



**Women's Aid submission to the  
Joint Committee on Justice, Equality, Defence  
and Women's Rights**

**Amendments to the Domestic Violence Act in  
the Civil Partnership Bill**

**February 2010**



## 1. Introduction

Women's Aid is a voluntary organisation offering information, support and access to services to women experiencing physical, emotional, financial and sexual abuse in intimate relationships. Women's Aid welcomes the opportunity to provide comments to the Joint Committee on Justice, Equality, Defence and Women's Rights on the amendments to the Domestic Violence Act included in the Civil Partnership Bill.

While the main aim of the Civil Partnership Bill is to provide for civil partnership for same sex couples and to establish a redress scheme for both opposite sex and same sex cohabiting couples, the Bill also makes amendments to the Domestic Violence Act 1996. While some amendments are welcome, others can have serious negative consequences for women experiencing domestic violence.

## 2. Recommendations:

### That the Civil Partnership Bill 2009 is amended to:

1. as a minimum, not worsen eligibility for protection for cohabitants and former cohabitants under the Domestic Violence Act 1996.
2. make all parties with a child in common eligible for protection under the Domestic Violence Act 1996, regardless of cohabitation.
3. further extend eligibility for Domestic Violence Safety Orders<sup>1</sup> to all parties who are or have been in intimate relationships, regardless of cohabitation.
4. further extend eligibility for Domestic Violence Barring Orders<sup>2</sup> by removing the cohabitation requirement altogether, or at least for applicant cohabitants who have sole interest in the property.

## 3. Gaps in the current Domestic Violence Act

Currently under the *Domestic Violence Act 1996* unmarried cohabitants need to meet strict eligibility criteria as follows:

- to be eligible to apply for a **Safety Order**, a cohabitant must have lived with the other person for 6 out of the previous 12 months.
- to be eligible to apply for a **Barring Order**, a cohabitant must have lived with the other person for 6 out of the previous 9 months AND have an equal or greater interest in the family home.

This means that many cohabitants and former cohabitants who cannot meet these criteria remain unprotected. Women's Aid regularly works with women who cannot avail of protection under the Act because they cannot satisfy the eligibility criteria. Some current cohabitants may not have been living together long enough, or the period of cohabitation was interrupted, for example because the violent partner has spent time in prison or been out of the country.

Women may hope that separating from a violent partner will end the violence and when they realise that this is not the case and that the abuse continues, it is too late to apply for protection against a former cohabitant partner.

In many cases that we see, former cohabitants are not eligible because the very short window of



opportunity to apply after separation has passed before they are willing or able to apply. This includes cases where the ex-partner was due to face criminal charges of assault for a very serious attack he had made against the woman and their child, cases where the woman cannot satisfy the cohabitation requirement because her partner has been in prison and cases where the woman is still harassed, abused and put in fear **years** after the ending of the relationship.

Research as well our own experience on the ground has proven that often separation does not end the violence and sometimes it actually escalates it. In 2008, 10% of callers to the Women's Aid Helpline disclosed that they were being abused by former partners to whom they were not married. It is therefore essential that cohabitants and former cohabitants can access protection without time limitations.

The Act also does not offer any protection to parties with a child in common but not residing together. This is very worrying as where there is a child in common there is often continued contact between the parents and with this contact the opportunity to continue the abuse.

Parties in a dating relationship are also not protected.

Since the Act was passed, a number of groups including Women's Aid, the Law Society of Ireland, the Law Reform Commission, the Government Task Force on Violence against Women and Amnesty Ireland, have called for the Act to be amended in order to address these issues.

#### **4. Amendments in the Civil Partnership Bill**

The Civil Partnership Bill includes amendments to the Domestic Violence Act. The Bill proposes to amend the Domestic Violence Act 1996 so as to allow civil partners and former civil partners qualify for protection under the Act in the same manner as married persons. This is a welcome development in so far as it will extend protection to same sex couples who register their civil partnership, even after the dissolution of the partnership.

The Bill also removes the cohabitation length requirement for Safety Orders for all couples who are **current** cohabitants. This is a welcome development which extends protection to women who may have only recently begun cohabiting with their partner.

However the current wording of the Bill risks to inadvertently creating further barriers for cohabitants seeking to apply for protection under the Domestic Violence Act **and may take away protection from some cohabitants and former cohabitants who are currently eligible.**

This is because:

- a)** due to the unsatisfactory use of the word "immediately" cohabiting parties applying for Safety Orders will have to have lived together **immediately** prior to applying for the Safety



Order.

