

SEANAD ÉIREANN

AN BILLE UM FHORÉIGEAN BAILE, 2017 LEASUITHE COISTE

DOMESTIC VIOLENCE BILL 2017 COMMITTEE AMENDMENTS

Leasuithe Breise agus Ionadacha Additional and Substitute Amendments

**Government amendments are denoted by an asterisk*

SECTION 2

1. In page 7, between lines 3 and 4, to insert the following:

“domestic violence” means any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse, (even if all or any of those incidents, when viewed in isolation, may appear to be minor or trivial), inflicted against an applicant or a dependent person by the respondent and includes all acts of physical, sexual, psychological or economic violence. In relation to “domestic violence”—

- (a) “coercive behaviour” is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the applicant or a dependent person by the respondent,
- (b) “controlling behaviour” is a range of acts designed to make an applicant subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour,
- (c) “psychological” means violence inflicted against an applicant or a dependent person by the respondent and includes, but is not limited to, all, or any of the following:
 - (i) threatening (including threatening suicide) to use violence against, molesting or putting in fear;
 - (ii) harassing by persistently following, watching, pestering, besetting or communicating;
 - (iii) damaging property;
 - (iv) ill-treatment of one or both of the following:
 - (I) household pets;
 - (II) other animals whose welfare affects significantly, or is likely to affect significantly, an applicant or a dependent person’s well-being;
 - (v) causing or allowing a dependent person to see or hear the physical, sexual, or

[SECTION 2]

psychological abuse of an applicant; or puts a dependent person, or allows a dependent person to be put, at real risk of seeing or hearing that abuse occurring. However, an applicant who suffers abuse as defined by “domestic violence” is not regarded as having—

- (I) caused or allowed a dependent person to see or hear that abuse, or
- (II) put a dependent person, or allowed a dependent person to be put, at risk of seeing or hearing that abuse;”.

—*Senator Colette Kelleher, Alice-Mary Higgins, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 1 on the principal list of amendments dated 31 May 2017.*]

SECTION 5

4. In page 8, between lines 2 and 3, to insert the following:

“Factors to be considered under sections 6 to 10

5. (1) On any application for an order under *sections 6, 7, 8, 9 or 10*, the court shall have regard to the following when deciding whether there are reasonable grounds for believing that the safety or welfare of an applicant or a dependent person requires that such an order be made:
- (a) any history of violence by the respondent against the applicant or any dependent;
 - (b) whether any violence by the respondent against the applicant or any dependent is repetitive or escalating;
 - (c) whether any psychological violence by the respondent of the applicant constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the applicant by the respondent;
 - (d) the current status of the relationship between the applicant and the respondent, including any recent separation or intention to separate;
 - (e) any circumstance of the respondent that may increase the risk of violence by the respondent against the applicant or any dependent, including substance abuse, threats of suicide, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of serious violence including lethal violence, against the applicant and/or others, including violence against family pets or other domestic animals;
 - (f) the applicant’s perception of risks to his or her own safety and security;
 - (g) any circumstance that may increase the applicant’s vulnerability or any dependent’s vulnerability to violence from the respondent, including pregnancy, age, family circumstances, health or economic dependence;
 - (h) the accommodation needs of the applicant and any dependent(s);
 - (i) any evidence of deterioration in the physical, psychological or emotional welfare of the applicant or any dependent which in the opinion of the court, was caused

[SECTION 5]

directly by the behaviour of the respondent;

