

Domestic Violence Act 2018 - Questions and Answers

What is Domestic Violence?

Domestic abuse is not defined in Irish legislation. It is however considered to be the physical, sexual, financial, emotional or psychological abuse of one person against another within a family environment or by an intimate partner currently or previously, regardless of gender or sexuality.

What are the high risk indicators to watch for?

- Use of a weapon.
- Presence of a firearm (licensed or unlicensed).
- Escalation of incidents (not always evident on PULSE).
- Threats to kill.
- Presence of children.
- Victim pregnant.
- Strangulation/Choking.
- Couple about to or already separated.
- Threat of suicide.
- Sexual assault.
- Alcohol/Drug abuse.
- Reduction in a person's liberty or freedom of movement.

When does the Domestic Violence Act 2018 come into force?

The Domestic Violence Act 2018 commenced on the 1st January 2019.

What are the orders available and who is eligible for an order under the Domestic Violence Act 2018?

There are important changes in eligibility which are outlined:

- **Safety and Protection Orders**

The most important change is that now all partners in an intimate relationship are eligible for Safety and Protection Orders, with no need of cohabitation.

The relationship only needs to be "intimate" (not "committed" as in previous Act) and a relationship does not have to be sexual to be intimate.

Therefore, the following are eligible for Safety and Protection Orders:

- ✓ Spouses and civil partners.
- ✓ Parents with a child in common.
- ✓ Partners in an intimate relationship (including cohabitants and dating partners).

- ✓ Parents of an abusive child, when the abuser is a non-dependent child (i.e. an adult).
- ✓ People residing with the respondent in a non contractual relationship.

All of the above include former partners also (e.g. former spouse, cohabitant, etc.)

In practice anybody in an intimate relationship can now apply for a Safety or a Protection Order.

A Safety Order lasts up to 5 years.

A Protection Order ceases when the Court decides on an application for a Safety Order or a Barring Order.

- **Barring Orders and Interim Barring Orders**

The major change is that there is **no minimum period of cohabitation** required for cohabitant applicants.

Therefore, the following applicants are eligible for Barring Orders and Interim Barring Orders:

- ✓ Spouses and civil partners
- ✓ Cohabitants who live in an intimate relationship
 - NO minimum period of cohabitation required.
 - NO need for the relationship to be "committed".
- ✓ Parents when the abuser is a non-dependent child (i.e. if the abusive son/daughter is an adult).

All of the above include former partners (e.g. former spouse, cohabitant etc.)

As before, an Interim Barring Order lasts up to **8 working days**.

- **Emergency Barring Orders (New Order)**

The following can apply for an Emergency Barring Order under Section 9 of the Domestic Violence Act, 2018:

- ✓ Person who is not a spouse or civil partner or is not related to the respondent but did live in an intimate relationship with the respondent prior to the application.
- ✓ Parent of the respondent who is not a dependent.

Only granted in circumstances where the applicant has no legal rights to the property or their rights are less than the respondent and there is an immediate risk of significant harm to the applicant or dependent person.

An Emergency Barring Order shall operate in the same manner as a Barring Order but will only last for **8 working days**. A subsequent Emergency Barring Order cannot be sought within one month of the expiration of a previous Emergency Barring Order.

What is Coercive Control?

According to Section 39 (1) of the Domestic Violence Act, 2018 a person commits an offence where he or she knowingly and persistently engages in behaviour that –

- a) Is controlling or coercive,
- b) Has a serious effect on a relevant person, and
- c) A reasonable person would consider likely to have a serious effect on a relevant person

Section 39 (2) states that a person's behaviour has a serious effect on a relevant person if the behaviour causes the relevant person –

- a) To fear that violence will be used against him/her, or
- b) Serious alarm or distress that has a substantial adverse impact on his/her usual day to day activities.

A person is a "relevant person" in respect of another person if she or he:

- a) Is the spouse or civil partner of that other person, or
- b) Is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.

An offence of Coercive Control is an arrestable offence, liable on conviction to a fine or a term of imprisonment not exceeding 5 years.

An investigation into Coercive Control must result in **a file to the Director of Public Prosecutions.**

What constitutes a breach of an Order under the Domestic Violence Act, 2018?