Currently applicants must have lived with the respondent for 6 out of the previous 12 months. This means that currently, cohabitants separating from violent partners have a period of time - albeit too short - after separation when they are still eligible for Domestic Violence Orders. This will not be the case if the Bill is passed without amendments, and former cohabitants will find their access to protection further restricted.

**b)** the new definition of cohabitant in the Civil Partnership Bill will require a person applying for a Domestic Violence order as a cohabitant to prove she/he is in a **committed** relationship and satisfies a number of other factors listed in S 170 (2) to be eligible.

While in many cases a woman will not encounter difficulty in satisfying to the court that she is a cohabitant under this test, the risk exists that in other cases the respondent abuser may challenge her assertion that she is a cohabitant by undermining their relationship to date. He may well use the factors enumerated in sub-section (2) to create a false impression that there was no commitment in the relationship at all, arguing, for example, that they had perhaps never considered having children, had decided to remain financially independent of each other or had only lived together intermittently or for a short period of time.

This definition would therefore create a new barrier for a woman seeking Protective Orders under the Domestic Violence Act and may be used by the abuser to prevent her concerns even been addressed or may discourage the woman from even applying.

Moreover, only adult cohabitants are covered by the definition, potentially leaving under age cohabitant unprotected.

Women's Aid is therefore of the opinion that the definition of cohabitant under S170 of the Civil Partnership Bill is not appropriate to determine eligibility for Domestic Violence Orders and therefore this definition should not be applicable to the Domestic Violence Act.

Women's Aid has raised the issues outlined at a) and b) with the Department of Justice, Equality and Law Reform through the Legal Issues Subcommittee of the National Steering Committee on Violence against Women and is hopeful that they will be addressed.

## **5. Further extension of eligibility**

### **Child in common:**

Women's Aid has lobbied for a long time for making parents with a child in common eligible for Safety Orders regardless of cohabitation. Having a child in common means that ongoing contact between the



parties is very likely and with it the opportunity for the abuse to continue.

Women's Aid notes that during the 2<sup>nd</sup> stage debate on the Civil Partnerships Bill, Minister Ahern stated his intention to bring an amendment to make parents with a child in common eligible for Safety Orders and warmly support this intention.

### **Safety Orders**

As mentioned above, currently a cohabitant wishing to apply for a Safety Order must have lived with the respondent for 6 out of the previous 12 months. As a Safety Order does not order the abusive party to leave the home it is not clear why there is a cohabitation requirement for this order.

Women's Aid believes that all parties who are or have been in an intimate relationship should be eligible to apply for Safety Orders regardless of cohabitation, in line with internationally recognised best practice.

The conclusion of an expert group meeting organised by the United Nations Division for the Advancement of Women was that, at a minimum, domestic violence legislation should apply to *"individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household"*.<sup>3</sup>

Other jurisdictions, such as England and Wales, Northern Ireland and New South Wales, have eligibility criteria more extensive than the current Irish ones and more in line with the UN guidelines above.

While we appreciate the proposed extension of eligibility for Safety Orders to parents of a child in common, we are concerned that former cohabitants without children in common as well as all parties in dating relationships would remain unprotected.

As mentioned above, 10% of callers to the Women's Aid Helpline in 2010 were abused by former partners to whom they were not married. Separation does not necessarily end the violence, in many cases it may well escalate it. In fact separation from an abusive partner is a risk factor in practically all risk assessment tools for domestic violence.

Karen and Orla's<sup>4</sup> case studies are a case in point:

**Karen** had been dating her partner Jim for a number of years before she finally left him due to his controlling and violent behaviour. They never had children and had never lived together. Looking back after she left Jim, Karen says she became a shell of her former self as he was always putting her down and trying to restrict her contact with friends and family. Before she knew it she had become isolated and had



lost her self confidence. When Jim realised she was serious about breaking up, his tactics moved from persuasion and promises to change. One night shortly after they separated, Jim broke into Karen's flat and waited for her in the kitchen. He started to open and close the cutlery drawer while pleading with Karen to take him back. Seeing he wasn't getting anywhere, he took out one of the steak knives and threatened to kill Karen. Karen was terrified and started screaming. Jim just laughed and walked out saying she wouldn't be so lucky next time.

Karen was very shocked to hear that she was not eligible under the domestic violence legislation and cannot understand why she is not covered. She has reported Jim to the Gardaí and pressed assault charges but that was 18 months ago and the criminal proceedings have been adjourned twice. Karen has lost confidence in the justice system and doesn't feel safe anywhere. Jim knows where she lives, where she works, who her family and friends are and says: *"now it's just me, me on my own and that's just the way Jim wants it. I can't even sleep at night anymore"*.

