



**Ballymun  
Community  
Law Centre**

## **Domestic Violence & Covid-19**

### **Family Law Advice and Information Service Information Note 4 (6 May 2020)**

---

It is important to note that court ordered relief from domestic violence can be secured while Covid-19 restrictions are in place. Further, **restrictions on movement do not apply** to a person escaping from a risk of harm or seeking to access essential services. In other words, the 2km rule (now 5km) will not apply to you if you are experiencing domestic violence.

In this note we have set out the following in brief:

- The practicalities – getting help and support
- The Law and Domestic Violence – who can apply for what orders and the effect of different orders
- Applying for relief from the Court

### **The practicalities – getting help and support**

The first priority in any situation is that people are safe. **No person, child, woman or man should have to put up with a violent situation.** Whether at work or in our personal life, if it is ourselves, a relative, friend or just someone we know, all should be protected and there is help out there.

#### **Seek help**

In a situation of domestic violence it is hard to cope but help can be obtained from the Gardai, a social worker, doctor, solicitor or one of the many non-governmental organisations (NGOs) working in this area, some of which are listed on the next page.

**Always as first call in a situation of violence, or a threat or fear of violence, An Garda Síochána should be contacted at 999 or 112.**

## Legal Aid

Applications can be made to court for urgent domestic violence relief such as Protection, Safety and Barring Orders in the District Court. This can be done by contacting your local District Court office, the Legal Aid Board (1890 615 200 or 01 646 9600 ) or a private solicitor. The Legal Aid Board are committed to providing legal services for these urgent cases during this crisis.

“

The Legal Aid Board recognises that in the current climate some legal services may be more difficult to access. We are committed to ensuring that every eligible person who needs our services in relation to a domestic violence remedy will be assigned a solicitor to advise and represent them very promptly. <sup>1</sup>

Legal Aid should be available as a priority for applications under the Domestic Violence Act 2018 (the Act). In many cases it will be provided through the private practitioner's scheme. This means that when you are granted legal aid you will get a certificate that will entitle you to instruct one of the private solicitors listed to represent you. In certain domestic violence cases the Legal Aid Board may grant a waiver of the financial contribution.

## Have a safety plan

A court order is only a piece of paper, albeit a very powerful one once enforced by the Gardai. This can take time so it is very important that that you have a safety plan in place setting out how you are going to deal with a situation of domestic violence. Seek the assistance of NGOs and the Gardai to formulate such a plan.

## Support organisations

Safe Ireland [www.safeireland.ie](http://www.safeireland.ie)

Women's Aid [www.womensaid.ie](http://www.womensaid.ie): 1800 341 900

Men's Aid [www.mensaid.ie](http://www.mensaid.ie): 01 554 3811

Male Domestic Abuse Advice Line: 1800 816 588

Rape Crisis Centre National Helpline: 1800 77 8888

Aoibhneas Domestic Abuse Support for Women and Children: 01 867 0701

Sonas Domestic Violence Charity: 01 8662015

Saoirse Women's Refuge: 01 463 0000

Inchicore Outreach Violence Against Women Centre: 01 454 5239

Directory of local services: [www.safeireland.ie](http://www.safeireland.ie)

Information on services and supports for victims is also available on a new website - [www.stillhere.ie](http://www.stillhere.ie)

Ballymun Community Law Centre can be contacted by phoning the law centre at: 01 8625805.

---

<sup>1</sup> John McDaid, CEO, Legal Aid Board: <https://www.stillhere.ie/the-courts-legal-aid/>. Accessed 23/04/2020.

# The Law and Domestic Violence

The Law provides protection for people whose safety and welfare is threatened. **Violence, whether domestic or otherwise, is a crime and should be reported to An Garda Síochána to investigate and commence criminal proceedings as appropriate.** Applying for a Barring or Safety Order does not preclude, nor is it an alternative to, criminal proceedings.

In addition to the criminal law, the Domestic Violence Act 2018 (the Act) explicitly provides for circumstances relating to domestic violence.<sup>2</sup> Where the Act's scope to protect a person from abuse is limited other legislation may provide protection by prohibiting certain conduct and behaviours; for example, in circumstances of harassment, s10 of the Non-Fatal Offences Against the Person Act 1997 might apply. In addition, where the Act does not apply an Applicant may be able to apply to the Court for an injunctive remedy to prevent another party from acting unlawfully.

