

domestic violence



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The **Domestic Violence Act 1996** provides for the protection, safety and welfare of married couples, 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.

The Non-Fatal Offences against the Person Act 1997 is also relevant in domestic violence situations, particularly where a couple is unmarried or else not cohabiting. Under this 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 the offences of coercion, harassment or endangerment.

Protection Available

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

- *Safety Order*
- *Barring Order*
- *Protection Order*

If any of these orders are breached by the offender the Gardai have immediate powers of arrest. The matter will come before the courts as a criminal matter and is heard in open court.

All of these orders can be appealed.

Safety Order

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

If the applicant and alleged offender are not living together, the court can order the alleged offender not to watch (regularly or continuously be looking at and observing comings and goings) or be near the applicant's home.

Who can apply for one?

- The spouse of the respondent, irrespective of how long they have lived together, on his/her own behalf or on behalf of a child.
- An unmarried partner, who has lived as husband/wife with the respondent for at least six months out of the previous 12 months before the application for the safety order was made.
- A parent can apply for an order against a child who is not a dependant (an adult child).
- A person of full age (over 18) who lives with the respondent in a relationship, the basis of which is primarily non-contractual, i.e. not a lodger or tenant.

- Relatives who live together (including adoptees).
- The Health Service Executive.

If the **relationship is not based on marriage** 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.

Grounds for a Safety Order

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

What can a Safety Order tell the respondent to stop doing?

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.

The order does not require the respondent to leave the home if the parties reside at the same address.

Note: A safety order can be varied, meaning the court can change the length of time for which the order lasts or its terms.

The court will hear applications from either side and, depending on the evidence before it, will make whatever order it sees fit.

Duration of a Safety Order

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 that person comes of age. The Circuit Court can grant a Safety Order of unlimited duration.

Non-compliance with a Safety Order

Under the Domestic Violence Act it is an offence to breach a Safety, Protection, Barring or Interim Barring Order. The penalty is a fine not exceeding €1,904.61 and/or a prison term of 12 months. Gardai can arrest a respondent without a warrant or enter and search any place they suspect that person to be.

Barring Order

This order requires the violent person (the respondent) to leave the family home until the order expires or is set aside. 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 the applicant is married to the violent person, then it is irrelevant how long the couple have lived together or who owns all or most of the house.

Once a Barring Order is granted, the offender must:

- Leave the home.
- Not use, or threaten to use, violence against the applicant.
- Not molest the applicant or put them in fear.
- Not be in the area where the applicant lives.

Who may apply for a Barring Order?

- A spouse on his/her own behalf, or on behalf of a dependent child.
- A partner who has lived with the alleged offender as husband and wife for at least six of the previous nine months. However the applicant must have significant ownership rights in the family home.
- A parent of an adult child can apply for an order against him/her, unless that child owns the family home or has greater ownership rights than the parent.
- The Health Service Executive.

Protection Order

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

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

Interim Barring Order

In exceptional cases this order will be granted. 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 with the help of a court clerk. This gives factual details of the violent situation.

This order can be granted **without** the knowledge of the alleged offender (this is called an *ex parte* application), but that person must be served immediately with a copy of the statement upon which the order was made.

A full court hearing of the facts must take place within eight working days of the Interim Barring Order being made.

A person seeking an Interim Barring Order should go to their local District Court. Court clerks can be helpful in filling out application forms.

If you wish to take legal action, you should seek advice from a lawyer, although in the case of an Interim Barring 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. Legal Aid can be available.

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 more satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, where 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.

As of 1 September 2006 the new **disposable income** limit of a person applying for legal aid has been increased from €13,000 up to €18,000 per year.

The **maximum allowance** (this is an expense which the rules allow you to deduct when calculating your disposable income) on childcare facilities if you are working is €6,000 per child per year. The maximum allowance on accommodation costs (e.g. rent) is now €8,000 per year.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property), as are the value of the tools of an applicant's trade.

For details of other allowances, contact the Legal Aid Board or your local Law Centre.

Women's Aid: This voluntary organisation provides on-going support and information to women suffering from 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. 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

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

Helpline: 046 902 3718

Website: www.amen.ie

notes

FLAC Mission Statement:

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

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. FLAC does not accept any legal liability for the contents of this leaflet. Persons with specific legal problems should consult a solicitor.

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