



Domestic and Relationship Violence Recent developments in Irish law

CPD - Southern Council of the Irish Association of Social Workers
6 September 2018

Dr Louise Crowley, Senior Lecturer in Family law, School of Law

A TRADITION OF
INDEPENDENT
THINKING



UCC

University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Introductory comments

- State intervention in private relationships
 - Belated recognition of individual's rights
- Protection historically limited to spouses
- Changing social context
- Enhanced remedies and eligibility
- International influences and expectations
- Evolving processes to better serve the victim
- Adequacy of current framework?

Prevalence of domestic abuse

- Alarming statistics from Women's Aid
- 1 in 5 women have suffered partner abuse
- 2017 - 15,833 disclosures of domestic violence against women during 21,451 contacts with Women's Aid Direct Services
- 2017 - 15,962 court applications
- 212 women murdered in Ireland (1996 – Aug 16)
 - 63% in their own homes
 - 55% by partner/ex partner
- Under reporting of crime
 - By victims
 - By statistics

Courts Service Annual Report 2017

- Applications to the District Court under the domestic violence legislation increased by 5% to 15,962 from 15,227 in 2016.
- There was a 5% increase in applications for safety orders (6,368 as compared to 6,069 in 2016)
- A 9% increase in applications for protection orders (5,869 as compared to 5,365 in 2016).
- Applications for interim barring orders showed a 4% increase (917 as compared to 880 in 2016)
- Applications for barring orders showed a slight decrease.

Domestic Violence – court trends and statistics

DISTRICT COURT: DOMESTIC VIOLENCE – TRENDS

	2017	2016	2015	2014	2013	2012
Barring order applications	2,613	2,658	2,638	2,671	2,738	2,789
Barring orders granted	822	1,329	859	877	1,167	1,165
Protection order applications	5,869	5,365	5,108	4,406	4,529	4,192
Protection orders granted*	5,006	4,627	4,225	4,024	4,142	3,849
Safety order applications	6,368	6,069	5,626	5,499	5,334	5,026
Safety orders granted	2,255	3,316	1,917	2,029	2,381	2,255
Interim barring order applications	917	880	731	699	674	648
Interim barring orders granted	693	676	563	569	522	520
Other applications	195	255	271	12	-	-
Orders granted	151	107	263	0	-	-

* *Some interim barring orders were granted on foot of applications for protection orders.
Likewise some protection orders were granted on foot of interim orders*

Statutory overview

- Family Law (Maintenance of Spouses and Children) Act 1976
- Family Law (Protection of Spouses and Children) Act 1981
- Domestic Violence Act 1996
- Domestic Violence (Amendment) Act 2002
- Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010
- Domestic Violence Act 2018

1976 - Statutory intervention

- Family Law (Maintenance of Spouses and Children) Act 1976
- Gender neutral, spousal right to apply for a barring order
- Removal from family home where the safety and welfare of applicant spouse and/or dependent child was in danger
- 3 month duration (renewable)

Family Law (Protection of Spouses and Children) Act 1981

- First dedicated legislative response to domestic violence
- Availability of remedies still restricted to a spouse
- Introduced the protection order
- Extended life of barring order to 12 months
- Created a Garda power of arrest without warrant, for alleged breach of barring order

Domestic Violence Act 1996

- Effective from March 1996
- Sought to make provision for the protection of
 - a spouse and any children
 - other dependent persons
 - persons in other domestic relationships,
- where their safety or welfare requires such protection arising from the conduct of other person in the domestic relationship;
- to provide for the arrest without warrant in certain circumstances;
- to provide for the hearing of applications under other legislative enactments related to the domestic relationship
- Introduced safety order and interim barring order

Recent law reforms – International Influences

- **The Council of Europe Convention on preventing and combating violence against women and domestic violence**

Domestic Violence Act 2018

- **Directive 2012/29/EU – Directive establishing minimum standards on the rights, support and protection of victims of crime.**

Criminal Justice (Victims of Crime) Act 2017

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

The purposes of this Convention are to:

- protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- promote international co-operation with a view to eliminating violence against women and domestic violence;
- provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

Istanbul Convention

- Opened for signature in Istanbul in May 2011
- Entered into force on the 1st August 2014.
- First Council of Europe treaty to specifically target violence against women,
- Sets out minimum standards on prevention, protection and prosecution, mandates the development of integrated policies.
- In its preamble the Convention recognises

“...that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women... [and further recognises]... the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;”

Istanbul Convention

- Article 4 identifies the over-arching obligation on signatories to take

“the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.”

