

July 2014



# domestic violence



The law provides for the protection, safety and welfare of married couples, same-sex partners, cohabiting couples, parents, children and any other people who live in a domestic relationship. Safety and welfare includes the physical, emotional and mental welfare of the person in question.

Domestic  
Violence Act  
1996 (as  
amended)

**Criminal law** is also relevant in domestic violence situations, particularly where a couple is unmarried or else not cohabiting. Under the Non-Fatal Offences against the Person Act, a person can be charged with the offence of assault, assault causing harm or serious harm, or with the offence of making threats to kill or cause serious harm. Other offences that a person can be charged with under this Act are coercion, harassment or endangerment.

Non-Fatal  
Offences  
against the  
Person Act  
1997

### **What protections are available under the law?**

Under the Domestic Violence Act, the following orders may be obtained:

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

It is important to note that a court can only grant an order where you have applied specifically for that order. In other words, it cannot grant any other type of order even if you feel it might have been more appropriate or necessary, if you haven't specifically applied for it. For example, if you apply for a Barring Order, the Court cannot grant a Safety Order unless you have also applied for one. Thus you may be advised to apply for both if appropriate – seek advice.

### **What happens if a person does not comply with an Order?**

If any of these orders is breached by the offender, the Gardaí have immediate powers of arrest. It is a criminal offence to breach a domestic violence order and

Section 17  
of the  
Domestic  
Violence Act  
1996

anyone found guilty of breaching a domestic violence order is liable to a fine of up to €1,904.61 or a term of imprisonment of up to 12 months, or both. Note that It is also an offence to in any way hinder or prevent a person who is protected under such Orders from entering or remaining in a place specified in the Order (such as the family home). Gardaí can arrest a respondent without a warrant or enter and search any place they suspect that person to be.

The offence of breaching the order will be heard in open court. All of these orders can be appealed.

### **Do I need a solicitor to apply for an Order?**

If you wish to take legal action, you should seek advice from a solicitor, although in the case of an interim barring order and/or a protection order, it is important to note that a solicitor is not necessary at the first ex parte hearing stage. Applicants can represent themselves throughout the process, although this is not advisable, particularly where the respondent may have legal representation and is contesting the application. It is advisable to have legal representation. Legal Aid can be available (see the end of this leaflet).

## Safety Order

This order prevents the respondent (the wrongdoer) from committing further violence, or threatening violence, against the applicant (the person looking for protection) and his/her dependants. The respondent is not required to leave the home.

A dependant is any child of either, or both, parties, including any child residing with the applicant and/or the respondent where either party is responsible for looking after this child. A dependent child is any child who is under the age of 18 or any adult child, who by reason of an intellectual or physical disability, cannot live independently.

If the applicant and the respondent are not living together, the court can order the respondent not to watch (in other words, regularly or continuously look at and observe the applicant's comings and goings) or be near the applicant's home.

You will have to apply for the Safety Order in the District Court.

### **Who can apply for a Safety Order?**

- Applicants for a Safety Order must be over 18 and have a relationship with the respondent which is not mainly based on a contract, such as a lodger or tenant.
- A married spouse or civil partner, whether current or former and irrespective of how long they have lived together, can apply for a Safety Order on his or her own behalf or on behalf of a child.
- An unmarried partner, (that is a person who is not married to or in a civil partnership with the respondent but is cohabiting) who is, living in an intimate and committed relationship with the respondent can apply for a Safety Order as long as the couple have been living together. This applies to same-sex and opposite-sex cohabiting couples.
- Parents with a child in common are able to apply for Safety Orders against each other regardless of whether they are now or have ever been cohabiting.
- Parents can apply for Safety Orders against their own child if the child is over 18 and the child does not suffer from either a physical or mental disability or both.
- Children (aged under 18) can apply for a Safety Order but will need an adult or the

Health Service Executive to apply on their behalf.

- The HSE can also seek an order for an adult or his/her dependent children.
- Relatives who live together (including adoptees) can apply for a Safety Order.

If the relationship is not based on marriage or a civil partnership the court considers the following factors:

- The length of time the people involved have lived together.
- The type of duties carried out by either person for the other or for their family.
- If any payment or other consideration was made by one person to the other for living expenses.
- Other matters the court considers appropriate in a particular situation.

### **What factors will the Court consider when deciding whether to grant an application for a Safety Order?**

Safety orders will be granted where the court considers there are reasonable grounds for believing that a person's physical or psychological safety or welfare (or that of a dependant) is at risk

### **What can a Safety Order do?**

The court can order the respondent:

- a) Not to use or threaten to use violence on or put in fear or molest the applicant or any dependant.
- b) To stay away from the residence of the applicant, if the parties do not live at the same address.

**It is important to note that the Safety Order does not require the respondent to leave the home if the parties reside at the same address.**

The court will hear applications from either side and, depending on the evidence before it, will make the order, including additional conditions if it considers this appropriate.