Offences are outlined in Section 33 of the Domestic Violence Act, 2018 as follows:

- (1) A person who-
 - a) contravenes an order issued pursuant to the Domestic Violence Act, 2018, or
 - b) while a Barring Order, an Emergency Barring Order or an Interim Barring Order is in force, refuses to permit the applicant or a dependent person to enter in and remain in the place to which the order relates or does any act for the purpose of preventing the applicant or dependent person from so doing, commits an offence and shall be liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months, or both.

What is the power to arrest for a breach of an Order under the Domestic Violence Act 2018?

Section 35 of the Domestic Violence Act, 2018 empowers members of the Garda Síochána to make an arrest without warrant in the following circumstances:

- 1) Where a member of the Garda Síochána has reasonable cause for believing that an offence has been committed under section 33 the member may, on complaint being made to him or her by or on behalf of the person who was the applicant for the order referred to in subsection (1) of that section, arrest the respondent concerned without warrant.

- 2) For the purpose of arresting a respondent under subsection (1), a member of the Garda Síochána may enter, if need be by force, and search a place where the member, with reasonable cause, suspects the respondent to be.

What happens to orders granted under the Domestic Violence Act 1996?

Any order (Safety Order, Protection Order, Interim Barring Order or Barring Order) made under the Act of 1996, shall continue to be in force as if made under the Act of 2018. As of the 01.01.2019 an arrest for a breach of any order is under Section 35 of the Domestic Violence Act 2018.

What should be done in situations where both parties hold a domestic violence order in respect of each other and both are alleging breaches?

Although uncommon, situations can arise where two people hold domestic violence orders, with each being applicant & respondent respectively. If confronted with a situation such as this, best practice is as follows:

- Separate both party's if possible and speak to each privately, recording all statements/admissions in notebook.
- If the member has a reasonable cause to believe that one party has breached a domestic violence order an arrest and charge should follow.
- If member has a reasonable cause to believe that both parties have breached a domestic violence order, then arrests and charges should follow in both cases.
- In a case where children are present consideration may be given to arresting one parent and leaving one with the children (in circumstances where appropriate). If unsafe to do so, then consider invoking Section 12 Child Care Act 1991.
- It is not incumbent on the member to determine guilt of either party, the member's role is to ensure safety of all relevant party's and to gather and present evidence.

Section 24 of the Domestic Violence Act, 2018 provides for special sittings of the District Court.

What is Forced Marriage?

According to Section 38 (1) of the Domestic Violence Act, 2018 a person is guilty of an offence where he/she engages in relevant conduct for the purpose of causing another person to enter in a ceremony of marriage.

“Ceremony of marriage” means any religious, civil or secular ceremony of marriage, whether legally binding or not.

“Relevant conduct” means violence, threats, undue influence or any form of coercion or duress

Section 38 (2) states that a person commits an offence where he/she –

- a) Removes another person from the State, and
- b) Intends the other person to be subject to relevant conduct outside the State for the purpose of causing that other person to enter into a ceremony of marriage

“removes another person from the State” includes-

- Arranging any part of the other persons travel out of the State,
- Accompanying the other person for any portion of that travel,
- Arranging that the other person be met when his or her travel out of the State has terminated, or
- Doing any other act that could facilitate the other person’s travel out of the State.

Section 38 (3) states that an offence is committed where, in a place other than the state, the person engages in relevant conduct for the purpose of causing another person to enter into a ceremony of marriage and the first-mentioned person is, at the time he or she engages in that conduct-

- a) An Irish citizen or ordinarily resident in the State and that conduct for that purpose would constitute an offence in the place in which that conduct occurs,
- b) On board an Irish ship within the meaning of Section 9 of the Mercantile Marine Act 1955 or,
- c) On an aircraft registered in the State.

An offence of Forced Marriage is an **arrestable offence**, liable on conviction to a fine or a term of imprisonment not exceeding 7 years.

An investigation into Forced Marriage must result in a **file to the Director of Public Prosecutions**.

How are Incidents recorded on the Garda PULSE system?

Where any offence relating to Domestic Abuse (including: breach of orders, assault, sexual assault, criminal damage, threats to kill etc.) has been committed an appropriate PULSE incident will be created and ‘domestic violence’ will be recorded as the motive in the MO details for that incident. It is not necessary to have a statement of complaint to record an incident as a criminal offence on PULSE. If the victim does not wish to make a statement, having disclosed that a criminal offence took place, the ‘Not detected’ tick box, ‘Reason Not Detected’ drop-down menu on the incident details screen can be used to identify why an incident remains undetected.

