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**AN BILLE UM FHORÉIGEAN BAILE (LEASÚ), 2002  
DOMESTIC VIOLENCE (AMENDMENT) BILL, 2002**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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*Introduction*

Section 4(1) of the Domestic Violence Act, 1996, provides that the Circuit or District Court may, on the making of an application for a barring order or between the making of such application and its determination, make an interim barring order if it is of the opinion that there are reasonable grounds for believing that there is an immediate risk of significant harm to the applicant or any dependent person if the order is not made immediately and the granting of a protection order would not be sufficient to protect the applicant or any dependent person. (A protection order directs the respondent not to use or threaten to use violence against, molest or put in fear the applicant or the dependent person but it does not bar him or her from the home if s/he has been residing there.) Section 4(3) of the Act provides that where the court in exceptional cases considers it necessary or expedient in the interests of justice, an interim barring order may be made *ex parte* or notwithstanding the fact that the originating document or other notice of the application required to be duly served on the respondent to the application has not been so served. '*Ex parte*' signifies that the order has been made in the absence of and without notice to the other party. Section 4(4) of the Act provides that an interim barring order shall cease to have effect on the determination by the court of the application for the barring order.

On 9 October last, the Supreme Court, in a case which arose out of the granting of an *ex parte* interim barring order which was in effect for almost three months, held that the provisions of section 4, as they relate to *ex parte* interim barring orders, in failing to prescribe a fixed period of relatively short duration during which such an order would continue in force, deprived the respondents to such applications of the protection of the principle of *audi alteram partem* (i.e. that the other side should be heard) in a manner and to an extent which is disproportionate, unreasonable and unnecessary. The Court declared section 4(3) unconstitutional and said that it had not been demonstrated that the remedy of an interim order granted on an *ex parte* basis would be in some sense seriously weakened if the interim order thus obtained were to be of limited duration only, thus requiring the applicant, at the earliest practicable opportunity, to satisfy the court in the presence of the opposing party that the order was properly granted and should now be continued in force.

The purpose of the Bill is to remedy the defect which rendered section 4(3) unconstitutional and to restore the power to grant interim barring orders *ex parte*.

### *Provisions of the Bill*

*Section 1* substitutes new subsections for sections 4(3) and 5(4) of the Domestic Violence Act, 1996.

The new section 4(3) provides that:

An interim barring order may be made *ex parte* where, having regard to the circumstances of the particular case, the court considers it necessary or expedient to do so in the interests of justice. The reference in the existing section 4(3) to an order being made ‘notwithstanding the fact that the originating document or other notice of the application required to be duly served on the respondent . . . has not been so served’ is deleted since this refers to the application for the full, not the interim, barring order. (Proposed new subsection (3)(a)).

The application for such an order shall be grounded on an affidavit or information sworn by the applicant. If an interim barring order is made *ex parte*, a note of evidence given by the applicant shall be prepared forthwith either by the judge or by the applicant or the applicant’s solicitor and approved by the judge, and a copy of the order, affidavit or information and note shall be served on the respondent as soon as practicable. (Proposed new subsection (3)(b) and (c)).

The order shall have effect for a period, not exceeding 8 working days, to be specified in the order, unless, on application by the applicant for the barring order and on notice to the respondent, the interim barring order is confirmed within that period by order of the court. The order shall contain a statement as to its effect in this regard. A working day is a day other than a Saturday, Sunday, or a public holiday within the meaning of the Organisation of Working Time Act, 1997. (Proposed new subsection (3)(d), (e) and (f)).

The new section 5(4) of the 1996 Act provides that a protection order may be made *ex parte*, in place of the existing wording which is that a protection order may be made ‘notwithstanding the fact that the originating document or other notice of the application required to be duly served on the respondent . . . has not been so served’. This corresponds to the change to be made by the proposed section 4(3)(a) which is explained above.

*Section 2* contains the usual provision for short title and collective citation.

### *Financial Implications*

The implementation of the Bill will give rise to extra court hearings, to decide whether or not to confirm interim barring orders made *ex parte*, but does not have any necessary financial implications.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,  
Nollaig, 2002.*