



SEANAD ÉIREANN

**AN BILLE UM FHORÉIGEAN BAILE, 2017
DOMESTIC VIOLENCE BILL 2017**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM FHORÉIGEAN BAILE, 2017 —AN COISTE

DOMESTIC VIOLENCE BILL 2017 —COMMITTEE STAGE

Leasuithe 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

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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.*

*2. In page 7, between lines 19 and 20, to insert the following:

“ “specified order” means—

- (a) a safety order, barring order, interim barring order, emergency barring order or protection order, or
- (b) an order varying or discharging an order referred to in *paragraph (a)*.”.

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

- *5. (1) In determining for the purposes of this Act whether or not to grant a relevant order, the court shall have regard to all of the factors or circumstances that it regards as relevant to the applicant concerned and his or her family.
- (2) The factors and circumstances referred to in *subsection (1)* shall include but is not limited to a list as devised by the Minister.”.

—*Senators David Norris, Colette Kelleher.*

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,

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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 directly by the behaviour of the respondent;
 - (j) whether it is appropriate in the circumstances to make any order under *section 14*, 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

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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 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.*

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

“Statutory Guidelines

5. (1) For the purposes of *sections 5, 6, 7, 8, 9# and 9* in deciding there are reasonable grounds for believing that the safety or welfare of an applicant or a dependent person so requires, the court shall have regard to—
- (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) the current status of the relationship between the applicant and the respondent, including any recent separation or intention to separate given the elevated risk of serious and/or lethal violence that is triggered by this action;
 - (d) any circumstance of the respondent that may increase the risk of violence by the respondent against the applicant or any dependent, including substance abuse, 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;
 - (e) the applicant’s perception of risks to his or her own safety and security;
 - (f) 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;
 - (g) the accommodation needs of the applicant and any dependent(s);
 - (h) 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 directly by the behaviour of the respondent;

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- (i) whether it is appropriate in the circumstances to make any order under *sections 14 to 19*; and
 - (j) any other matter which appears to the Court to be relevant to the safety and welfare of the applicant and any dependents.
- (2) For the purposes of *sections 7(1)(a)* and *8(3)* in deciding there are reasonable grounds for believing that there is an immediate risk of significant harm to the applicant or a dependent person, the court shall also have particular regard to—
- (a) risk of serious harm 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) protection order history of 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; and
 - (d) any violence by the respondent against the applicant and/or any dependent, which is recent, repeated, and/or severe, including attempts at lethal violence against either the applicant or any dependent.
- (3) Whatever order is made or not made on the application, 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.”.

—*Senators Frances Black, Lynn Ruane.*

[#This is a reference to the section proposed to be inserted by amendment 27.]

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

“Factors to be considered by court in certain applications under this Part

5. (1) Where a court is deciding, on an application for an order under *sections 6 to 10*, whether there are reasonable grounds for believing that the safety or welfare of an applicant or a dependent person requires that an order be made, the court shall have regard to the following considerations:
- (a) any history of violence by the respondent against the applicant or a dependent person;
 - (b) whether any such violence is repetitive or escalating;
 - (c) whether any psychological violence by the respondent against 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 an intention to separate;

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- (e) any circumstance of the respondent that may increase the risk of violence by the respondent against the applicant or a dependent person, including substance abuse, threat of suicide, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of serious violence against the applicant or others, including violence against family pets or other domestic animals;
 - (f) the applicant's perception of the risks to his or her own safety and security;
 - (g) any circumstance that may increase the applicant's vulnerability or a dependent person'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 person;
 - (i) any evidence of deterioration in the physical, psychological or emotional welfare of the applicant or any dependent person which, in the opinion of the court, was caused directly by the behaviour of the respondent;
 - (j) whether it is appropriate in the circumstances to make one or more orders specified in *section 14(2)*, and
 - (k) any other matter which appears to the court to be relevant to the safety and welfare of the applicant and any dependent person.
- (2) Where an application to which *subsection (1)* relates is for an order under *section 8* or *9*, the court shall also have regard to the following considerations:
- (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 this Act or an Act repealed by this Act, have been made against the respondent;
 - (c) any criminal proceedings for violence against the respondent, in respect of the applicant or other persons and whether pending or concluded;
 - (d) any violence by the respondent against the applicant or any dependent children, which is recent, repeated or severe.
- (3) In this section—
- (a) “violence” includes physical, sexual or psychological violence;
 - (b) “psychological violence” includes intimidation, harassment, coercion of the applicant or a dependent person, or threats, including threats against other persons, pets or property made by the respondent to the applicant or a dependent person, unreasonable restrictions on, or prevention of, the applicant's financial or personal autonomy, stalking or following the applicant or a dependent person, intentional damage to property and, in the case of a dependent child, direct or indirect exposure to violence by the respondent against the applicant;
 - (c) a single act by the respondent against the applicant or any dependent, may

