

WOMEN'S AID

Domestic Violence

Bill 2017

Submission

February 2017



WOMEN'S AID

Making Women and Children Safe

WOMEN'S AID

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National Freephone Helpline 1800 341 900

Registered charity number 6491

WOMEN'S AID

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1. Introduction

Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence against women and children since 1974. In this time, the organisation has built up a huge body of experience and expertise on the issue, enabling us to best support women and share this knowledge with other agencies responding to women experiencing domestic violence. Our services and expertise are outlined below.

National Freephone Helpline

Our National Freephone Helpline (1800 341 900) operates 24 hours a day, seven days a week, and provides support and information to callers experiencing abuse from intimate partners.

It is the only free, national, domestic violence Helpline with specialised trained staff and volunteers, accredited by The Helplines Association and with a Telephone Interpretation Service facility covering 170 languages for callers needing interpreting services. In 2015 the Women's Aid National Freephone Helpline responded to 9,308 calls.

One to one support visits and Court Accompaniment

We also provide face to face support visits and Court Accompaniment in the greater Dublin area. Court Accompaniment is a specific service providing support to the particular needs of women seeking legal redress in the Courts regarding violence by a current or former husband or partner. In 2015 Women's Aid provided 870 support visits and 239 court accompaniments.

Dolphin House Family Law Support and Referral Service

Women's Aid also operates the Dolphin House Family Law Support and Referral Service, in partnership with the Dublin 12 Domestic Violence Service and Inchicore Outreach Centre. This is a free and confidential drop in service for women who are experiencing abuse in a relationship, located in the Dublin District Family Law Court.

Training and Development

Women's Aid is a centre of excellence in training to statutory, voluntary and community organisations as they develop and maintain organizational responses to women and their children experiencing domestic violence. Training participants include health and social care professionals, staff from community groups throughout Ireland and Women's Aid National Freephone Helpline volunteers.



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Policy and Communications work

The sum of the above contacts with women experiencing domestic violence and their supporters enable us to have a good picture of the issues that need addressing to improve systemic responses and we use that information in our policy and communication work. We provide relevant information and recommendations to government and other relevant agencies on the nature and prevalence of domestic violence, the barriers faced by women experiencing domestic violence and the gaps in existing legislation/systems.

2. Statistical context

A recent European Union survey¹ on violence against women has found that in Ireland:

- 14% of women have experienced physical violence by a partner (current or ex)
- 6% of women have experienced sexual violence by a partner (current or ex)
- 31% of women have experienced psychological violence by a partner (current or ex)

This same survey found that in Europe, 73% of women who have experienced physical or sexual violence by a current or a previous partner, indicate that their children have become aware of the violence².

Women's Aid statistics³

In 2015:

- there were 12,041 contacts with Women's Aid, in which 16,375 disclosures of domestic violence against women were made (including emotional, physical, financial and sexual abuse).
- our Court Accompaniment service went to court 239 times with 131 women, and provided support to women in 117 applications for orders under the Domestic Violence Act.
- the Dolphin House Support and Referral Service supported 289 women in 308 face to face drop in sessions throughout the year.
- there were 5,966 disclosures of child abuse to Women's Aid direct services.
- 43% of the information, referral and advocacy work by the Helpline and One to One service in 2015 was in support of women accessing and negotiating the legal system for protection. This includes information and support on legal options, how to access expert legal advice and representation and contacting the Gardaí.

¹ FRA gender-based violence against women survey dataset available at <http://fra.europa.eu/DVS/DVT/vaw.php>

² European Union Agency for Fundamental Rights (FRA), 2014, Violence against women: an EU-wide survey Main results, page 134. No country specific data available.

³ Women's Aid Impact Report 2015



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3. Summary of Recommendations

Recommendation 1:

We strongly support the Minister's commitment to bring forward amendments to the Bill at Committee Stage to extend access to Safety and Protection orders to those in intimate and committed relationships, who are not cohabiting.