**What happens at the hearing?**

The hearing of any application for a Safety Order is held in private and only the applicant, the respondent, the judge and the court registrar attend. Where the applicant has sworn an affidavit (which is a statement in writing setting out the applicant's reasons for seeking a Safety Order, sworn before by a Commissioner for Oaths or solicitor), the respondent can seek and will be provided with a copy of this affidavit. While the Judge can, if he or she considers it appropriate, hear evidence from a third party such as a Garda, a child, or a relative/ friend of the applicant or the respondent, generally a judge will not seek to hear evidence from a third party and will make his or her decision on the basis of the evidence of both parties.

**What happens if the respondent doesn't turn up in court?**

If the respondent fails to attend court, the judge can proceed to hear evidence from the applicant and, if satisfied, can grant a Safety Order in his or her absence. The respondent must be notified as soon as possible of the order made, even orally, by the applicant or Gardai, and will then be served with a copy of the order as a matter of urgency. A Safety Order only takes effect after the respondent has been notified. The respondent can appeal the order made, but it will remain in place until such time as the appeal is heard.

### **How long does the Safety Order last?**

An order made by a District Court **can last up to five years**. Before this order expires, an application can be made to have it extended for a further five years, or for a shorter period, as the court sees fit. Safety Orders obtained to protect a dependant cease when he or she comes of age, although it is open to that adult child to seek a safety order in his or her own right.

The Circuit Court can grant a Safety Order of unlimited duration.

### **How do I seek to vary the terms of a Safety Order?**

A Safety Order can be varied by application to the Court which made the original order. The person who applied for the original order or the respondent to the Order can make this application on notice to the other party.

## **Barring Order**

This type of order requires the respondent (the wrongdoer) to leave the family home until the order expires or is set aside. You must apply through your local District Court.

### **What does a Barring Order do?**

Once a Barring Order is granted, the offender must, according to the order the Court will make, do one or some or all of the following:

- Leave the home and stay away from the home for the order's duration.
- Not use, or threaten to use, violence against the applicant or any dependent child.
- Not molest the applicant or any dependent child or put them in fear.
- Not be in the area where the applicant and any dependent child lives.

### **Who may apply for a Barring Order?**

- Applicants for a Barring Order must be over 18 and have a relationship with the respondent which is not mainly based on a contract, such as a lodger or tenant.
- The spouse or civil partner of a violent person can seek a Barring Order on his or her own behalf or on behalf of a dependent child, regardless of how long they have lived together or who owns all or most of the house.
- A co-habiting partner, who is not the spouse or civil partner of the respondent but who has lived with the respondent in an intimate and committed relationship for at least six of the previous nine months, can apply for a Barring Order on his or her own behalf or on behalf of a child. However the applicant must have greater ownership rights in the family home.
- Parents with a child in common are able to apply for a Barring Order against each other regardless of whether they are now or have ever been cohabiting, on the basis that they fear for the safety or welfare of a dependent child.
- Parents can apply for Barring Orders against their own adult child aged over 18, unless that child has greater ownership rights in the family home.

- Children (aged under 18) can apply for a Barring Order but will need an adult or the Health Service Executive to apply on their behalf.
- The HSE can also seek an order on behalf of an adult or his/her dependent children.

### **What happens at the hearing?**

The hearing of any application for a Barring Order is held in private and only the applicant, the respondent, the judge and the court registrar attend. Where the applicant has sworn an affidavit (which is a statement in writing setting out the applicant's reasons for seeking a Barring Order, sworn before by a Commissioner for Oaths or solicitor), the respondent can seek and will be provided with a copy of this affidavit. While the Judge can, if he or she considers it appropriate, hear evidence from a third party such as a Garda, a child, or a relative/ friend of the applicant or the respondent, generally a judge will not seek to hear evidence from a third party and will make his or her decision on the basis of the evidence of both parties.

The court shall not make a Barring Order in circumstances where the applicant has no legal or beneficial interest in the home or property, or where the court is of the opinion that the applicant's legal and beneficial

interest in the home or property is less than the respondent. However, whatever views of the applicant or the respondent might have as to their interest in the property, it is a matter solely for the court to determine the parties' relative property rights after considering all the evidence.

If a judge decides not to grant a Barring Order, for whatever reason, it may still be open to the court to grant a Safety Order as an alternative, but only where the applicant has sought both a Barring and a Safety Order. You might be advised therefore when seeking a Barring Order to also seek a Safety Order.

### **How long does a Barring Order last?**

The District Court may grant a Barring Order for up to three years and an application for an extension can be made. There is no time limitation on such an order if made by the Circuit Court. If a barring order is made for the benefit of a dependent person such as a child it ceases to have effect when that person turns 18.

## Protection Order

While you are waiting for the court to decide on your application for a Safety or Barring Order, the court can give you an immediate temporary order called a Protection Order.

This has the same effect as a Safety Order but because it is only intended to last until the court decides on your case, it is temporary.