When creating an incident for breach of an order the member must ensure that the relevant order is associated to the incident and to both parties.

Members should use the victim engagement tab to record all communication with the victim.

Investigation notes should clearly outline the investigation process, including actions taken, court outcome, bail etc.

Consideration should be given to colleagues attending future incidents as recording detailed information facilitates an appropriate response and can ensure members' safety in some cases.

Where no criminal offence is disclosed, and there is no evidence to suggest that a criminal offence occurred, the Pulse incident type 'Domestic Dispute – No Offence Disclosed' will be created. This type of incident must have one of three possible outcomes – 'Bogus Call'; 'No Complaint', or 'No Response' recorded in the MO feature in the MO tab of the incident.

What should be considered when making an arrest?

Members of the Garda Síochána will take a pro-active approach towards arresting and charging a suspect where the member has a reasonable cause to believe an offence has occurred and a power of arrest exists. **A statement of complaint is not required prior to making an arrest. In addition, the injured party's attitude will not be the determining factor.**

Where a breach of an order and another offence has been disclosed to the member, an arrest should follow for the breach of the order **and** the other offence. Members should bear in mind that a Section 2 Bail application can't be made on a charge of breach of a domestic abuse order.

In the absence of a domestic violence order the following legislation may be utilised if applicable:

- Criminal Damage Act, 1991.
- Non-Fatal Offences Against the Person Act, 1997.
- Criminal Law (Rape) Amendment Act, 1990.
- Criminal Justice Public Order Act, 1994.
- Children's Act, 2001.
- Common Law Breach of the Peace.

What should An Garda Síochána do if an injured party withdraws a complaint?

In all cases the injured party must be offered every support service available. A positive encounter with An Garda Síochána may encourage future engagement and prevent further serious abuse. Investigating Gardaí should be aware that research has shown that a complainant is more likely to remain committed to the investigation and any subsequent prosecution when:

- She/he has been supported by a victims group;
- There is a substantial investigative effort, including the early taking of a detailed statement of complaint;
- She/he has been dealt with in a supportive and compassionate manner;
- Investigating Garda(i) reassure the complainant that her/his complaint will be fully investigated; and

- She/he is kept fully, and regularly, informed of the progress of the investigation/prosecution.

Therefore, it is invaluable, both for the victim and the Court system that cases are dealt with professionally and victims are advised of the relevant services available.

The investigating member does not have the authority to strike out cases before the Court. In domestic violence cases Gardaí should be mindful to gather all possible evidence, which may allow the case to proceed through the Courts, in the absence of the injured party's complaint.

What advice can be given to someone who is experiencing domestic abuse?

- Communicate that there is help available.
- Provide [details of local Family Law Courts, local Refuge and various Non-Government Organisations](#) (Women's Aid, Amen etc.).
- Inform them how to go about obtaining an order under the Domestic Violence Act, 2018.
- Refer a Crime Prevention Officer to a victim and provide their details, with their consent, to a local Community Policing Unit for personal safety advice.

How is a breach of an order prosecuted in court?

When prosecuting a breach of a domestic violence order, the following are 3 essential proofs:

Proving the existence of the order:

When the offender is brought before the court the original station copy of the order should be produced to prove the order is in existence.

Proving the respondent was aware of the existence of the order:

- This can be done in any of the following ways:
- The arresting member, following arrest should caution the respondent and then ask them whether he/she was aware of the order in question and how he/she was aware. The member should note all responses and can give this direct evidence of what the respondent disclosed.
- If the respondent was in court or represented in court, on the day the order was granted, evidence of this is sufficient. This information can be obtained from the court file held at the Family Law Court Office in which the order was granted.
- If the order was served by Gardaí, the serving member can give evidence of this.
- If the respondent was informed of the existence of the order by:
 - a) the applicant
 - b) a member of the applicant's family
 - c) a friend or associate of the applicant or
 - d) a member of the Garda Síochána

- then direct evidence by the relevant person will suffice.

3. Proving the breach:

The applicant and/or any witnesses, which may include a member of the Garda Síochána may give evidence of the breach.

Should a victim of domestic abuse receive a summons to appear in court?

Where possible, it is advised that members avoid issuing summonses in respect of applicants to appear at court sittings. Victims of domestic abuse should be offered every support service available and court accompaniment where possible. Extensive engagement and explanation of the process is preferable to a witness summons as it may add to the trauma already experienced.