Recommendation 2:

A provision should be included in the Domestic Violence Bill 2017 to allow for Garda to apply for **Out of Hours Barring Orders** to an on-call judge. Whereby, on request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorise the calling of an on-call judge to apply for an Out of Hours Barring Order. The return date would be the next sitting day in the nearest available Court.

Recommendation 3:

To include in the Bill a provision by which, when granting a Barring Order, the Court should consider the safety and well-being of any children of the relationship and take interim measures, as necessary, for their protection.

Recommendation 4:

To include in the Bill to provide for experts being available to the Court to assess the risk the perpetrator poses to children and the impact on them of direct and/indirect abuse.

Recommendation 5:

That indirect forms of harassment, including posting online of harmful private and intimate material in breach of a victim's privacy or impersonating them online are included in the range of behaviours the court can prohibit when making a Safety, Barring or Protection Order.

Recommendation 6:

a) To remove the property test for cohabitants applying for a Barring Order, where the best interest of the child/ren of the family so requires.

b) Failing that, at least to provide for a short term Barring Order, of a duration of 6 months, for cohabitant applicants that do not satisfy the property test, if such applicant has children in their care and has previously been granted an EBO against the respondent.

Recommendation 7:

That the maximum duration of a Barring Order is extended to 5 years.



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Recommendation 8:

Women's Aid recommends to insert a provision in Section 15 so that Barring Orders, Interim Barring Orders and Emergency Barring Orders are always served by Garda to the respondent. Women's Aid recommends to include a provision by which the views of the applicant for a Safety or Protection Order are sought when deciding whether Garda should or not serve such orders.

Recommendation 9:

a) That a provision is included in the Domestic Violence Bill to amend the Non-Fatal Offences Against the Person Act so as to include as aggravating circumstances of relevant offences that such offences are carried out against a current or former spouse or partner, against or in the presence of a child, were committed repeatedly, the offence resulted in severe physical or psychological harm for the victim or the perpetrator had previously been convicted of offences of a similar nature.

b) That sentencing for breaches of Safety or Protection Orders, where the parties are not residing together, should include prohibiting the respondent from being in the vicinity of the residence of the victim.

Recommendations 10:

That guidelines are developed in relation to criteria and considerations for granting orders under the Domestic Violence Act. Such guidelines should clearly name as forms of abuse covered by the Act: physical abuse, sexual abuse, financial abuse and emotional abuse of the applicant and/or of any child of the relationship.

Recommendation 11:

Stalking should also be included in the guidelines as a ground for applying for a Safety Order.



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4. Women's Aid Welcomes the Domestic Violence Bill 2017.

Women's Aid welcomes the consolidation and updating of the Domestic Violence Bill 1996 and the Domestic Violence (Amendment) Bill 2002 into a new comprehensive Bill. In particular, **Women's Aid appreciates the new provisions that intend to make it easier for victims of domestic violence to avail of the court system and to link them with support, the removal of the duration of cohabitation test for Barring Orders and the creation of an offence of Forced marriage.**

Over the last few years Women's Aid has noticed and reported on the increasing **use of new electronic technologies to monitor, control and harass women**, both during an abusive relationship and after separation. **We therefore appreciate and welcome the new provisions that prohibit this kind of behaviour.**

Women's Aid is delighted with the commitment included in the Minister's press release to **“bring forward amendments to the Bill at Committee Stage to extend access to Safety and Protection orders to those in intimate and committed relationships, who are not cohabiting.”**

The lack of protection for dating relationships has long been a huge concern for Women's Aid. Our own experience, as well as national and international research show that young women in dating relationships are also victim of intimate partner abuse:

- In the FRA survey mentioned above, 15% of women in the EU who have experienced physical or sexual violence by a **current** partner, indicated that the first incidence of violence took place when they were **not** living together⁴.
- UK research also concludes that “adult domestic violence often starts at a much younger age than previously recognised” and that it affects young women disproportionately⁵.
- The ISPCG has confirmed that they deal with clients, as young as 15, who experience abuse in their relationship and support the extension of Safety orders to non-cohabiting couples, so that these young people can avail of protection⁶.