**Orla** met her boyfriend Colm when she moved from home to Cork to attend university. They dated for several months but Colm was very possessive and controlling. He would call or text Orla several times a day and would often be waiting for her outside classes to go and have lunch or coffee. He didn't really want to go out with groups and always said that he preferred it when it was "just the two of us". He would get really upset if Orla wanted to go out with her friends and was very jealous. One night he got very upset about Orla talking to an old male school friend and so he grabbed her by the hair and started dragging her along the street calling her names. Orla broke up with Colm the next day and thought that was the end of it. However Colm started to follow her around, waiting for her after classes and asking her to get back together. He would also phone her and text her continuously. Sometimes Colm would be really upset saying he loved her and he was sorry but more and more the messages he left were angry, accusing and threatening. Orla was becoming alarmed by the fact that Colm always seemed to know where she was going, who she was seeing, what she was doing.

He knew where she lived and on one occasion Orla came home to find him sitting having a cup of tea with her flat mate because he had told her they were back together and she let him in. Colm also started spreading malicious rumours about Orla in college: that she was a prostitute, that she had a sexually transmitted disease, that she was a drug dealer. At the same time though he kept saying he wanted her back and that he would kill himself. Orla became really frightened of what he was capable of.

Orla started staying away from college as she was too nervous of him being there and too tired of having to defend herself against his lies. Her studies started suffering and so did her health from not sleeping and being always on the alert. Eventually Orla felt like the situation was getting totally out of control, so she went to the Gardaí to see about getting a protective order against him as she was in fear of Colm at this point. She couldn't believe it when they said that she had no right to this protection because they had never lived together. The Gardaí said that there was nothing that they could do "until he does something". Orla says "What does he have to do – hurt me again, kill me? Why is it that he can walk around freely and I feel as though I am in a prison because of his behaviour? It feels like I am under siege and that just doesn't seem right."

Women's Aid believes that women like Karen and Orla should be eligible to apply for Safety Orders,



regardless of the fact they have never lived with their partners.

Safety Orders do not exclude the violent partner from their home; they simply forbid the respondent from engaging in abusive activities and there seem to be no reason why some former cohabitants and couples in dating relationships should not be covered.

### **Barring Orders**

Currently a cohabitant wishing to apply for a Barring Order needs to fulfil the following two eligibility criteria: the applicant must have lived with the respondent for 6 of the previous 9 months **AND** have an equal or greater interest in the property.

The Civil Partnership Bill proposes to amend the category of persons eligible to apply for a Barring Order so as to include parties to a current or dissolved civil partnership. There is no change to the requirement for cohabitants to have lived together for six out of the previous nine months in order to be eligible to apply for a Barring Order. Under the Department of Justice's General Scheme of 2008 these time restrictions were removed and it was proposed that a person would be eligible to apply for a Barring order if they were cohabiting, regardless of any particular period of cohabitation.

This is a sensible approach as there is already a requirement in the legislation that the applicant must have a greater or equal interest in the property in order to apply for a Barring Order. A duration of cohabitation requirement on top of this is unnecessary.

In cases where the applicant is the sole owner of the property, the Law Reform Commission and the Law Society Reform Committee have both recommended that the cohabitation requirement be entirely removed as there can be no justification for insisting that a person allow an abuser to live in their house for any period of time before being eligible to seek a Barring order from the courts.

## **6. Conclusion**

Domestic Violence Orders are a valuable tool to protect women experiencing domestic violence. The value of the Domestic violence orders is that they are forward looking, in that they seek to protect the victim from **further** violence.

They are also a civil matter and therefore for many women more accessible and less intimidating than criminal court proceedings.

Women's Aid welcomes the proposed extension of Domestic Violence Orders to civil partners, all current cohabitants and parents with a child in common, but recommends that government does not pass this welcomed opportunity to extend protection under the Domestic Violence Act to all parties that may need it. We have drafted a number of suggested amendments to address the issues and gaps detailed in this submission.



Women's Aid has welcomed the opportunity to make this submission and detail our concerns and we look forward to these being addressed.

## References

1. A Safety Order is an order of the court which prohibits the violent person from further violence or threats of violence. It does not oblige the violent party to leave the family home.
2. A Barring Order is an order of the court which prohibits the violent person from further violence or threats of violence, and removes the violent party from the home.
3. Department of Economic and Social Affairs Division for the Advancement of Women, Handbook for Legislation on Violence against Women, Advanced version, United Nations, New York, 2009
4. Karen and Orla's story are based on real accounts as told to Women's Aid. Specific details and circumstances have been changed in the interests of protecting identity and to preserve the confidential nature of Women's Aid Services.