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amount to the use of violence;

- (d) a number of acts by the respondent against the applicant or a dependent person that form part of a pattern of behaviour may amount to psychological violence, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

- (4) On an application for an order under *sections 6 to 10*, the reasons for the decision of the court shall be recorded by it in writing and shall be communicated to the parties as soon as is reasonably practicable.”.

—*Senators Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Riordáin.*

- *7. In page 8, lines 12 and 13, to delete “but lived with the respondent in an intimate and committed relationship” and substitute “but was in an intimate and committed relationship with the respondent”.

8. In page 8, line 13, to delete “and committed” and substitute “personal”.

—*Senator Alice-Mary Higgins.*

- *9. In page 8, line 35, to delete “may” and substitute “shall”.

10. In page 9, line 5, after “person” to insert the following:

“, save for urgent electronic communications which are strictly necessary for the care and welfare of any dependent children of the applicant and respondent to the extent that and in the form that the court directs”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

11. In page 10, between lines 5 and 6, to insert the following:

“(11) Where a member of the Garda Síochána responds to an incident of domestic violence, or where safety and barring orders are being sought, a full assessment to be undertaken to ascertain the impact of domestic violence on children in the home.”.

—*Senator Alice-Mary Higgins.*

SECTION 6

- *12. In page 10, to delete lines 19 to 23 and substitute the following:

“(2) (a) Where the court, on application to it, is of the opinion, having taken into account any order made or to be made to which *paragraph (a) or (d) of section 14(2)* relates, that there are reasonable grounds for believing that the safety or welfare of the applicant or a dependent person so requires, it shall, subject to *section 11*, by order (in this Act referred to as a “barring order”)—”.

13. In page 10, line 41, after “person” to insert the following:

“, save for urgent electronic communications which are strictly necessary for the care and welfare of any dependent children of the applicant and respondent to the extent that and in the form that the court directs”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee,*

[SECTION 6]

Diarmuid Wilson, Gerry Horkan.

SECTION 7

- *14. In page 12, lines 18 to 27, to delete all words from and including “(1) Where” in line 18 down to and including line 27 and substitute the following:

“(1) Where the court, on application to it for a barring order or between the making of that application and its determination, is of the opinion, having taken into account any order made or to be made to which *paragraph (a) or (d) of section 14(2)* relates, that there are reasonable grounds for believing—

- (a) there is an immediate risk of significant harm to the applicant or a dependent person, and
- (b) the making of a protection order would not be sufficient to protect the applicant or a dependent person,

the court shall, subject to *section 11*, by order (in this Act referred to as an “interim barring order”)—”.

15. In page 13, line 2, after “person” to insert the following:

“, save for urgent electronic communications which are strictly necessary for the care and welfare of any dependent children of the applicant and respondent to the extent that and in the form that the court directs”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

SECTION 8

16. In page 14, line 39, to delete “and committed” and substitute “personal”.

—*Senator Alice-Mary Higgins.*

- *17. In page 15, to delete lines 9 to 15 and substitute the following:

“(3) Where the court, on application to it under *subsection (2)*, is of the opinion, having taken into account any order made or to be made to which *paragraph (a) or (d) of section 14(2)* relates, that there are reasonable grounds for believing that there is an immediate risk of significant harm to the applicant or a dependent person if an order is not made immediately, the court shall, subject to *section 11*, by order (in this Act referred to as an “emergency barring order”)—”.