Istanbul Convention - Article 52

- “Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.”

Domestic Violence Act 2018

- Published on 3 February 2017.
- It aimed to “...improve the protections available to victims of domestic violence, most critically for cohabitants and parents in crisis situations, by introducing a new emergency barring order which can last for up to 8 working days....[and] to make the court process easier for victims of domestic violence.”
- “[A] victim will have the right to be accompanied to court by a family member, friend or support worker. A victim will be able to give evidence by live television link. There will be restrictions on attendance at both civil and criminal court proceedings and protections for the victim’s anonymity.”

Domestic Violence Act 2018

- Repeals the Domestic Violence Act 1996
- Repeals the Domestic Violence (Amendment) Act 2002
- Represents a consolidated reform of domestic violence laws in Ireland

Domestic Violence Act 2018

Remedies available

- Barring Order
- Interim Barring Order
- Emergency Barring Order
- Safety Order
- Protection Order

Interim protections

- Necessary to balance competing rights
- Facilitates fair procedures whilst granting immediate **short term** protection
- More typically granted on *ex parte* basis
- Rights of respondent restrict length of protection
- Granted on application for barring or safety order
- Much more likely to be granted than longer term order
- Valid until full hearing
 - **Protection Order** – protects the applicant
 - **Interim Barring order** – removes the respondent
 - immediate risk of significant harm to applicant/any dependent person if order is not made immediately, and
 - granting a protection order would not be sufficient to protect the applicant or any dependent person.

Barring Order

- Removes respondent from home where the parties reside or where applicant resides
- Remains in place until order expires or until further order of the court (max 3 years)
- Court is satisfied there are reasonable grounds for believing the safety or welfare of the applicant and any dependent person requires it
- Court must consider the impact upon any dependent children of the removal of the respondent from the home

The court can also prohibit the respondent from

- using or threatening to use violence against the applicant or any dependent person;
- molesting or putting in fear the applicant or any dependent person;
- attending at or in the vicinity of, or watching or besetting a place where, the applicant or any dependent person resides;
- prohibit the respondent from following or communicating with the applicant, including by electronic means, other than for such purpose as the court may specify.

Barring Order – who can apply?

- a) Spouse of the respondent
- b) Civil partner of the respondent
- c) Applicant has lived with the respondent in an intimate relationship prior to the application for a barring order
- d) Parent of the respondent who is of full age and is not dependent upon the parent

In respect of c) and d) the barring order cannot be made where the respondent has a legal or beneficial interest in the property and

- the applicant has no legal or beneficial interest, or
- the applicant's legal or beneficial interest is less than that of the respondent.

Interim Barring Order

- Granted by the court on application for a barring order or whilst awaiting the hearing of a barring order application
- Where risk of harm is such that a protection order is insufficient protection for the applicant
- Same eligibility tests as applied for a barring order
- Has effect for a maximum period of 8 days

Emergency barring order

Who can apply?

- Applicant has lived with the respondent in an intimate relationship prior to the application (but not the spouse, civil partner or relative) or
- Applicant is a parent of the respondent, the respondent being of full age and not dependent on the applicant
- Respondent has a legal or beneficial interest in the property but the applicant has no such interest, or
- Applicant's legal or beneficial interest is less than that of the respondent.
- **Matters for consideration**
- Immediate risk of significant harm if an order is not made immediately
- Maximum duration of 8 days
- No new emergency order for a period of one month except in exceptional circumstances

Safety Order

- Lesser evidentiary burden on applicant
 - Ordered where safety or welfare of applicant or any dependent person so requires
- Does not remove the respondent from the home
- Directs respondent not to use or threaten to use violence against, molest or put in fear the applicant or dependent persons (including watching/besetting)
- Includes reference to communication by electronic means
- Gardaí on notice of order (5 years max)
- Court can attach any conditions as necessary
- Important discretionary scope, especially where child access arrangements must be facilitated

