

# WOMEN'S AID

## Domestic Violence

### Bill 2017

## Submission

Updated December 2017



**WOMEN'S AID**

Making Women and Children Safe

**WOMEN'S AID**

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Registered charity number 6491

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# WOMEN'S AID

## 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.

### **24hr 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 2016 the Women's Aid National Freephone Helpline responded to 15,952 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 2016 Women's Aid provided 748 support visits and 240 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. We have also compiled the Femicide Watch for the Republic of Ireland since 1996.

## 2. Statistical context

A recent European Union survey<sup>1</sup> 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 violence<sup>2</sup>.

### Women's Aid statistics<sup>3</sup>

In 2016:

- there were 19,115 contacts with Women's Aid, in which 20,769 disclosures of domestic violence against women were made (including emotional, physical, financial and sexual abuse).
- our Court Accompaniment service went to court 240 times with 133 women, and provided support to women in 134 applications for orders under the Domestic Violence Act.
- the Dolphin House Support and Referral Service supported 387 women in 411 face to face drop in sessions throughout the year.
- there were 3,823 disclosures of child abuse to Women's Aid direct services. This figure includes 3,558 disclosures of emotional abuse and 183 disclosures of physical and sexual abuse against children. It also includes 82 disclosures of where children were being abused during access visits. In addition, we noted 18 disclosures of child abduction in the context of domestic violence.

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 2016 [www.womensaid.ie/impact2016](http://www.womensaid.ie/impact2016)



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- there were 411 disclosures from mothers that their ex partners were using access visits to abuse them, often in front or in ear shot of the children.
- In 2016 the majority of women supported by our One to One Support Service had children, with at least 564 children exposed to domestic violence<sup>4</sup>.
- In 2015 in Ireland 3,383 children received support from a domestic violence service, of these 2,093 stayed in a refuge<sup>5</sup>.
- 43% of the information, referral and advocacy work by the Helpline and One to One service in 2016 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.

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4 Women's Aid Impact Report 2016

5 Safe Ireland, 2017, Submission to the National Women's Strategy 2017 - 2020



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## 3. Summary of Recommendations

### **Recommendation 1:**

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 2:**

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/or indirect abuse.

### **Recommendation 3:**

That the new Out of Hours Barring Order provision is retained and strengthened by including that "applications for Out of hours Barring orders can be made by telephone or secure electronic means." The return date would be the next sitting day in the nearest available Court.

### **Recommendation 4:**

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, to extend the duration of Emergency Barring Orders to 6 months if the applicant has children in their care and their welfare and Safety so require, after a Court hearing.

### **Recommendation 5:**

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

### **Recommendation 6:**

To insert a provision in Section 19 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 7:**

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.



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

Women's Aid has welcomed the consolidation and updating of the Domestic Violence Bill 1996 and the Domestic Violence (Amendment) Bill 2002 into a new comprehensive Bill. We have noted the constructive, collaborative and engaged debate on this Bill and commend the huge progress and improvements achieved in the Seanad.

Among the many welcome improvements we would like to highlight the **extension of eligibility** for Safety and Protection orders to all persons in an intimate relationship without need of cohabitation, the new **offence of coercive control**, the introduction of **factors** to which court shall have regard in determining applications for orders and the inclusion of the relationship between defendant and victim as an **aggravating circumstance** in relevant offences.

### **Extension of Eligibility for Safety and Protection orders to all persons in an intimate relationship without need of cohabitation**

Women's Aid is especially delighted with the Minister's amendment to extend eligibility for Safety orders to **all those in intimate and committed relationships, regardless of cohabitation.**

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, therefore we consider this amendment a huge and positive step.

### **A Caveat on Wording: Do relationships need to be "committed" for parties to be protected from violence?**

When the Civil Law (Miscellaneous Provisions) Act 2011 extended eligibility for Safety Orders to those **living together** in "intimate and **committed** relationships" Women's Aid expressed concerns about the word "committed" as we feared abusers may argue the relationship was not a "committed" one to avoid an order being made against them. Fortunately in that case our fears proved to be unfounded, but it could be that the courts took the fact that the applicant and respondent were living together as sufficient proof of commitment.

In this Bill eligibility for Safety and Protection orders is extended to applicants who **were** in an intimate and committed relationship with the respondent prior to applying for the orders. While this is an excellent



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extension, we query how the courts will determine that a relationship was committed or otherwise in the absence of cohabitation and if this wording may create difficulties.

For example an abuser may challenge that the relationship was committed because he does not feel committed to it or by asserting, rightly or wrongly, that the woman had an affair. It is presumably not intended that a women might become disentitled to protection from the emotionally and physically violent actions of her partner due to her own non-abusive actions outside of the relationship. The requirement that the relationship be “committed” maximises the scope for manipulation by abusers who may, in an effort to protect themselves from having domestic violence orders issued against them, go to all lengths to prevent their victim’s protection concerns ever being addressed. Ultimately, applications for domestic violence orders should focus on the nature of the actions which may give rise to protection needs rather than on the level of commitment between the parties.