The extension of eligibility for Safety and Protection orders to dating relationships is also in line with the requirements of the Istanbul Convention.

4 European Union Agency for Fundamental Rights (FRA), 2014, Violence against women: an EU-wide survey Main results, Table 2.10.

5 Christine Barter, Melanie McCarry, David Berridge and Kathy Evans, Partner exploitation and violence in teenage intimate relationships, NSPCC, 2009

6 http://www.thejournal.ie/readme/children-abuse-domestic-violence-2309167-Sep2015/?utm_source=shortlink, accessed 23rd September 2015



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Recommendation 1: We strongly support the Minister's commitment to bring forward amendments to the Bill at Committee Stage to extend access to Safety and Protection orders to those in intimate and committed relationships, who are not cohabiting.

5. Main Gaps in the Domestic Violence Bill 2017 and Recommendations

There are two main gaps in an otherwise positive Bill:

1. The **lack of measures to provide immediate protection when the Courts are not sitting** and
2. The **missed opportunity to finally formally link in safety of children with domestic violence orders**, particularly Barring Orders.

These two main issues will be discussed in section 5, whereas other comments and recommendations will be outlined under each section in Section 6.

5.1 Lack of measures to provide for Immediate protection when the Courts are not sitting (Out of Hours Barring Orders)

A significant gap in the proposed legislation is the lack of measures to provide for immediate protection in an emergency situation, **when the courts are not sitting**. For example, if a domestic violence incident occurs on a Friday evening, there is no recourse to the Courts until at least the following Monday. This may be longer outside Dublin, where courts may not be sitting every day. It may be unsafe for a woman and her children to remain in the home with the perpetrator and with no protection for this length of time.

While in certain cases Garda may arrest the perpetrator, they usually are granted station bail within a few hours. **In the absence of immediate protection, the woman, often with children, may have no option but to leave the family home and seek protection with family, friends or refuges.** However, family and friends may be unable or unwilling to shelter her and refuges are often full. The current crisis in emergency refuges and more generally homelessness services compounds this problem.



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Women's Aid had previously suggested the implementation of a system that would meet this need, ensuring access through an on call judge to Out of Hours Barring Orders⁷ 24/7 every day of the year, while seeking to return the matter to normal courts as soon as possible.

Women's Aid acknowledges the creation of a new Emergency Barring Order in this Bill which provides a limited form of protection for certain cohabitants (see more below). **The Emergency Barring Order in this Bill however is not what we had recommended**, as it does not address the problem that no order is available for anybody **when the courts are not sitting**.

In relation to Emergency Barring Orders the Istanbul Convention says (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. (emphasis added).

Immediate protection and prioritising the victim's safety does not sit well with having to wait, possibly for a few days, for the Courts to open. There remains a clear and unmet need for orders to be available outside of traditional Courts hours, so that victims of domestic violence do not find themselves in an emergency without protection for extended periods of time.

Recommendation 2: Women's Aid recommends that a provision is included in the Domestic Violence Bill 2017 to allow for Garda to apply for Out of Hours Barring Orders to an on-call judge. Whereby, on request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorise the calling of an on-call judge to apply for an Out of Hours Barring Order. The return date would be the next sitting day in the nearest available Court.

7 We previously called Out of Hours Barring Orders, Emergency Barring Orders, but had to rename them to avoid confusion with the Emergency Barring Orders provided for in this Bill, which do not serve the same purpose.



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5.2 Lack of Provisions to Protect Children when a Barring Order is granted

The link between child abuse and domestic violence has been clearly established with domestic violence being a very common context in which child abuse takes place. **It has also been found that the more severe the domestic violence, the more severe the abuse of children in the same context⁸.**

International research documents both the co-occurrence of child abuse with domestic violence and the **impact of domestic violence on the developmental needs and safety of children⁹**. Moreover, exposure to domestic violence is recognised in itself as a form of emotional abuse, with detrimental effects to children's well-being, as acknowledged in Children First: National Guidance for the Protection and Welfare of Children.