Safety Order

- **Who can apply?**
- Spouse of the respondent
- Civil partner of the respondent
- Person in an intimate relationship with respondent prior to application
- Parent of the respondent and respondent is of full age and not dependent on applicant
- Applicant is over 18, resides with the respondent in a non contractual relationship
- Parent of a child, whose other parent is the respondent

Child and Family Agency right to apply

- **Where the Child and Family Agency -**
 - Is aware of incident(s) which place safety or welfare of a person in doubt,
 - Has reasonable cause to believe a person has been subject to molestation, violence or threatened violence,
 - Reasonable grounds for believing a person will be deterred or prevented from pursuing an application as a consequence of molestation, violence or threatened violence and
 - Considers having ascertained as far as is reasonably possible the wishes of the aggrieved person, that it is appropriate to apply for an order on their behalf.
- **Where aggrieved person is a dependent, the first 2 criteria need not be complied with, if reasonable cause to believe –**
 - The child has been/is being assaulted, ill treated sexually abused or seriously neglected or
 - The child's health, development or welfare has been/is being/will be avoidably impaired or seriously neglected

Care order or supervision order

- Not applicable where CFA makes original application
- Where court is of the view that a care/supervision order may be appropriate, it can of its own motion or upon application adjourn proceedings and direct the CFA to undertake an investigation/further investigations
- Court may give directions under 1991 Act incl a supervision order
- On foot of investigation the CFA must consider if it should –
 - Apply for a care or supervision order
 - Provide any service/assistance for the dependent's family
 - Take any other action in respect of the dependent person

Factors relevant to the court in determining application for an order

- Any history of violence by the respondent on the applicant
- If respondent has a conviction for violence or threat of violence
- If violence by respondent on applicant is escalating
- Exposure of children to violence by respondent on applicant
- Any previous domestic violence order made against respondent
- Any history of animal cruelty by the respondent
- Any destruction of property by the respondent to the property and /or residence of the applicant
- Any recent separation between the parties
- Substance abuse including alcohol by any of the parties
- Access to weapons by any of the parties
- Applicants perception of risk to him/herself by the respondent
- Age, health including pregnancy of the applicant and any children
- Evidence of deterioration of welfare caused by fear of respondent
- Economic dependency by the applicant on the respondent

Domestic Violence Act 2018

Views of the Child

Express requirement that the court seek the views of a child who is capable of expressing them; court can appoint an expert to ascertain and convey those views

Accompaniment (applicant but not respondent)

- Permits accompaniment in court, in addition to legal representative, by an individual (including a support worker) of his/her choice
- Court can refuse such permission where it would not be in the interests of justice for the individual concerned to accompany applicant – must explain reason for so refusing.

Cross examination of victim/children by the respondent

- Court must prevent re minors unless justice requires it.
- Court can prevent re adult parties unless justice requires it.

Domestic Violence Act 2018

Criminal offences for breach of orders

Now heard in camera

Anonymity of victim and accused

Express, detailed confirmation of importance of anonymity in reporting of domestic violence criminal law proceedings

Evidence by video link

Amends related criminal legislation to permit evidence to be given by television link in criminal proceedings arising from the breach of an existing domestic violence order

Judicial reasoning for decisions

Where an application for intervention is made to the court, the court must give reasons for its decision –

- (a) To grant or refuse the application,
- (b) To make the order subject to exceptions or conditions,
- (c) To vary existing exceptions or conditions

Provision of information re applicant support services and respondent intervention programmes

Referrals to Support Services

- Obliges the court to provide an applicant with information on domestic violence support services.
- When granting a barring/safety order the court may direct a respondent to engage with services to address issues relating to his/her behaviour to include
 - (a) a domestic violence perpetrator programme,
 - (b) an addiction service,
 - (c) a counselling or psychotherapy service, or
 - (d) a service in relation to financial planning.
- The court may consider the engagement of the respondent with services, and the outcome of such engagement, when hearing an application for variation or appeal from an existing order or in respect of an alleged breach of an order.

