The persons who may apply for discharge of the orders are the Child and Family Agency (if they made the application for the order), the applicant or the respondent. The court may discharge the order if it is of the opinion that the safety and welfare of the applicant or dependant does not require the order to continue in force. The court may also discharge the order if it is determining proceedings relating to the dissolution of marriage or civil partnership or proceedings under the Guardianship of Infants Act 1964.

Section 19 (Exercise of jurisdiction by court in civil proceedings) provides for the jurisdiction of the District Court and the Circuit Court under the Bill.

Section 20 (Hearing of civil proceedings) provides for civil proceedings to be heard in camera and as informally as possible. Judges in the District Court and the Circuit Family Court and barristers and solicitors appearing in the court proceedings will not wear wigs and gowns.

Section 21 (Evidence through television link for civil proceedings) is a new provision which allows for evidence to be given through live television link by minors, unless the court sees good reason to the contrary, and by other persons with the leave of the court. The evidence can be either video recorded or audio recorded. Where live television link facilities are not available in a particular court, the court may order the transfer of the proceedings to a circuit or district court district where these facilities are available. This provision applies to applications for safety orders, barring orders, interim barring orders, emergency barring orders and protection orders.

Section 22 (Right to be accompanied in court in certain circumstances) is a new provision which allows an applicant to be accompanied in court by a person (including a support worker) of his or her choice. This is in addition to being accompanied by a legal representative (if any). The court may order that the applicant may not be accompanied to court by another person but, if it does so, it must give reasons for its decision.

Section 23 (Views of a child for whom an order is sought) is a new provision which will facilitate the court in seeking the views of a child when an order is being sought on behalf of the child, depending on the child's age and maturity. It applies to any proceedings under this Bill with the exception of applications for interim barring orders, emergency

barring orders or protection orders. The court may also appoint an expert to ascertain and convey the child's views and that expert may be called as a witness in the proceedings. Regulations made under section 32(10) of the Guardianship of Infants Act 1964 will apply to such experts. The court may specify which party, or parties, to the proceedings will pay the fees and expenses of the expert and the proportions which the parties will pay.

Section 24 (Information to victims of domestic violence on support services) is a new provision which requires the Courts Service to provide applicants for safety orders, barring orders or emergency barring orders with information on, and contact details for, domestic violence support services.

Section 25 (Recommendation for engagement by respondent with certain services) provides that the court may, when granting a safety order, barring order or emergency barring order, direct a respondent to engage with a programme or services to address issues relating to their behaviour. The court may take account of the respondent's engagement with such services when hearing proceedings for a variation of, or an appeal from, a safety order, barring order or emergency barring order, or when hearing an application for a further order. When considering the engagement of the respondent with the programme or service, the court will have regard to the views of the applicant in relation to the engagement and the effect of the engagement on the respondent's behaviour.

Section 26 (Costs) provides that the costs of civil proceedings under this Bill will be at the discretion of the court.

Section 27 (Rules of court and service of documents) provides for the making of rules of court in relation to service of documents.

Section 28 (Orders not to affect rights under certain enactments or estate or interest) provides that where a person is not residing at a place by reason only of an interim barring order, an emergency barring order or a barring order, that person will not lose their rights under the Statutes of Limitations, the Landlord and Tenant Acts 1967 to 2008, the Housing (Private Rented Dwellings) Acts 1982 and 1983 and the Residential Tenancies Acts 2004 to 2015. An interim barring order, emergency barring order or barring order will only suspend the respondent's right to occupy the place but will not affect any estate or interest the respondent or any other person has in that place.

Section 29 (Offences) provides that any person who contravenes a safety order, barring order, interim barring order, emergency barring order or protection order commits an offence. It is also an offence to refuse to permit an applicant or dependant to enter in and remain in a place for which a barring order, emergency barring order or interim barring order is in force.

Section 30 (Evidence through television link in proceedings for offence under section 29) applies sections 13, 14, 17, 18 and 19 (where it applies to references in sections 13(1)(a) and 14(1)(b)) of the Criminal Evidence Act 1992, with necessary modifications, to proceedings for an offence under section 29.

Section 31 (Restrictions on those present in courtroom in proceedings under section 29) restricts entry to the courtroom in criminal cases involving breaches of safety orders, barring orders, interim barring orders, emergency barring orders or protection orders to those directly involved in the case as well as officers of the court, bona fide representatives of the press and others specified by the judge.

Section 32 (Arrest without warrant) provides for a person to be arrested without warrant where a member of the Garda Síochána has reasonable

cause to believe that an offence is being, or has been committed, under section 29 following a complaint from, or on behalf of, the applicant for the order. For the purposes of making an arrest, a member of the Garda Síochána may enter, if needs be by force, and search the place where it is suspected that the person may be.

Section 33 (Prohibition on publication or broadcast of certain matters) provides that where proceedings are brought for an offence under section 29, it is an offence to publish or broadcast information, photographs, depictions or representations of physical likeness which would lead to identification of the applicant, the person charged or a dependant of either of them. It is not an offence to publish identifying details where the applicant consents to being identified or to the person charged being identified and where the court agrees to that identification having first considered the effect of identification on a dependent person. The judge may also, in the interest of justice, direct the publication or broadcasting of information in a specified manner and subject to conditions.

Section 34 (Penalties for offence under section 33) provides for offences relating to contravention of anonymity requirements under section 33.

Section 35 (Offence of forced marriage) provides for the creation of a new criminal offence of forced marriage. A person commits 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 is also an offence to remove another person from the State with the intention that they will be forced into a ceremony of marriage.

Section 36 (Continuance of orders made under Act of 1996) provides that any safety order, barring order, interim barring order or protection order which was made under the Domestic Violence Act 1996 will remain in force and the provisions of this Bill shall apply to it.

Section 37 (Applications pending under Act of 1996) provides that any applications which were made under the Domestic Violence Act 1996 for safety orders, barring orders, interim barring orders or protection orders but not determined will continue as if they had been made under this Bill.

Section 38 (Amendment of section 1 of Criminal Damage Act 1991) provides for necessary amendments to section 1 of the Criminal Damage Act 1991 to take account of this Bill.

Section 39 (Amendment of Family Law Act 1995) provides for necessary amendments to the Family Law Act 1995 to remove the exemption for underage marriage. It also provides that there is no effect on the validity of marriages which have already taken place on the basis of a marriage exemption which was granted prior to commencement of this section.

Section 40 (Amendment of Family Law (Divorce) Act 1996) provides for necessary amendments to the Family Law (Divorce) Act 1996 to take account of this Bill.

Section 41 (Amendment of section 9 of Mental Health Act 2001) provides for necessary amendments to the Mental Health Act 2001 to take account of this Bill.

Section 42 (Amendment of Section 2 of Civil Registration Act 2004) provides for necessary amendments to the Civil Registration Act 2004 to remove the exemption for underage marriage.

Sections 43 to 46 provide for the replacement of references to the Domestic Violence Act 1996 in existing legislation with references to the corresponding provisions of this Bill.

Financial Implications of the Bill

There are no significant financial implications for the Exchequer arising from this Bill.

*An Roinn Dlí agus Cirt agus Comhionannais,
Feabhra, 2017.*