As Barnardos has recently confirmed, the way children experience domestic violence is complex, their awareness of it is often under-estimated by adults and therefore so is its impact. **There is an urgent need to create more robust legislative and procedural links between domestic abuse and child abuse¹⁰.**

When a court grants a Barring Order, it has found that the respondent poses a significant risk to the welfare and safety of the applicant. Both research and our own experience suggest that there is a high probability that the safety and welfare of children of the family is also jeopardised. **Therefore this risk should be assessed and mitigated.**

Unfortunately in the experience of Women's Aid, when Barring Orders are granted to protect a woman from her abusive partner, there is often no assessment process looking at the safety and well-being of children of the relationship.

For example in many cases the perpetrator may be barred from the house but still have unsupervised access to the children and use that access to continue abusing the children directly and/or through having them

8 M. Hester et al., Making an Impact - Children and Domestic Violence: A Reader: 2nd edition, Jessica Kingsley Publishers, 2007. For an insightful discussion on of the impact of a perpetrator of domestic violence on children before and after separation see Bancroft L. and Silverman J. (2002). The batterer as a parent addressing the impact of domestic violence on family dynamics, SAGE Publications.

9 See for example Hogan, F. and O'Reilly M. (2007) Listening to children: Children's stories of domestic violence. Office of the Minister for Children/Department of Health and Children. Dublin

S. Holt et al, "The impact of exposure to domestic violence on children and young people: A review of the literature", Child Abuse and Neglect 32 (2008) 797-810).

The Australian Domestic & Family Violence Clearinghouse and The University of New South Wales for the Benevolent Society, The Impact of Domestic Violence on Children: A Literature Review, 2011.

10 Barnardos, (2016) What's the harm? A child centred response to domestic abuse.



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witnessing continuing abuse of their mother. Legal proceedings in relation to Custody and Access often take a long time, and during this period while the woman is protected by the Barring Order, the children may still be subjected to on-going abuse.

It is imperative that the risk posed by a perpetrator of domestic violence to the children of the family and the impact of such abuse on them is assessed and that **immediate** interim measures are taken to protect the children.

Therefore Women's Aid recommends that when granting a Barring Order the safety and well-being of any children should always be considered and, when appropriate, interim measures should be put in place to protect them from further abuse.

This is not only in the children's best interests but it could also take some pressure off the courts and Legal Aid by dealing with this issue at the same time as the Barring Order. As things stand, often after the woman is granted a Barring Order, her partner puts in access /custody applications, so they have to return to court.

To support this, there is a need for expert reports assessing child's safety and welfare being available to the courts. This should include assessing the emotional impact of being exposed to the abuse of their primary carer, which is recognised as a form of child abuse. The need for free/affordable expert reports has also been recently reiterated in the One Family Report on Shared parenting¹¹.

Recommendation 3: To include in the Bill a provision by which, when granting a Barring Order, the Court should consider the safety and well-being of any children of the relationship and take interim measures, as necessary, for their protection.

Recommendation 4: To include in the Bill to provide for experts being available to the Court to assess the risk the perpetrator poses to children and the impact on them of direct and/indirect abuse.



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6. Comments and Recommendations on Particular Sections of the Domestic Violence Bill

Section 5. Safety Order

5. (1) (a)

As discussed above, Women's Aid believes that Safety Orders should be available to partners in dating relationships and therefore looks forward to and supports the Minister's forthcoming amendments to eligibility for Safety orders so as to include those in intimate and committed relationships, who are not cohabiting.

5. (2) (c)

In recent years Women's Aid has noted and reported on the increasing use of electronic technologies to monitor, control and harass women, both during an abusive relationship and after separation. We therefore commend and support the inclusion of the following provision in this Bill, which prohibits the respondent from

(c) following or communicating (including by electronic means) with the applicant or the dependent person.