## The Domestic Violence Act 2018

Under the Act you as the Applicant are seeking the protection of the Court in the form of a court order or orders. Spouses, persons previously living in an intimate relationship, parents, persons living together, children and the Child and Family Agency (Tusla) can apply for orders under the Act. The Act sets out the particular type of Applicant that can apply for the different orders. If an order is breached by the Respondent this constitutes a criminal offence.

A decision to make an Order pursuant to the relevant provision/s of the Act can only be made if you can satisfy the Court that your safety and or welfare are at risk. 'Welfare' is defined at s2 of the Act as including **'the physical and psychological welfare of the person'**. 'Safety' is not defined in the Act. In the Supreme Court decision *O'B v O'B*, O'Higgins CJ at 188 stated:

“

The use of the word "safety" probably postulated a necessity to protect from actual or threatened physical violence emanating from the other spouse.<sup>3</sup>

Future judgements from our Superior Courts will reflect the changes in the legislation.

**Legal advice will help you identify whether a threat to your safety and or welfare meets the requirements for a Court to consider granting an order.**

---

<sup>2</sup> The Domestic Violence Act, 2018 consolidated previous legislation in this area and repealed the Domestic Violence Act, 1996.

<sup>3</sup> [1984] 1 IR 182, at 188.

The Act provides for two main types of order - Safety and Barring. Prior to a court hearing to decide if these orders should be made an Applicant can seek interim (temporary) relief in the form of a Protection or Interim Barring Order. The Act also provides for Emergency Barring Orders which are similar to Interim Barring Orders.<sup>4</sup>

It is important to remember that relief under the Act should not be relied on as a means to achieve a form of 'quickie' separation. Circumstances of relationship breakdown could be exacerbated if a party proceeds to apply for relief under the Act when in fact steps towards an orderly separation might be more appropriate. It is important to get legal advice before proceeding to the Court.

## Who can apply for what orders

### 1. Barring/Interim Barring orders<sup>5</sup>

The following categories of Applicant can apply for Barring/Interim Barring Orders:

- (i) The spouse of the Respondent (the Respondent being the person who you want the order to apply to). A spouse includes a separated and former spouse. The Order can also be sought on behalf of any dependent children.
- (ii) The civil partner of the respondent.
- (iii) A person who lived with the Respondent in an intimate and committed relationship prior to the application. The Order can also be sought on behalf of any dependent children of the relationship.
- (iv) A parent seeking protection from an adult child (over 18) unless that child is still regarded as a dependent; for example, where an adult child is suffering from a disability and it is not 'reasonably possible' for them to live independently of the Applicant.<sup>6</sup>

Property interest – an Applicant who is not the spouse of the Respondent must establish to the satisfaction of the Court that they have a legal or beneficial interest in the property that they are seeking to bar the Respondent from. The Applicant's property interest must be at least equal to that of the Respondent.

---

<sup>4</sup> A number of new provisions were introduced by the Domestic Violence Act 2018 in order that Ireland was in a position to ratify the Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence in July 2019.

<sup>5</sup> Section 7 and 8 of the Domestic Violence Act 2018 apply.

<sup>6</sup> Section 2 of the Domestic Violence Act 2018. Definition of a 'dependent person'.

## 2. Emergency Barring Order (interim/temporary measure)

The categories of Applicant that can apply for an Emergency Barring Order are:

- (i) A person who lived with the Respondent in an intimate and committed relationship prior to the application. The Order can also be sought on behalf of any dependent children of the relationship.
- (i) A parent of the Respondent providing that the Respondent is not a dependent person.

The Applicant must have no legal or beneficial interest in the property that they are seeking to bar the Respondent from or have an interest that is less than that of the Respondent. The Respondent to the application must have a legal or beneficial interest in the property.<sup>7</sup>

## 3. Protection/Safety orders

The categories of applicant who can apply for Protection/Safety Orders include those who can apply for Barring/Interim Barring Orders. There are two further categories that can apply for Safety/Protection Orders.

