

WOMEN'S AID

Guide on the new Domestic Violence Act 2018

The Domestic Violence Act 2018 replaces the Domestic Violence Act 1996 and the Domestic Violence (Amendment) Act 2002 and brings in positive and significant changes, many of which have been lobbied for by Women's Aid for a long time (such as guidelines, extension eligibility for orders and intimate relationship being considered an aggravating circumstance in sentencing).

The most significant changes are outlined below.

Factors the Courts shall consider when deciding to grant or refuse an order (S5)

The Act introduces factors that the Court shall consider when deciding on an application for an order under the Domestic Violence Act.

The factors are as follows:

- **history of violence** by the respondent towards the applicant or any dependent person (i.e. child)
- any conviction of the respondent for an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 that involves loss to the applicant or child
- **any conviction** of the respondent for an offence that involves violence or the threat of violence to any person;
- increase in **severity or frequency** of violence towards the applicant or their children
- **exposure of children to violence** inflicted by the respondent on the applicant or other child
- **previous order** under this Act or the DV Act 1996 made against the respondent with regard to any person
- history of **animal cruelty**
- any **destruction or damage to the personal property** of the applicant, the respondent or a dependent person, **or to any place** where the applicant or a dependent person resides;
- 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;
- any recent **separation** between the applicant and the respondent;
- **substance abuse**, (including alcohol), by the respondent, the applicant or a dependent person;
- **access to weapons** by the respondent, the applicant or a dependent person;
- **the applicant's perception of the risk** to his or her own safety or welfare
- the age and state of health (including **pregnancy**) of the applicant or any dependent person;
- 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;
- whether the applicant is **economically dependent** on the respondent;
- if the respondent has engaged in perpetrator programs, addiction services, counselling or financial planning services. Note that this factor relates mostly to variation, appeals or renewal of orders. The court must seek the views of the applicant on whether engaging with such services has changed the behavior of the respondent
- any other relevant matter

This is not an exhaustive list, meaning the Court can take into consideration anything else they deem relevant.



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Note that the Court will also have to give reasons as to why they grant or refuse an order (S17).

Note that now if the Court is satisfied that the threshold for making an order has been reached, (that is, if the safety and welfare of the applicant requires it) it **shall** make an order (previously it **may** make it).

Eligibility for orders

There are important changes in eligibility, highlighted in red

Safety and Protection Orders

The most important change is that now **all partners in an intimate relationship** are eligible for Safety and Protection orders, with no need of cohabitation.

Note that the relationship only needs to be "intimate" (and not also "committed" as previously) and that relationship does not cease to be an "intimate relationship" for the purposes of this Act by reason only that it is no longer sexual in nature.

Therefore all the following are eligible for Safety and Protection orders:

- Spouses and civil partners
- Parents with a child in common
- **Partners in an intimate relationships (including cohabitants and dating partners)**
- Parents of an abusive child, when the abuser is a non-dependent child (i.e. an adult)
- People residing with the respondent in an non contractual relationship

All of the above include former partners as well (e.g. former spouse, cohabitant, etc.)

In practice anybody in an intimate relationship can now apply for a Safety or a Protection order.

Note that applications for ex parte Protection Orders will now require an affidavit/sworn statement

Barring Orders and IBOs

The major change is that now there is **no minimum period of cohabitation** required for cohabitant applicants.

Therefore the following applicants are eligible for Barring Orders and Interim Barring Orders

- Spouses and civil partners
- Cohabitants who live in an intimate relationship AND who satisfy the property test (which means that the applicant must have an equal or greater interest in the property than the respondent). NO minimum period of cohabitation required. NO need for the relationship to be "committed".
- Parents when the abuser is a non-dependent child (i.e. if the abusive child is an adult) and who satisfy the property test.

All of the above include former partners (e.g. former spouse, cohabitant etc.)

As before an IBO made ex-parte can only last up to 8 working days.



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Note that the affidavit / sworn statement for an ex-parte IBO needs to include information on whether the property from which the applicant intends to bar the respondent is also / include a place of business of the respondent.

Emergency Barring Order

This is a new order that gives time-limited protection where there is an immediate risk of significant harm to **cohabitants who do NOT satisfy the property test**. For example women who do not own or co-own the home or do not have their name on the lease.

The Emergency Barring Order can last a **maximum of 8 working days**. A further EBO can be applied for only a month after the expiration of the first one, unless there are exceptional circumstances

It can be made ex-parte as an IBO and prohibits the same behaviours as a BO/IBO.