18. In page 15, line 28, after “person” to insert the following:

“, save for urgent electronic communications which are strictly necessary for the care and welfare of any dependent children of the applicant and respondent to the extent that and in the form that the court directs”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

19. In page 16, to delete lines 18 to 20 and substitute the following:

“(11) An application for an emergency barring order—

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- (a) 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, and
- (b) may, where the court is of the opinion that the applicant or a dependent child may be at risk of immediate harm, be made by telephone or electronic means, subject to the applicant's undertaking to swear a grounding affidavit or information as soon as is reasonably practicable."

—*Senators Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Ríordáin.*

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.*

21. In page 16, line 37, to delete "8 working" and substitute "28 working".

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

22. In page 16, line 37, to delete "8 working" and substitute "38 working".

—*Senator Alice-Mary Higgins.*

23. In page 16, line 37, to delete "8 working" and substitute "20 working".

—*Senators Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Ríordáin.*

24. In page 17, to delete lines 1 to 9 and substitute the following:

- "(16) (a) Where an emergency barring order has been made against the respondent, such order shall be capable of being renewed for a further period or periods, not exceeding six months in total.
- (b) On an application for an order under this subsection, the court shall consider whether such an order is necessary to preserve the safety and welfare of the applicant and any dependent children in accordance with the list of factors set out in section 5(1)#."

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan, Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Ríordáin.*

[#This is an appropriate reference if amendment 4 is accepted.]

[SECTION 8]

25. In page 17, to delete lines 1 to 9 and substitute the following:

“(16)(a) Where an emergency barring order has been made against the respondent, such order shall be capable of being renewed for a further period or periods, not exceeding six months in total.

(b) On an application for an order under this subsection, the court shall consider whether such an order is necessary to preserve the safety and welfare of the applicant and any dependent children.”.

—*Senator Alice-Mary Higgins.*

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.*

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

“Out of hours barring orders

9. On request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorize communicating with an on-call judge to apply for an out of hours barring order.”.

—*Senators Frances Black, Lynn Ruane.*

*28. In page 17, line 14, to delete “may” and substitute “shall”.

29. In page 17, line 23, after “person” to insert the following:

“, save for urgent electronic communications which are strictly necessary for the care and welfare of any dependent children of the applicant and respondent to the extent that and in the form that the court directs”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

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.”.

[SECTION 10]

—*Senators David Norris, Colette Kelleher, Alice-Mary Higgins.*

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.*

SECTION 14

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

“(3) A respondent with a history of domestic violence against the applicant shall be prohibited from cross examining the applicant during family court proceedings.”.

—*Senators David Norris, Colette Kelleher.*

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

“(3) Upon request of the applicant, a judge may prohibit the respondent from cross examining the applicant during relevant court proceedings.”.

—*Senator Alice-Mary Higgins.*

SECTION 15

*34. In page 21, between lines 21 and 22, to insert the following:

“Protection against cross-examination by applicant or respondent

15. (1) Where—

- (a) an application is made to a court for a specified order,
- (b) a person under the age of 18 years is to give evidence, and
- (c) the applicant or respondent proposes to cross-examine the person referred to in *paragraph (b)* personally,

the court shall direct that the applicant or the respondent, as the case may be, may not personally cross-examine the witness unless the court is of the opinion that the interests of justice require the applicant or respondent to conduct the cross-examination personally.

(2) Where—

- (a) an application is made to a court for a specified order,
- (b) a person who has attained the age of 18 years (being the applicant for the specified order, an aggrieved person under *section 10*, a dependent person or the respondent to that application) is to give evidence, and
- (c) the applicant or respondent proposes to cross-examine the person referred to in *paragraph (b)* personally,

the court may direct that the applicant or the respondent, as the case may be, may not

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personally cross-examine the witness unless the court is of the opinion that the interests of justice require the applicant or respondent to conduct the cross-examination personally.