### How do I get a Protection Order?

You apply in the District Court where you are seeking the Safety or Barring Order. The Protection Order is granted following an emergency or urgent application and on the basis of the applicant's evidence only. Evidence is usually given by the person who is in fear swearing an affidavit (which is a statement in writing setting out the applicant's reasons for seeking the order, sworn before by a Commissioner for Oaths or solicitor) with the help of a court clerk.

A Protection Order may be granted **without** the knowledge of the respondent. This is called an ex parte application. However, the respondent must be notified as soon as possible of the order made, even orally, by the applicant or the Gardaí, and is then served with a copy of the order as a matter of urgency. A Protection Order only takes effect after the respondent has been notified.

The respondent is given the opportunity to attend and address the court when the full hearing for the Barring or Safety Order takes place.

## Interim Barring Order

This order is only granted in exceptional cases. There must be evidence of **immediate risk** of significant harm to the person applying and a Protection Order must also be considered insufficient in the circumstances. Evidence is usually given by the person who is in fear of the violence swearing an affidavit or information and this can be with the assistance of the Court Clerk. This gives factual details of the violent situation. If the application is made without the knowledge of the respondent then the respondent will be given a copy of the affidavit or information and the note of the proceedings.

An Interim Barring Order can be granted **without** the knowledge of the respondent (this is called an ex parte application), but he or she must be served immediately with the order, usually by the Gardaí. An interim barring order only takes effect after the respondent has been notified. A full court hearing of the facts must take place within eight working days of the Interim Barring Order being made.



If you think you need an Interim Barring Order, you should go to your local District Court. Court clerks can be helpful in filling out application forms.

### **The *in camera* rule**

All cases in the Family Law Courts in Ireland are heard *in camera* (in private). Therefore, members of the general public are not permitted to enter the court. The *in-camera* rule has changed recently to allow the media to have limited access to family law hearings and to have limited rights to report on the proceedings.

**Useful addresses:**

**Women's Aid:** This voluntary organisation provides on-going support and information to women affected by domestic violence. A freephone helpline gives confidential information and can refer callers to other necessary services 7 days a week, 10 am to 10 pm (except Christmas Day). Person-to-person advice and information appointments are also available by calling the helpline. A court accompaniment scheme provides support for women going through the courts system.

Women's Aid freephone national helpline:  
1800 341 900

Website: [www.womensaid.ie](http://www.womensaid.ie)

**Amen:** A confidential helpline and support service for male victims of domestic abuse and their families.

Helpline: 046 902 3718

Website: [www.amen.ie](http://www.amen.ie)

## Legal Aid

You may be eligible for legal aid if you are a person of moderate means. To qualify for legal aid in civil cases your disposable income and assets must be below a certain limit, there must be merit to the case and there must be no other satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, if necessary, a barrister. You can apply for legal aid for more than one matter at a time. The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre, call 1890 615 200.

All those who are granted legal advice and/or legal aid must pay a fee called a contribution to the Board. The minimum contribution is €30 for legal advice and €130 for legal aid. Law centre staff will advise what a person's actual contribution will be as each person is assessed on an individual basis.

Before you qualify for legal aid, you must first satisfy a means test. Your disposable income must be less than €18,000 and your disposable capital cannot be more than €100,000.

If you are in receipt of allowances, they will be taken into account and they are deductible when calculating disposable income. The **maximum allowance** on childcare facilities if you are working is €6,000 per child per year and the maximum allowance on accommoda-

tion costs (e.g. rent) is €8,000 per year. The Public Service Pension Related Levy and the Universal Social Charge are now also considered and are deductible for the purposes of assessment.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property). If your capital resources exceed €4,000, you must complete a Statement of Capital.

For further details on financial eligibility requirements or for details of other allowances, **contact your local Law Centre**. A full list is available at [www.legalaidboard.ie](http://www.legalaidboard.ie). FLAC has prepared a guide to the state legal aid system which you can download at [bit.ly/CLAflacsheet](http://bit.ly/CLAflacsheet).

### **Need more information?**

Legal information leaflets are also available from FLAC on a variety of other areas of law. They are free to download as PDFs from the FLAC website or in print from your local FLAC centre or Citizens Information Centre.

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## FLAC Mission Statement

FLAC (Free Legal Advice Centres) is a human rights organisation which exists to promote equal access to justice for all.

While every effort has been made to ensure the accuracy of this leaflet, it is provided for general legal information only and is not intended as a substitute for legal advice. The information it contains is correct as of date of publication. FLAC does not accept any legal liability for the contents of this leaflet. People with specific legal problems should consult a solicitor.

FLAC is very grateful to Matthew Kenny, solicitor, Katie Dawson BL and to Helen Louise Caffrey BL for their help in drafting and finalising this leaflet.

FLAC offers free, confidential basic legal information via its lo-call telephone information line at 1890 350 250 and one-to-one legal advice through its network of voluntary advice centres countrywide – [www.flac.ie/help](http://www.flac.ie/help)



promoting access to justice

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