- (i) An Applicant of full age (over 18) who resides with a person in a relationship that is not primarily contractual in nature. In deciding whether a relationship is or is not contractual in nature the Court will have regard to a number of factors including how long the parties have lived together and the nature of any duties each person might perform for the other.<sup>8</sup>
- (ii) A person who is a parent of a child whose other parent is the Respondent.

Please note – An Applicant seeking a safety/protection order does not have to demonstrate a legal/beneficial property interest.

The Child and Family Agency can also apply for Orders on behalf of an ‘aggrieved person’ .

---

<sup>7</sup> Section 9(2) of the Domestic Violence Act 2018 refers.

<sup>8</sup> Section 6(1)(b) of the Act provides:

For the purposes of paragraph (a)(v), in deciding whether or not a person is residing with another person in a relationship the basis of which is not primarily contractual, the court shall have regard to—

- (i) the length of time those persons are residing together,
- (ii) the nature of any duties performed by either person for the other person or any kindred person of that other person,
- (iii) the absence of any profit or of any significant profit made by either person from any monetary or other consideration given by the other person in respect of residing at the place concerned, and
- (iv) any other matters the court considers appropriate in the circumstances.

### **Injunctive relief**

Where a person is not one of the qualified persons that can apply for relief under the Act they can, in addition to the normal criminal sanctions, consider pursuing an application to the Court for injunctive relief to restrain a person from continuing their abusive conduct. Please note that injunctive relief is discretionary. This means that the Court must be satisfied that it is just and equitable to grant the relief sought.

An application for injunctive relief would require similar evidence to that required under the Act. Applying for injunctive relief involves drafting court papers and it is recommended that an prospective Applicant seek legal advice and assistance if pursuing this course of action.

## The effect of the different orders

### **Protection Order**

The Court may issue a Protection Order where it is of the opinion that there are reasonable grounds for believing that the safety or welfare of the Applicant, or of any dependent person, so requires. **It is a temporary 'interim' order.** A Protection Order prohibits the Respondent to the application from:

- (a) using or threatening to use violence against, molesting or putting in fear, the applicant or the dependent person;
- (b) if he or she is residing at a place other than the place where the applicant or the dependent person resides, watching or besetting the place where the applicant or the dependent person resides;
- (c) following or communicating (including by electronic means) with the applicant or that dependent person.

In a case reported in *The Irish Times* a man was granted a Protection Order against his wife of 28 years.

“

[Addressing the Court he said that] she was an alcoholic and would come home drunk, get into the bed and dig her nails into him to wake him up. Then she would put the television on loudly.

Recently, she had put their adult son out of his room, so that she could move into it. She had also raised her arm to hit their teenage daughter, but stopped herself. He said he was worried about the teenager who was afraid of her mother.<sup>9</sup>

---

<sup>9</sup> Fiona Gartland, *The Irish Times*, 11 August 2017.

In another reported case a woman secured a protection order against her two sons.

“

[Addressing the Court the woman was reported as stating]: “If someone doesn’t help me I’m going to have a nervous breakdown or a heart attack.”

The woman, who was present in court, said one of her sons lives with her and was very violent and aggressive. “I’m terrified of him,” she said.

The woman said her son suffers with drug and alcohol issues and that three weeks ago he smashed her windows. She said he has previously damaged bins, microwaves, her washing basket and her mobile phone.

The woman told the court her other son also suffers with drug problems but that he doesn’t live with her. She said he was in her home recently and she told him that he couldn’t stay.<sup>10</sup>

### **Interim Barring Order**

Section 8 (1) of the Act provides the Court with authority to grant an Interim Barring Order if it is of the opinion that there are reasonable grounds to believe that:

- (a) there is an immediate risk of significant harm to the applicant or any dependent person, and
- (b) the making of a protection order would not be sufficient to protect the applicant or any dependent person,

In a case reported in *The Irish Times* a woman was granted an eight-day barring order against her partner after showing the judge her arms.

“

[Addressing the Court the mother-of-four ] said two days earlier her partner had slapped her in the head a few times and then later punched her in the head and arms. She raised her sleeves to show black bruises.