However, much damage to the welfare and reputation of victims is done by communication to third parties **about** them, usually through electronic means, and not necessarily **with** them.

Examples of this type of abuse that women report to us on a regular basis are:

- Image based sexual abuse ('revenge porn') where intimate/private images or videos are shared on the Internet or by other means without the woman's consent.
- advertising woman on escort sites without her consent or knowledge.
- accessing and modifying her online data.
- falsely impersonating the woman online and alienating friends and supports.
- spreading lies and rumors about the woman that affect her both personally and professionally

This provision, while very welcome, does not seem to cover such cases.

The same concerns are valid for the equivalent provisions under Section (6) (3) (c) Barring Orders, Section 7 (2) (c) Interim Barring Orders, Section 8 (4) (c) Emergency Barring Orders and Section 9 (1) (c) Protection orders.



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Therefore Women's Aid recommend that this provision is expanded to include communication about the victim to third parties and posting on the Internet.

Women's Aid also notes that women are sometimes "followed" online by the abuser using spyware on the woman's electronic devices and would like to clarify whether this provision cover such cases.

Recommendation 5: That indirect forms of harassment, including posting online of harmful private and intimate material in breach of a victim's privacy or impersonating them online are included in the range of behaviours the court can prohibit when making a Safety, Barring or Protection Order.

Section 6 Barring Order

Women's Aid is delighted that the duration of cohabitation for Barring Orders has been removed.

We have however the following remaining concerns in relation to Barring Orders:

Eligibility: Property test for cohabitant applicants Section 6. (6) (a)

The property test for cohabitant applicants, by which a cohabitant applicant for a Barring Order must have an equal or greater interest in the property to be eligible to apply, has been retained in this Bill, with no regards to children's best interests.

Our experience working with women has taught us that leaving is a very difficult choice, and that having nowhere to go is one of the main reasons women do not leave an abuser¹². This is of course much more difficult if she has children to care for.

In certain cases in the absence of a Barring Order, women and children have no choice but to leave the home for their safety and seek protection with family, friends or in a refuge. This may be a very disruptive move. It may mean that children have to leave favourite possessions, friends and supports behind, that they may have to change schools, normal activities and routines.

Currently, due to the housing crisis in Ireland, women and children who are forced to leave their home may take a long time to secure new accommodation and may be forced into emergency/transient accommodation for a long period. In extreme cases women and children may even find themselves

12 Making the Links, Women's Aid, 1995.



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homeless and living on the streets. In other cases, they may return to the abuser, not having any other realistic alternatives.

Women's Aid had previously recommended that the property test should at least be removed where it is in conflict with the best interest of the children of the family. If this is not possible due to the Constitutional protection of property, cohabitant applicants with children with a lesser or no interest in the property, who were granted an EBO, should at least be eligible to apply for a Barring Order of 6 months, so that they have a realistic opportunity to organise alternative accommodation.

Recommendation 6:

- a) To remove the property test for cohabitants applying for a Barring Order, where the best interest of the child/ren of the family so requires.
- b) Failing that, at least to provide for a short term Barring Order, of a duration of 6 months, for cohabitant applicants that do not satisfy the property test, if such applicant has children in their care and has previously been granted an EBO against the respondent.

Duration of Barring Orders

The maximum duration of a Barring Order remains 3 years. However in certain cases the process of separation, selling the family home and finding a new place may take longer, particularly when the abuser uses delaying tactics. In such cases it may be appropriate for the Court to be able to grant a longer Barring Order, as needed, so that protection of the victim is not discontinued.

Recommendation 7: That the maximum duration of a Barring Order is extended to 5 years.

Following and communicating by electronic means

Women's Aid welcome the provision by which the court, when granting a Barring Order, can prohibit the respondent from following and communicating with the applicant including by electronic means. Our observations and recommendations in this regard are the same as per equivalent provision in Section 5.