- (j) whether it is appropriate in the circumstances to make any order under *section 4*, and
 - (k) any other matter which appears to the court to be relevant to the safety and welfare of the applicant and any dependents.
- (2) With regard to the violence referred to at *subsection (1)*—
- (a) a single act by the respondent against the applicant or any dependent, may amount to violence for the purposes of *subsection (1)*,
 - (b) a number of acts by the respondent against the applicant or any dependent, that form part of a pattern of behaviour may amount to psychological violence for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.
- (3) In this section—
- (a) “violence” includes physical, sexual, psychological or economic violence;
 - (b) “psychological violence” includes intimidation, harassment, coercion of the applicant or any dependent, or threats, including threats to other persons, pets or property made by the respondent to the applicant or any dependent, unreasonable restrictions on, or prevention of, the applicant’s financial or personal autonomy, stalking or following by the respondent of the applicant or any dependent, intentional damage to property, and in the case of a child dependent, direct or indirect exposure to violence by the respondent against the applicant;
 - (c) whatever order is made or not made on the application for an order under *sections 6, 7, 8, 9, or 10*, the reasons for making it or not making it and for making it subject to conditions, if any, should all be recorded by the court and a copy of these reasons should be made available to each party with the minimum of delay.
- (4) On application to it for an order under *section 8 or 9*, the court shall also have regard to the following factors when deciding whether there are reasonable grounds for believing that the safety or welfare of the applicant or a dependent person requires that such an order be made:
- (a) any immediate risk of significant harm being caused directly or indirectly by any kind of violence by the respondent against the applicant or any dependent if the order is not made immediately;
 - (b) whether any previous orders under the Domestic Violence Acts have been made against the respondent with regard to the applicant, and/or others, as far as known;
 - (c) any criminal proceedings for violence against the respondent, in respect of the applicant and/or others, pending or concluded, as far as known;
 - (d) any violence by the respondent against the applicant and/or any dependent children, which is recent, repeated, and/or severe, including attempts at lethal

[SECTION 5]

violence against either the applicant or any dependent.”.

—*Senators David Norris, Colette Kelleher, Alice-Mary Higgins, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 4 on the principal list of amendments dated 31 May 2017.*]

SECTION 8

20. In page 16, line 20, after “justice” to insert the following:

“and where necessary out of hours where the applicant and any dependent children are at risk of immediate harm if the order is not made in this way, such an application may be made by telephone or other secure electronic means, subject to the applicant’s undertaking to swear an affidavit or information before the next available ordinary sitting of the court”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 20 on the principal list of amendments dated 31 May 2017.*]

SECTION 9

26. In page 17, between lines 9 and 10, to insert the following:

“**9.** On request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorise the calling of an on-call judge to apply for an out of hours barring order. The return date shall be the next sitting day in the nearest available court.”.

—*Senators David Norris, Colette Kelleher, Alice-Mary Higgins, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 26 on the principal list of amendments dated 31 May 2017.*]

SECTION 10

30. In page 18, between lines 24 and 25, to insert the following:

“**10.** (1) When granting a relevant order, the court shall consider the safety and well-being of any children of the relationship and take interim measures, as necessary, for their protection.

(2) Provide for the availability of experts to the courts to assess the risk the perpetrator poses to children and the impact on them of direct and/or indirect abuse.

(3) Establish a national system of Child Contact Centres to facilitate post-separation contact for children of victims of domestic abuse that ensures and protects their physical and psychological well-being.”.

—*Senators David Norris, Colette Kelleher, Alice-Mary Higgins, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 30 on the principal list of amendments dated 31 May 2017.*]

[SECTION 10]

31. In page 18, between lines 24 and 25, to insert the following:

“10. Where the court, on application to it, is of the opinion that there are reasonable grounds for believing that the safety or welfare of an applicant or a dependent person so requires the making of a relevant order, the court cannot substitute an undertaking for a court order.”.

—*Senators David Norris, Colette Kelleher, Alice-Mary Higgins, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 31 on the principal list of amendments dated 31 May 2017.*]

SECTION 14

33a. In page 21, between lines 21 and 22, to insert the following:

“(3) Upon request of the applicant, a court may prohibit the respondent from cross-examining the applicant during relevant court proceedings, or in the absence of a request the court may prohibit the respondent from cross-examining the applicant where the respondent has a history of domestic violence.”.

—*Senators Rose Conway-Walsh, Niall Ó Donnghaile.*

SECTION 27

44. In page 27, between lines 31 and 32, to insert the following:

“**Civil legal aid**

27. For the purpose of any application under this Act, upon the applicant being determined eligible for receipt of civil legal aid, any contribution payable pursuant to the Civil Legal Aid Act 1995, as amended, is deemed waived.”.

—*Senators Frances Black, Lynn Ruane, Rose Conway-Walsh, Niall Ó Donnghaile.*

[*This amendment is in substitution for amendment 44 on the principal list of amendments dated 31 May 2017.*]