- (3) Where an applicant or respondent, as the case may be, is prevented from cross-examining a witness by virtue of *subsection (1) or (2)*, the court shall—
 - (a) invite the applicant or respondent to arrange for a legal representative to act for him or her for the purpose of cross-examining the witness, and
 - (b) require the applicant or respondent to notify the court, by the end of such period as it may specify, as to whether a legal representative is to act for him or her for that purpose.
- (4) If by the end of the period referred to in *subsection (3)(b)*, the applicant or respondent has notified the court that no legal representative is to act for him or her for the purpose of cross-examining the witness or no notification has been received by the court and it appears to the court that no legal representative is to so act, the court shall consider whether it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative appointed to act for the applicant or respondent for that purpose.
- (5) If the court decides under *subsection (4)* that it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative appointed to act for the applicant or respondent for that purpose, the court shall appoint a legal representative (chosen by the court) to cross-examine the witness on behalf of the applicant or respondent.”.

*35. In page 21, between lines 21 and 22, to insert the following:

“Requirement to give reasons for certain decisions

16. Where an application is made to a court for a specified order, the court shall give reasons for its decision—
 - (a) to grant or refuse the application,
 - (b) if applicable, to make the specified order subject to exceptions or conditions, and
 - (c) to vary the exceptions or conditions referred to in *paragraph (b)*.”.

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

- “15. (1) In any application for an order in this Part, the Court shall not regard any failure by the respondent to secure legal representation as a reasonable ground on which to adjourn the application, save where it finds based on the evidence available that there are compelling reasons to do so.
- (2) In any application for an order in this Part, the Court shall have power to make directions to ensure the timely, fair and efficient conduct of proceedings.
- (3) The Court shall not allow any application or applications to be determined by accepting undertakings, including cross-undertakings, in any case in which it is satisfied that—

[SECTION 15]

- (a) the respondent has used any form of violence against the applicant or any dependent child already,
 - (b) there is a real risk that the respondent may use violence against the applicant or any dependent child in the future,
 - (c) there is evidence that the respondent has not complied with court orders restraining his behaviour towards the applicant or any dependent children, whether made in civil or criminal proceedings, in the past, or
 - (d) it has not been proved that the applicant has ever used any violence against the respondent.
- (4) The Court shall not allow any application or applications to be determined by making cross-orders against both the respondent and the applicant, in any case in which it is satisfied that—
- (a) the respondent has used any form of violence against the applicant or any dependent child already,
 - (b) there is a real risk that the respondent may use violence against the applicant or any dependent child in the future,
 - (c) there is evidence that the respondent has not complied with court orders restraining his behaviour towards the applicant or any dependent children, whether made in civil or criminal proceedings, in the past, or
 - (d) it has not been proved that the applicant has ever used any violence against the respondent.”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

37. In page 21, to delete lines 25 to 28 and substitute the following:

- “(2) Oral communication to the respondent by a Garda, on behalf of the applicant of the fact that a relevant order has been made, together with production of a copy of the barring order, interim barring order or emergency barring order, shall, without prejudice to the sufficiency of any other form of notification, be taken to be sufficient notification to the respondent of the making of the order. The views of the applicant for a safety or protection order shall be sought by the Gardaí, when deciding whether the Gardaí, should or not serve the relevant orders.”.

—*Senators David Norris, Colette Kelleher.*

38. In page 21, line 25, after “applicant” to insert “or by a Garda”.

—*Senator Alice-Mary Higgins.*

39. In page 21, between lines 28 and 29, to insert the following:

- “(3) In any case where the court finds that there are reasonable grounds for believing that a respondent who is not present in court when the order is made, will try to evade service of the order, the court may direct that the order should be served personally by a member of An Garda Síochána with such period as the court may direct.”.

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—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

SECTION 22

- *40. In page 25, to delete lines 35 to 38, and in page 26, to delete lines 1 and 2 and substitute the following:

“(1) Subject to *subsection (2)*, an applicant may, in addition to being accompanied by his or her legal representative (if any), be accompanied in court by an individual (including a support worker) of his or her choice.

(2) The court may refuse to allow an applicant to be accompanied in court by a particular individual at any stage in the proceedings which relate to the applicant if the court considers that it would not be in the interests of justice for the individual concerned to accompany, or continue to accompany, the applicant and where the court so refuses it shall give reasons for such refusal.”.

