

GENERAL SCHEME OF A REFORMED AND CONSOLIDATED DOMESTIC VIOLENCE BILL

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GENERAL SCHEME OF A DOMESTIC VIOLENCE BILL

A BILL TO MAKE PROVISION FOR THE PROTECTION OF A SPOUSE AND ANY CHILDREN, CIVIL PARTNER OR OTHER DEPENDENT PERSONS, AND OF PERSONS IN OTHER DOMESTIC RELATIONSHIPS, WHOSE SAFETY OR WELFARE REQUIRES IT BECAUSE OF THE CONDUCT OF ANOTHER PERSON IN THE DOMESTIC RELATIONSHIP CONCERNED, TO PROVIDE FOR ARREST WITHOUT WARRANT IN CERTAIN CIRCUMSTANCES, TO PROVIDE FOR THE HEARING AT THE SAME TIME OF CERTAIN APPLICATIONS TO A COURT UNDER MORE THAN ONE ENACTMENT FOR ORDERS RELATING TO DOMESTIC RELATIONSHIPS AND TO PROVIDE FOR OTHER CONNECTED MATTERS.

Head 1 **Interpretation**

Provide along the following lines:

In this Bill, except where the context otherwise requires—

“Act of 2010” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“applicant”, where appropriate, has the meaning assigned by either Heads 2 or 3 or by both of those sections and where an interim barring order has been made the applicant for the barring order to which the interim barring order relates shall be deemed to be the applicant for the interim barring order and where a protection order has been made the applicant for the safety order or the barring order to which the protection order relates shall be deemed to be the applicant for that protection order;

“barring order” has the meaning assigned by Head 3;

“Child and Family Agency” means the agency established under the Child and Family Agency Act 2013, the functions of which are as outlined in that Act;

“civil partner” has the meaning assigned to it by the Act of 2010 and includes a person who was a civil partner in a partnership that has been dissolved under that Act;

“civil proceedings under this Act” means—

(a) proceedings for the making, variation or discharge of a safety order or a barring order,

(b) proceedings, consequent on the making of an application for a barring order, for the making, variation or discharge of an interim barring order which relates to the application,

(c) proceedings, consequent on the making of an application for a safety order or barring order, for the making, variation or discharge of a protection order which relates to the application,

(d) any proceedings by way of appeal or case stated which are related to proceedings to which *paragraph (a), (b) or (c)* applies;

“the court” means the Circuit Court or the District Court;

“dependent person”, in relation to the applicant or the respondent or both of them, as the case may be, means any child—

(a) of the applicant and the respondent or adopted by both the applicant and the respondent under the Adoption Acts, 1952 to 2010, or under an adoption deemed to have been effected by a valid adoption order by virtue of Part 3, Chapter 2 or Part 4, Chapters 1, 2, 3, and 6 of the Adoption Act, 2010, or in relation to whom both the applicant and the respondent are *in loco parentis*, or

(b) of the applicant or adopted by the applicant under the Adoption Acts, 1952 to 2010, or under an adoption deemed to have been effected by a valid adoption order by virtue of Part 3, Chapter 2 or Part 4, Chapters 1, 2, 3, and 6 of the Adoption Act, 2010, or in relation to whom the applicant is *in loco parentis*, or

(c) of the respondent or adopted by the respondent under the Adoption Acts, 1952 to 2010, or under an adoption deemed to have been effected by a valid adoption order by virtue of Part 3, Chapter 2 or Part 4, Chapters 1, 2, 3 and 6 of the Adoption Act, 2010, or in relation to whom the respondent is *in loco parentis*, and the applicant, while not in the same relationship to that child for the purposes of this paragraph as the respondent is in, is in respect of that child a person to whom *paragraph (b)* of this definition relates,

who is not of full age or if the child has attained full age has a physical or mental disability to such extent that it is not reasonably possible for the child to live independently of the applicant.