‘I have lumps in my head as well,’ she said.

There had been no argument before the violent outburst.

‘I was in bed asleep when it happened . . . about 11.30pm,’ she said.

She told the judge her partner used drugs and had told her in the past he would kill her and shoot her. There had been mental abuse, she said.

‘But I never thought he would hit me.’

---

<sup>10</sup> Sarah Burns, *The Irish Times*, 6 May 2020.

The judge granted a barring order for eight days. He advised the woman to bring the order to her local garda station and they would remove her partner from the family home.

'I don't have to be there when they got to the house, do I?' she asked.  
The judge said she did not.<sup>11</sup>

In another case a woman reportedly secured an Interim Barring Order having experienced verbal abuse by her husband and a threat to burn the house down.

““

[Addressing the Court] The woman said her husband has a long history of taking cocaine and had threatened to burn down the family home.

The woman said her husband had called her “horrible, filthy names” and she had locked herself in her room as a result of his behaviour.

“He says he’s going to burn this house down,” the woman told the court. “Because he’s on cocaine I don’t know whether he’s capable of that or not.”<sup>12</sup>

### **Emergency Barring Order**

Section 9 of the Act provides for a new Emergency Barring Order allowing a person in a dangerous situation to have a person barred from a property. This order is made so as to bar a person other than a spouse/civil partner from a property. It is a significant measure in that unlike an Interim Barring Order an Applicant can apply for the order in circumstances where he/she has no legal or beneficial interest in the property concerned, or where their interest is less than that of the person against whom the order is sought.

Where an Emergency Barring Order is made *ex-parte* (without the other party present or being on notice) it shall have effect for such period not exceeding 8 working days. Once expired, another order may not be made until one month after the expiry of the previous order unless the court is satisfied that there are exceptional circumstances. This is to ensure that the order will operate as an emergency, temporary measure only.

### **Safety Order**

Section 6 (2) of the Act provides that the Court may make a Safety Order prohibiting the respondent from doing one or more of the following:

- (a) using or threatening to use violence against, molest or put in fear the applicant or the dependent person;

---

<sup>11</sup> Fiona Gartland, *The Irish Times*, 11 August 2017.

<sup>12</sup> Sarah Burns, *The Irish Times*, 6 May 2020.

- (b) if he or she is residing at a place other than the place where the applicant or that dependent person resides, watching or besetting a place where the applicant or that dependent person resides;
- (c) following or communicating (including by electronic means) with the applicant or the dependent person.

### **Barring Order**

Section 7(2)(a) of the Act provides that the Court may make a Barring Order to:

- (a) direct the respondent, if residing at a place where the applicant or that dependent person resides, to leave such place, and
- (b) whether the respondent is or is not residing at a place where the applicant or that dependent person resides, prohibit that respondent from entering such place until further order of the court or until such other time as the court shall specify.

### **Programme engagement**

Section 29 of the Act provides that the Court may recommend that a person engage with a programme or service to address their behaviour. Recommendations would include programmes for perpetrators of domestic violence, addiction services, counselling or psychotherapy services and or financial planning services.

## **Applying for relief from the Court**

It is important to obtain legal advice at the earliest opportunity. When making an application for a Barring or Safety Order the Court may decide to grant interim relief (temporary) in the form of a Protection, Interim Barring or Emergency Order. These orders are made for your welfare and safety while waiting for a court date to hear your application for more long-term relief.

Having issued applications and obtained interim relief the proceedings will usually be served by registered post on the other party. Sometimes when an Interim Barring Order is granted it may be served on the Respondent by the Gardaí. If you have obtained a Protection Order you will be advised to attend at your local Garda Station on the way home and have them photocopy the order so that they have a copy on file if you need to call them. Keep your own copy.

### **Preparing for the hearing and evidence**

Hopefully you will have an early consultation with your solicitor to prepare for the hearing and in particular to consider what evidence you will need to prove your case.

It can be a difficult task ascertaining the evidence available particularly if there have been traumatic and distressing events. Nevertheless, the question of evidence has to be addressed at the outset in order to establish if there is a case to argue before a Judge that the Applicant's safety/welfare, or that of a child, requires the Court's intervention.