SECTION 23

41. In page 26, between lines 5 and 6, to insert the following:

“23. A respondent is prohibited from delaying court proceedings under this Act without reasonable cause.”.

—*Senators David Norris, Colette Kelleher, Alice-Mary Higgins.*

SECTION 24

42. In page 27, between lines 7 and 8, to insert the following:

“Child Contact Centres

24. This Act shall establish and maintain a network of Child Contact Centres where children can safely have supervised access and custody visits if it is deemed to be in the best interests of the child for such visits to occur.”.

—*Senator Colette Kelleher.*

- *43. In page 27, line 9, to delete “for an order under *section 5, 6 or 8*”.

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.*

SECTION 29

45. In page 28, line 23, after “both” to insert “, and on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or both”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee,*

SECTION 33

- *46. In page 29, to delete lines 38 to 40, and in page 30, to delete lines 1 to 3 and substitute the following:

“ “broadcast” has the same meaning as it has in the Broadcasting Act 2009;

“publish” means publish, other than by way of broadcast, to the public or a portion of the public;”.

- *47. In page 30, line 4, to delete “(within the meaning of *section 5, 6 or 8*)”.

SECTION 40

- *48. In page 34, between lines 9 and 10, to insert the following:

“Amendment of section 28 of Civil Legal Aid Act 1995

- 40.** Section 28 of the Civil Legal Aid Act 1995 is amended by the insertion of the following subsection after subsection (5C):

“(5D) Notwithstanding any other provision of this Act, where an applicant or respondent (within the meaning of the *Domestic Violence Act 2017*) is prevented from conducting a cross-examination referred to in *section 15#* of that Act, the Board shall grant a legal aid certificate to the applicant or respondent, as the case may be, for the purpose of his or her being represented in relation to such a cross-examination.”.

[#This is a reference to the section proposed to be inserted by amendment 34.]

49. In page 34, between lines 9 and 10, to insert the following:

- “40. Section 29(2) of the Civil Legal Aid Act 1995 is amended by the insertion of the following after “lower contribution”:

“, save that the Board shall provide legal aid or advice to an applicant for an order under the *Domestic Violence Act 2017* without reference to his or her financial resources, and shall waive any contribution payable pursuant to this section and to any other regulations under *section 27*.”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

50. In page 34, between lines 9 and 10, to insert the following:

- “40. (1) Section 2 of the Non-Fatal Offences Against the Person Act 1997 is amended by the insertion of the following subsections after subsection (4):

“(5) Notwithstanding section 4, the offence created by this section shall be considered to be an arrestable offence.

(6) By way of exception to the rule in section 10(4) of the Petty Sessions Act 1851, a charge under this section may be brought at any time up to two years after its commission.”.

[SECTION 40]

- (2) Section 20 of the Non-Fatal Offences Against the Person Act 1997 is amended by inserting the following subsection after subsection (4):

“(5) The court shall have regard to the following aggravating factors in determining the appropriate sentence where an accused person is convicted of any offence under this Act, or under the *Domestic Violence Act 2017*:

- (a) the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- (b) the offence, or related offences, were committed repeatedly;
- (c) the offence was committed against a person made vulnerable by particular circumstances;
- (d) the offence was committed against or in the presence of a child;
- (e) the offence was committed by two or more people acting together;
- (f) the offence was preceded or accompanied by extreme levels of violence;
- (g) the offence was committed with the use or threat of a weapon;
- (h) the offence resulted in severe physical or psychological harm for the victim;
- (i) the perpetrator had previously been convicted of offences of a similar nature.”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan.*

SECTION 43

- *51. In page 35, between lines 30 and 31, to insert the following:

“(2) Where, prior to the coming into operation of *subsection (1)(a)#*, a person has contravened section 40A(1) of the Act of 2004 as respects proceedings to which paragraph (h) of the definition of “relevant enactment” in section 39 of that Act relates, then notwithstanding the repeal of section 33 of the Act of 1995 by *section 39(1)(e)*, section 40A of the Act of 2004 continues to apply to that contravention as if the amendment in *subsection (1)(a)#* had not been made.