Behaviours prohibited by orders

- The behaviours prohibited by the various orders remain as before.
- In addition for all orders the Court can also now include a **prohibition on following or communicating (including by electronic means) with the applicant or the dependent person /child**.
- When granting Barring, Safety or Emergency Barring Order, the Court can now also **recommend** that the respondent engages in a perpetrator program, an addiction service, counselling or a financial planning program. The Court may consider the engagement of the perpetrator with such services and any outcomes when renewing, dismissing or varying an order. In such cases, the Court will have to consider the views of the applicant.

Domestic violence orders will remain in force in respect of children after they reach the age of 18, until the orders expire. Previously they expired when the child became 18 years old.

Special Sitting of District Court (S24)

This is a new provision to address the issue of women needing orders **out of hours**, when the court is not sitting in an emergency situation.

Under this provision, a Garda Síochána not below the rank of sergeant may request the Courts Service to arrange a special sitting of the District Court for the purposes of an out of hours application for an **Interim Barring order, Protection order or Emergency Barring order**.

It is not limited only to cases where a Garda attends an incident, it also include cases where a victim of domestic violence walks into a Garda station and seeks assistance.

The District Court, would then contact a judge and, if the judge agrees, arrange a special sitting.

This is not exactly the Out of Hours Barring Order that Women's Aid has been asking for but it is a step in the right direction.



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New measures to improve experience of Court process

The Domestic Violence Act 2018 provides a number of measures that will improve women's experience when going to court. This links in with measures already included in the Victims of Crime Act.

- The Courts Service will have to provide information on support services for victims of domestic violence to applicants for orders.
- Section 16 provides protection against cross-examination conducted in person as follows:
 - Children giving evidence in an application for a DV order cannot be cross examined in person by either the respondent or the applicant
 - In case of adults giving evidence in applications for DV orders the Court **may** prohibit cross examining by respondent or applicant. For example the Court will be able to prohibit self-representing abusers from personally cross examining women applying for orders
 - Note that cross examining will still have to take place, but through a legal representative
- Evidence may be given by video link to avoid the risk of intimidation (at discretion of the court)
- An applicant (but not a respondent) has the right to be accompanied in court by a support person, including a support worker. The court may refuse to allow the applicant being accompanied by a particular support person, but it would have to give reasons as to why.

Serving of orders (S18)

The Court may order that any orders under the DV Act are served by the Garda to the respondent if the court believes the respondent may avoid service of the order or for any other good reason.

Children's views for orders sought on behalf of a child (S27)

Children will be able to make their views known to the court where a Safety or Barring order is sought on behalf of, or will partly relate to, a child. The court will have the option of appointing an expert to assist the court to ascertain the views of the child.

Breaches

- Penalties for breaches remain the same: a class B fine, or 12 months imprisonment or both
- **Breaches will also now be heard in camera** and there will be restriction on media reporting in order to maintain anonymity

New Offence of forced marriage (S 38)

The Act brings in a new criminal offence of forced marriage, including removing a person from Ireland for the purpose of them being forcibly married. The current legislation that enables people under 18 to marry will be repealed.

New Offence of coercive control (S 39)



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This is a new offence which criminalises psychological abuse/ controlling and coercive behaviour in an intimate relationship that causes fear of violence, or serious alarm or distress that has a substantial adverse impact on a person's day-to-day activities.

The penalties range from a class A fine or imprisonment for a term not exceeding 12 months, or both, to 5 years imprisonment if convicted in indictment.

Aggravating circumstances (S 40)

This is a new provision, strongly advocated for by WA whereby in sentencing certain offences, it will be an aggravating circumstance if the victim is or was a partner of the offender (spouse, civil partner or person in an intimate relationship). This includes many offences under the Non-Fatal Offences Against the Person Act (e.g. assault, threats, harassment, false imprisonment) and sexual assault offences.

Other points to note

- Note that orders already made and proceedings already started under the DV Act 1996 will continue and deemed to be made under the Domestic Violence Act 2018
- Some provisions in the Criminal Evidence Act 1992, which relates to special protective measures for giving of evidence by victims and witnesses in criminal proceedings for violent or sexual offences, will apply to the offences of breaching a domestic violence order, coercive control and forced marriage. This includes for example use of screens or intermediaries.

Disclaimer: This is summary brief of the main changes and new provisions in the Domestic Violence Act 2018 and does not intend to replace legal advice.

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