Moreover this may create extra work load for the courts as judges will have to determine if the relationship is committed or not before continuing with the application and this may dissuade women to apply for protection as they may not wish to go through a line of questioning seeking to prove the commitment or otherwise of the relationship.

This issue was raised during the Seanad debate and the Minister helpfully suggested that the Department would look into the possible implications of the word “committed” and whether another wording could be formulated. Women's Aid looks forward to learning the outcomes of this analysis.

Women's Aid welcomes the new offence of coercive control that has been introduced in the Bill. It is very important that the harm and impact psychological violence and coercive control are recognised in legislation. The offence will also create stronger awareness of this pervasive and insidious form of abuse.

Women's Aid notes that a lot of work has gone into drafting the offence, and as a result the wording is much stronger than in the original amendment.

Our independent legal advice has pointed out some areas where further consideration may be useful order to further strengthen the offence. We offer these observations in the spirit of collaboration that has been so evident in the Bill process so far.



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- The legislation remains confusing on the *mens rea* issue. This needs to be dealt with to head off any potential challenges to the legislation. The proposed section speaks in terms of a person "knowingly and persistently" engaging in certain conduct with specific effects. The section could be made clearer: is it necessary that the person acting in that way appreciates the consequences of their actions? Is recklessness enough?
- Definitions for "persistently", "controlling", "serious alarm", and "coercive" may be useful in order to avoid ambiguities in application.
- The legislation needs to be clearer that the person subject to the behaviour was a "relevant person" at the time that the behaviour was actually ongoing.
- It may be difficult to establish, beyond a reasonable doubt, that a person "persistently" engaged in behaviour, and that this caused "serious alarm" or a substantial adverse impact on day to day activities. Consideration might be given if possible to revisiting the proofs that are actually necessary to secure a conviction.
- It should also be noted that the proposed section narrows the ambit of the offence compared to the initial wording (family members are no longer included) and it does not contain provisions for in camera proceedings despite this being in place under the Domestic Violence Bill for prosecutions of domestic violence order breaches. A greater degree of privacy for prosecutions of this nature would be welcome, given the sensitive issues that will need to be canvassed as part of the case.

## **5. Main Gap: Lack of Provisions to improve safety and welfare of children in situations of domestic violence**

The major gap in this otherwise very positive Bill is the missed opportunity to improve the safety and welfare of children escaping and /or witnessing domestic violence.

There are two areas where this Bill could positively impact on children experiencing domestic violence:

1. ensuring their safety needs are assessed and addressed when granting a Barring Order
2. minimising the possibility they may become homeless when escaping domestic violence with the non-abusive parent



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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 context<sup>6</sup>.**

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 children<sup>7</sup>**. 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. Women's Aid is therefore pleased that exposing children to violence inflicted by the respondent on the applicant has been included in the list of factors that the court shall consider when determining an application for an order under this Bill (Section 5 (e)).

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 abuse<sup>8</sup>.**

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.**

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6 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.

7 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.

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



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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 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 been recently reiterated in the One Family Report on Shared parenting<sup>9</sup>.

A system of **Child Contact Centres** to facilitate safe post-separation contact is also needed.

**Recommendation 1:** 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 2:** 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/ or indirect abuse.

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9 One Family, Ireland's first national Shared Parenting Survey Results and Recommendations Report.



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To protect the safety and welfare of children it is also necessary that they are not made **homeless when escaping domestic violence**, and therefore the duration of Emergency Barring Orders should be increased to at least 6 months when there are children involved, so as to give women and their children a fair chance to leave the abuser, find alternative accommodation and move in a planned and organised fashion, minimising disruption and the use of temporary /unstable accommodation.

See Recommendation 4 on eligibility.

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

### Out of hours Barring Orders<sup>10</sup> (Section 10)

The Seanad amended the Bill to introduce Out of Hours Barring order as follows:

10. On request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorize communicating with an on-call judge to apply for an out of hours barring order (S 10).

Women's Aid has long argued for the need of measures to provide for immediate protection in an emergency situation, when the courts are not sitting, and therefore welcomes this provision.

We envisaged this measure to work **without** the need for the applicant to be in the presence of the on - call judge and with the application been initiated by a Garda attending a domestic violence incident and authorized by a Garda of an appropriate rank.

This would make it possible to obtain protection out of hours **in practice**, while limiting it to emergency situations and having the Garda verifying the identity of the applicant and the gravity of the situation.

In the Seanad Committee debate Minister Stanton has helpfully explained that it is in fact possible to arrange for an emergency sitting of the court in exceptional circumstances:

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<sup>10</sup> 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 as they deal with an issue of eligibility and not of out of hours service.



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1. If the court is not sitting, but the court office is open, this involves a clerk of the Court contacting an on-call judge, who would then decide if the gravity of the situation requires an emergency sitting.
2. If the court office is closed, an on-call clerk needs to be contacted first, usually by Garda, to contact the on-call judge. This mechanism is used almost exclusively for criminal matters and provides in practice no relief for victims of domestic violence needing emergency protection at night or during weekends.