(3) Where, prior to the coming into operation of *subsection (1)(b)#*, a person has contravened section 40A(1) of the Act of 2004 as respects proceedings to which paragraph (j) of the definition of “relevant enactment” in section 39 of that Act relates, then notwithstanding the repeal of section 16 of the Act of 1996 by *section 3*, section 40A of the Act of 2004 continues to apply to that contravention as if the amendment in *subsection (1)(b)#* had not been made.”.

[#*These are the appropriate references if this amendment is accepted.*]

[NEW SECTION]

NEW SECTION

52. In page 36, after line 19, to insert the following:

“Controlling or coercive behaviour in an intimate or family relationship

47. (1) A person A commits an offence if—
- (a) person A repeatedly or continuously engages in behaviour towards another person B that is controlling or coercive,
 - (b) at the time of the behaviour, person A and person B are personally connected,
 - (c) the behaviour has a serious effect on person B, and
 - (d) person A knows or ought to know that the behaviour will have a serious effect on person B.
- (2) Person A and person B are “personally connected” if—
- (a) person A is in an intimate personal relationship with person B, or
 - (b) person A and person B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (3) Person A does not commit an offence under this section if at the time of the behaviour in question—
- (a) person A has responsibility for person B, as a parent or guardian or foster parent or adoptive parent or is otherwise for the time being *in loco parentis* with regard to person B, and
 - (b) person B is under 16
- (4) Person A’s behaviour has a “serious effect” on person B if—
- (a) it causes person B to fear, on at least two occasions, that violence will be used against person B, or
 - (b) it causes person B serious alarm or distress which has a substantial adverse effect on person B’s usual day-to-day activities.
- (5) For the purposes of *subsection (1)(d)* person A “ought to know” that which a reasonable person in possession of the same information would know.
- (6) For the purposes of *subsection (2)(b)(i)* person A and person B are members of the same family if—
- (a) they are, or have been, married to each other,
 - (b) they are, or have been, civil partners of each other,
 - (c) they are relatives,
 - (d) they have agreed to marry one another (whether or not the agreement has been

[NEW SECTION]

- terminated),
- (e) they have entered into a civil partnership (whether or not that partnership has been dissolved),
 - (f) they are both parents of the same child,
 - (g) they have, or have had, responsibility for the custody, care and welfare of the same child.
- (7) In proceedings for an offence under this section it is a defence for person A to show that—
- (a) in engaging in the behaviour in question, person A believed that he or she was acting in person B’s best interests, and
 - (b) the behaviour was in all the circumstances reasonable.
- (8) Person A is to be taken to have shown the facts mentioned in *subsection (7)* if—
- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (9) The defence in *subsection (7)* is not available to person A in relation to behaviour that causes person B to fear that violence will be used against person B.
- (10) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.”.

—*Senators David Norris, Colette Kelleher, Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan, Alice-Mary Higgins, Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Riordáin.*

53. In page 36, after line 19, to insert the following:

“Statutory Guidance on controlling or coercive behaviour

47. (1) The Minister for Justice and Equality may publish guidance on the investigation of offences of controlling or coercive behaviour to An Garda Síochána;
- (2) Members of An Garda Síochána charged with the investigation of offences of controlling or coercive behaviour under *section 47#* of this Act shall have regard to any guidance on the investigation of these offences, published by the Minister for Justice and Equality.”.

—*Senators Catherine Ardagh, Lorraine Clifford-Lee, Diarmuid Wilson, Gerry Horkan, Alice-Mary Higgins.*

[#This is a reference to the section proposed to be inserted by amendment 52.]

[NEW SECTION]

54. In page 36, after line 19, to insert the following:

“Urgent communications about child

47. An order under this Act prohibiting the respondent from communicating (including by electronic means) with the applicant or a dependent person may, to the extent that and in the form that the court directs, exempt from the terms of the order any communication of an urgent nature relating to the care and welfare of a dependent child of the applicant and the respondent.”.

—*Senators Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Ríordáin.*