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Section 8 Emergency Barring Orders (EBO)

The Bill introduces a new order, called an Emergency Barring order (EBO)¹³, which provides short term emergency protection to certain categories of applicants who are **not** eligible for Interim Barring Orders and Barring Orders. These applicants include cohabitant partners who do not meet the property test for BOs and IBOs, i.e. they do not have an equal or greater interest in the property from which the respondent is being barred.

As such EBOs provide some very limited relief for cohabitant partners who were previously unable to access any Barring Order.

EBOs however only last 8 days and, unlike other orders, cannot be renewed, as an applicant **cannot** apply for another EBO against the same respondent for a month since the first EBO expires (except in exceptional circumstances).

In practice, EBOs would buy a cohabitant with no equal interest in the property 8 days to look for alternative accommodation but no more. However, 8 days is not an adequate period to be able to find alternative accommodation, especially with children. The current homelessness crisis makes this even more difficult, as we know that many families are becoming homeless each week and both refuges and homeless services are not coping with demand.

A better way to protect cohabiting partners who do not satisfy the property test, would be to remove the property test when the best interest of children so requires, as in our recommendation 6 above.

Section 15 Taking Effect of Orders

For orders to take effect, a respondent needs to be notified that an order under the Domestic Violence Act has been made. **In Women's Aid experience, as it stands, most women have to notify an abusive partner that an Order has been granted against him.** In certain cases Garda notify the respondent about an order having been made, either at the request by the Court or of their own initiative. However this is not often the case, and **women have had to notify the respondent themselves at the risk of violence or retaliation, or may find themselves in the situation where, having no witnesses to the notification of the order, the perpetrator subsequently lies about having been notified.**

13 Note that these EBOs are not the same as the ones previously advocated by Women's Aid to address the problem of providing immediate protection when the courts are not sitting. We now refer to these as Out of Hours Barring Orders.



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In other cases women have had to wait until a friend or family was able to accompany them to carry out this task, but this may put the family or friend at risk too. This is particularly risky in relation to Barring Orders, Interim Barring Orders and Emergency Barring Orders, where the respondent may be angry that they have to leave the home and may resist doing so.

A Barring Order/IBO is made when the Court assesses that the perpetrator poses a significant risk to the welfare and safety of the applicant.

Having Barring Orders, Interim Barring Orders and Emergency Barring Orders always served on the respondents by Garda would make this process safer for the applicant, while at the same giving Garda an opportunity to familiarise themselves with the area and property, should they be called there in an emergency.

Out of Hours Barring Orders, if included in legislation as recommended above, would obviously be served by the attending Garda.

Recommendation 8: Women's Aid recommends to insert a provision in Section 15 so that Barring Orders, Interim Barring Orders and Emergency Barring Orders **are always served by Garda** to the respondent. Women's Aid recommends to include a provision by which the views of the applicant for a Safety or Protection Order are sought when deciding whether Garda should or not serve such orders

Section 22 Accompaniment

This Section includes a provision which allows a victim to be accompanied in court by a support person when applying for an order. We have the following concerns about this provision:

- Currently hearings for an application under the Domestic Violence Act are very private, with only the applicant, the respondent, their legal representatives, the Judge and the court clerk present. We are concerned that including more people may impact on the confidentiality of the proceedings.
- Moreover, we are aware of a small number of cases where domestic violence **perpetrators** apply for an order, having supported in the past years victims of domestic violence that were **respondents** in such cases¹⁴. We are concerned that if an abuser who is applying for an order brings to court a support person, this may be intimidating for the victim (who is the respondent in such cases), and

14 In 2015 we supported 14 women, victims of domestic violence, who were respondents



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may impact on the evidence she may want to present, especially in relation to disclosing sexual abuse within the relationship.

- We are also concerned about the safety of support workers, who may be targeted by the domestic violence perpetrator, if their identity becomes known when they accompany the woman to court.

Section 23 Views of a Child for Whom an Order is Sought

Women's Aid would like clarification on whether this Section would apply to all applications made by a parent for the safety of the parent which also include dependent children, or only when the application relates **solely** to the child.