It will be necessary to have all witnesses and evidence available for the hearing. It may be that witness summonses will have to be issued and served to ensure their attendance. Sometimes a relative or friend if they have relevant evidence may request a witness summons as they can then truthfully say they were obliged to attend. Professional witnesses such as doctors can be put on call so that they can be phoned on the day and brought to the court to give their evidence if their medical report is not agreed.

It has to be considered in detail what evidence the Applicant has. It is also worthwhile considering what evidence the other side will produce. It is often helpful to write notes of the actual incidents and also to see if there is evidence from Garda, GP or an independent witness.

Dishes broken or clothing torn during an incident of domestic violence should be brought to court on the day as items can be produced in evidence. It is no good saying the evidence is at home. That said, don't take a 'kitchen sink' approach. **The evidence must be relevant** to the issue of welfare and safety, not relationship breakdown more generally. Similarly, care should be taken with witnesses. A line-up of relatives will not necessarily support a case as they would likely be predisposed to testify in the relevant party's favour.

The question is often asked can some incident from the past be brought up in court and the answer is yes. There is no limitation on what can be raised but whether the Judge will allow it be heard or, more importantly, whether it will be of any relevance is another matter. It will be for the Judge to determine what should be heard and what is relevant.

### **Protection against Cross-examination**

Section 16 of the Act is a new provision to prevent oppressive cross-examination conducted personally by the Applicant or Respondent. It provides that persons who are giving evidence may not be personally cross-examined by either the applicant or respondent unless the court is of the opinion that the interests of justice so require.

### **Factors that will be considered by the Court**

The Court is not limited in its deliberations. It will determine what facts and or circumstances are relevant. However, the Act does provide a framework of relevant factors to be examined. Section 5 of the Act provides:

5. (1) Nothing in subsection (2) shall be construed as limiting the power of a court to make a specified order under this Act.
- (2) In determining an application for a specified order, the court shall have regard to all the factors or circumstances that it considers may have a bearing on the application including where relevant:
  - (a) any history of violence inflicted by the respondent on the applicant or a dependent person;

- (b) any conviction of the respondent for an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 that involves loss to, or is to the prejudice of, the applicant or a dependent person;
- (c) any conviction of the respondent for an offence that involves violence or the threat of violence to any person;
- (d) whether any violence inflicted by the respondent on the applicant or a dependent person is increasing, or has increased, in severity or frequency over time;
- (e) any exposure of any dependent person to violence inflicted by the respondent on the applicant or any other dependent person;
- (f) any previous order under this Act or the Act of 1996 made against the respondent with regard to any person;
- (g) any history of animal cruelty by the respondent;
- (h) any destruction or damage caused by the respondent to—
  - (i) the personal property of the applicant, the respondent or a dependent person, or
  - (ii) any place where the applicant or a dependent person resides;
- (i) any action of the respondent, not being a criminal offence, which puts the applicant or a dependent person in fear for his or her own safety or welfare;
- (j) any recent separation between the applicant and the respondent;
- (k) substance abuse, including abuse of alcohol, by the respondent, the applicant or a dependent person;
- (l) access to weapons by the respondent, the applicant or a dependent person;
- (m) the applicant's perception of the risk to his or her own safety or welfare due to the behaviour of the respondent;
- (n) the age and state of health (including pregnancy) of the applicant or any dependent person;
- (o) any evidence of deterioration in the physical, psychological or emotional welfare of the applicant or a dependent person which is caused directly by fear of the behaviour of the respondent;
- (p) whether the applicant is economically dependent on the respondent;
- (q) any matter required to be considered by the court under, and in accordance with, subsections (2) and (3) of section 29;
- (r) any other matter which appears to the court to be relevant to the safety or welfare of the applicant and any dependent person.

Ends: Frank Murphy, Solicitor, Ballymun Community Law Centre  
 Ciara Murray, Manager, Ballymun Community Law Centre  
 6 May 2020.

**Please contact Ballymun Community Law Centre at 01-8625805 if you require family law advice or information or information on our mediation services.**