Women's Aid believes that there needs to be real access to barring orders in an emergency situation, as they may save lives.

**For the orders to be working in practice it should be possible for the on-call judge to make them on the basis of information provided by the Garda by phone or by secure electronic means.**

It is unrealistic to think that a woman who has just been assaulted and has been assisted by the Garda, possibly in the middle of the night, will be able to attend an emergency sitting of the court, even assuming such sitting is organised quickly. Who would look after any children for example?

Having Out of Hours Barring Orders initiated by the Garda attending at a domestic violence call out would ensure that the identity of the parties is ascertained and the gravity of the situation is assessed, thereby preventing bogus applications.

These orders should be of the shortest possible duration so as to return the matter to normal courts as soon as possible. That is why the return date should be the next sitting day in the nearest available Court.

## Need for Out of Hours Barring Order

Domestic violence happens 24/7, every day of the year, therefore mechanisms and services for emergency protection need to be available accordingly. For example the Women's Aid night service (10 pm to 10 am) responded to 4,910 calls last year<sup>11</sup>, which shows the need for out of hours response.



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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 are usually 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.

Following the Seanad debate, in an effort to assess the need for Out of Hours Barring Orders, we looked at the number of women calling our Helpline looking for refuge accommodation on Saturdays and Sundays. From January to October this year (10 months) **37 women** rang Women's Aid Helpline **on week-ends** looking for emergency accommodation, which equates to **28%** of all women looking for refuge through our Helpline.

**The number looking for accommodation when Courts are closed would be higher as it would include Public holidays and week day nights,** but we are unable to extract that information. **Many women also contact refuges directly or through local Helplines, so that this is surely an underestimate of need.**

While not all of the women looking for emergency accommodation out of hours would be interested in or eligible for a Barring Order, it is safe to assume that many would prefer to stay home safely if it was possible to have the perpetrator removed.

In relation to Emergency Barring Orders<sup>12</sup> 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).

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12 Emergency Barring Orders in the Istanbul Convention are equivalent to Out of Hours Barring Orders in this Bill



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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.

**Recommendation 3: That the new Out of Hours Barring Order provision is retained and strengthened by including that “applications for Out of Hours Barring orders can be made by telephone or secure electronic means.” The return date would be the next sitting day in the nearest available Court.**

## **Barring Order (Section 7) and Emergency Barring Order (Section 9)**

Women's Aid is delighted that the duration of cohabitation for Barring Orders has been removed in this Bill. We have however the following remaining concerns in relation to Barring Orders:

### **Eligibility: Property test for cohabitant applicants Section 7. (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 abuser<sup>13</sup>. 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**

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13 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.

## **Emergency Barring Order (Section 9)**

To provide for applicants who are not eligible for Barring Orders, the Bill introduces a new order, called **Emergency Barring Order (EBO)**<sup>14</sup>, which provides short term emergency protection to 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 limited relief for cohabitant partners who were previously unable to access any Barring Order and is therefore to be welcome.

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 4a below.**

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, should at least be eligible to apply for an Emergency Barring Order of 6 months, so that they have a realistic opportunity to organise alternative accommodation.

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14 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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Women's Aid notes and acknowledges the Minister's concerns in relation to a possible Constitutional challenge to Emergency Barring Orders if their duration is increased, especially as they can be applied for ex-parte.

Women's Aid agrees that ex-parte EBOs should have the same duration as ex-parte Interim Barring Orders (8 days). However the difference is that an ex parte IBO can after a Court hearing "become" a Barring Order, with a duration of up to 3 years, whereas the maximum duration of an EBO is always 8 days.

As mentioned above 8 days is not enough time to organise new accommodation and this very short duration of an EBO puts children at real risk of homelessness.

The respondent's rights deriving from the Constitutional protection of property should be balanced with children's rights to safety and security, which should include a right to a safe home.

Therefore Women's Aid recommends that **when there are children and their safety and welfare so requires**, Emergency Barring Orders should last up to 6 months. However, this increased duration **would require a hearing** within the 8 days of an ex-parte EBO, as happens with IBOs.

#### **Recommendation 4:**

- 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, to extend the duration of Emergency Barring Orders to 6 months if the applicant has children in their care and their welfare and Safety so require, after a Court hearing

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



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## Effect of Orders (Section 19)

The Seanad passed an amendment to the Bill by which, where the court finds that there are reasonable grounds for believing that a respondent who is not present in court when the order is made will try to evade service of the order, the court may direct that the order should be served personally by a member of An Garda Síochána.

While this is much appreciated, evasion of service is not the only or main reason why orders, and in particular Barring Orders, should be served on a respondent by the Garda. Safety of the applicant is also a very important reason.

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.**

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 would obviously be served by the attending Garda.



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**Recommendation 6:** To insert a provision in Section 19 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

## Prohibition of indirect forms of harassment

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 S6. (2) (c) of 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 (7) (3) (c) Barring Orders, Section 8 (2) (c) Interim Barring Orders, Section 9 (4) (c) Emergency Barring Orders and Section 11 (1) (c) Protection orders.

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



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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 4:** 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.