Offence of coercive control

- Criminal offence
- Knowingly and persistently engaging in behaviour that –
 - Is controlling or coercive
 - Has a serious effect on a relevant person
 - A reasonable person would consider likely to have a serious effect on a relevant person
- Behaviour has a serious effect if it causes the person –
 - To fear that violence will be used against him/her, or
 - Serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities
- Applicant is the spouse, civil partner or is/was in an intimate relationship with the accused
- **Relevant offences:**
- Assault, rape, rape under s.4, sexual assault, aggravated sexual assault, or conspiring/procuring/inciting the commission of any of these offences

Relationship between parties an aggravating factor in sentencing

- When court is determining sentencing the fact of marriage/civil partnership/intimate relationship will be treated as an aggravating factor
- Will require the court to impose a greater sentence unless exceptional circumstances exist

Relevant offences:

- Assault, rape, rape under s.4, sexual assault, aggravated sexual assault, or conspiring/procuring/inciting the commission of any of these offences

Breach of an order

A respondent who—

(a) contravenes a safety order, a barring order, an interim barring order or a protection order, or

(b) while a barring order or interim barring order is in force refuses to permit the applicant or any dependent person to enter in and remain in the place to which the order relates or does any act for the purpose of preventing the applicant or such dependent person from so doing,

shall be guilty of an offence and shall be liable on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both.

Criminal Justice (Victims of Crime) Act 2017

- Right to receive comprehensive information on role of victim and services/entitlements of victims
- Right to receive written acknowledgement of complaint giving contact details for further information
- Right to be provided with information on progress of investigation and any court proceedings.
- Right to be protected during investigation and proceedings
- Right to an assessment to establish the measures necessary to protect victim from repeat victimisation
- Right to be informed, of any decision not to institute a prosecution and right to request a review of that decision.
- Right to receive information from Irish Prison Service of the release of offender

Right to Information on first contact

- Support services and services re alternative accommodation
- Procedure for making a complaint re offence
- Where to address any enquiries re complaint
- Entitlement to assistance re interpretation/translation
- Role of the victim in the criminal justice process
- Measures, procedures, arrangements available to non residents
- Measures, procedures, arrangements available to children
- How/why a victim may obtain protection
- Any scheme re compensation for injuries suffered during offence
- Power of court to order compensation
- Victims right to give evidence or make a submission
- Procedures for making a complaint re any breach of rights etc
- Restorative justice schemes where available
- Types of cases in which legal advice and legal aid are available
- Entitlement to expenses arising from participation of a victim in proceedings

Right to be protected during investigation

- Right to be accompanied when making a complaint (can be excluded by the Gardaí)
- Can request a translation of acknowledgement of receipt
- Assessment required to identify protection needed during investigation and/or court proceedings, taking all circumstances incl vulnerability of victim into account and [protect from any secondary or repeat victimisation, intimidation or retaliation
- Must consult with victim and take views into account
- Special measures may be implemented re interview with victim, incl suitable premises, interviewer specially trained, same interviewers where repeat interviews
- Where offence involves sexual violence, GBV, or relationship violence, right to be interviewed by someone of the same sex.
- Where victim is a child, and parent is accused/not available etc, victim can be accompanied by a relative or any other adult.

Right to be protected during proceedings

- State can seek to exclude the public/portion of the public/a person from the court during proceedings
- Does not affect the right of a parent, relative or friend of the victim; a support worker of the victims choice, a parent or relative or friend of the minor accused from remaining in court.

(Support worker means a volunteer of, or an individual employed under contract of service or under a contract for services by, an organisation which provides support to victims of crime.)

- Court can give direction regarding evidence or questioning relating to private life of victim that is unrelated to the offence
- Where required interpretation shall be provided for the victim

Legal Framework– Victim faces many challenges

Civil proceedings:

- Application for interim remedy often secured with assistance of Courts service
- Representation subsequently sought for full hearing
- Limitations of Legal Aid Board – given priority
- Legal Aid Board solicitor or private practitioner scheme

Criminal proceedings:

- Criminal prosecution of abuser or proceedings for breach of order
- Victim as witness only in criminal proceedings