In the great majority of the cases we see, children are included in the mother's application for orders. In our opinion it would not be necessary to seek the views of the child in **all** or even most of these applications. In fact, in many cases it may be detrimental to the child and put the child in a difficult position.

It is more important and appropriate in our view, that an expert report on the best interest and the safety of the child is carried out especially when a Barring Order is granted, as explained above in Recommendation 4, and that the Courts are adequately resourced to do so.

Section 24 Information to Victims of Domestic Violence on Support Services

Women's Aid warmly welcomes the provision by which the court will provide information and contacts of support services to applicants for orders under the Domestic Violence Act.

Section 25 Recommendation for Engagement by Respondent with Certain Services

Women's Aid also welcome the possibility of mandating perpetrators to attend specific programs to address their behaviour. However attendance to such programs should be **in addition to and not as a substitute for** an order being granted or for sanctions for a breach of an order.

Section 29 Offences

Women's Aid notes that under the Istanbul Convention (Article 46), certain offences, including psychological, physical and sexual violence and stalking should carry aggravating circumstances if (among other circumstances):

- they are carried out against a current or former spouse or partner
- they are carried out against or in the presence of a child



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- are committed repeatedly
- the offence resulted in severe physical or psychological harm for the victim
- the perpetrator had previously been convicted of offences of a similar nature.

These aggravating circumstances are very common in domestic violence cases and Women's Aid would recommend that this Domestic Violence Bill should amend the Non-Fatal Offences against the Person Act accordingly.

Moreover, when a Safety or Protection Order is breached, and the parties are not residing together, as part of the sentencing for the breach the perpetrator should be prohibited to go in the vicinity of where the victim resides. This is to increase the safety of the victim in cases where the perpetrator has shown by the breach to have scant regard for the law.

Recommendation 9:

- a) That a provision is included in the Domestic Violence Bill to amend the Non-Fatal Offences Against the Person Act so as to include as aggravating circumstances of relevant offences that such offences are carried out against a current or former spouse or partner, against or in the presence of a child, were committed repeatedly, the offence resulted in severe physical or psychological harm for the victim or the perpetrator had previously been convicted of offences of a similar nature.
- b) That sentencing for breaches of Safety or Protection Orders, where the parties are not residing together, should include prohibiting the respondent from being in the vicinity of the residence of the victim.

Sections 30, 31, 33, 34

Women's Aid warmly welcome these Sections, which will support a victim of domestic violence engaging with the legal process.

In relation to Section 30 Evidence through television link, **we would like to have it clarified under which circumstances this would be allowed** and would recommend that it should be at the request of the victim/applicant to avoid intimidation and manipulation of the victim by the perpetrator.



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7. Additional Issues and Recommendations

Guidelines

The Domestic Violence Act (1996) does not set out criteria regarding the standard or type of proof necessary to determine the basis for the granting of an order, nor what the Courts should consider in this regard.

This has led to considerable variation among and within Courts regarding the grounds on which Courts will grant orders under the Domestic Violence Act. The need for more consistency in application of the legislation has been documented as far as 1999 by the Law Reform Committee¹⁵, and continues to be an issue. The present Bill does not improve on this matter.

The Istanbul Convention defines domestic violence as “all acts of **physical, sexual, psychological or economic violence** that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”. (Article 3, emphasis added), but over the years Women's Aid has found that it is extremely difficult to obtain an order for non-physical forms of violence.

For many women, especially young women, domestic violence takes the form of stalking, during the relationship and often after separation.

Recommendations 10: That guidelines are developed in relation to criteria and considerations for granting orders under the Domestic Violence Act. Such guidelines should clearly name as forms of abuse covered by the Act: physical abuse, sexual abuse, financial abuse and emotional abuse of the applicant and/or of any child of the relationship.

Recommendation 11: Stalking should also be included in the guidelines as a ground for applying for a Safety Order.

Ends.

15 The Law Society Law Reform Committee (1999), Domestic Violence: A Case for Reform The Law Society Law Reform Committee (1999), Domestic Violence: A Case for Reform