“full age” has the same meaning as it has in the Age of Majority Act, 1985;

“functions” includes powers and duties;

“interim barring order” has the meaning assigned by Head 4;

“protection order” has the meaning assigned by Head 5;

“respondent”, where appropriate, has the meaning assigned by either Heads 2 or 3 or by both of those Heads and where an interim barring order has been made the respondent to the application for the barring order to which the interim barring order relates shall be deemed to be the respondent to the

interim barring order and where a protection order has been made the respondent to the application for the safety order or the barring order to which the protection order relates shall be deemed to be the respondent to that protection order;

“safety order” has the meaning assigned by Head 2;

“welfare” includes the physical and psychological welfare of the person in question.

(2) (a) A reference in this General Scheme to a Head is a reference to a Head of this Scheme unless it is indicated that a reference to some other Act is intended.

(b) A reference in this General Scheme to a subsection or to a paragraph is to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) Any reference in this General Scheme to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment including this General Scheme.

Head 2

Safety order

Provide along the following lines:

(1) (a) In this section—

“the applicant” means a person, other than the Child and Family Agency or the Health Service Executive, who has applied or on whose behalf the Child and Family Agency or the Health Service Executive have applied by virtue of Head 6 for a safety order against another person (in this section referred to as “the respondent”) and the person so applying or on whose behalf the Child and Family Agency or the Health Service Executive have so applied—

- (i) is the spouse or the civil partner of the respondent, or a person who was a party to a civil partnership with the respondent that has been dissolved under the Act of 2010, or
- (ii) is not the spouse or the civil partner within the meaning of the Act of 2010 of the respondent and is not related to the respondent within the prohibited degrees of relationship, but lived with the respondent in an intimate and committed relationship prior to the application for the safety order, or
- (iii) is a parent of the respondent and the respondent is a person of full age who is not, in relation to the parent, a dependent person, or
- (iv) being of full age resides with the respondent in a relationship the basis of which is not primarily contractual, or
- (v) is a parent of a child whose other parent is the respondent;

“kindred”, in respect of two or more persons, means the relationship of each of those persons to the other person or to the rest of those persons by blood, adoption, marriage or civil partnership.

(b) In deciding whether or not a person is residing with another person in a relationship the basis of which is not primarily contractual, the court shall have regard to—

- (i) the length of time those persons have been residing together,
- (ii) the nature of any duties performed by either person for the other person or for any kindred person of that other person,
- (iii) the absence of any profit or of any significant profit made by either person from any monetary or other consideration given by the other person in respect of residing at the place concerned,

- (iv) such other matters as the court considers appropriate in the circumstances.

(2) Where the court, on application to it, is of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person so requires, it may, subject to Head 7, by order (in this Bill referred to as a “safety order”) prohibit the respondent to the application from doing one or more of the following—

- (a) using or threatening to use violence against, molesting or putting in fear the applicant or that dependent person, or
- (b) if he or she is residing at a place other than the place where the applicant or that dependent person resides, watching or besetting a place where the applicant or that dependent person resides, or
- (c) following or communicating with the applicant, including by electronic means, other than for such purposes as the court may specify.

And the court may make such order subject to such exceptions and conditions as it may specify.

(3) Where a safety order has been made, any of the following may apply to have it varied, that is to say:

(a) if the application for the order was made by the Child and Family Agency or the Health Service Executive in respect of any dependent person by virtue of Head 6—

- (i) the Child and Family Agency,
- (ii) the Health Service Executive,
- (iii) the person referred to in *subsection (1)(c)* of that Head, or
- (iv) the respondent to that application;

(b) if the application for the order was made by the Child and Family Agency or the Health Service Executive in any other case by virtue of Head 6—

- (i) the Child and Family Agency,
- (ii) the Health Service Executive,
- (iii) the person who was the applicant for the order, or
- (iv) the respondent to that application;

(c) in any other case—

- (i) the person who was the applicant for the order, or
- (ii) the person who was the respondent to the application for the order,

and the court upon hearing any such application shall make such order as it considers appropriate in the circumstances.

(4) For the purposes of subhead (3), a safety order made by a court on appeal from another court shall be treated as if it had been made by that other court.

(5) A safety order, if made by the District Court or by the Circuit Court on appeal from the District Court, shall, subject to subhead (6)(a) and Head 13, expire five years after the date of its making or on the expiration of such shorter period as the court may provide for in the order.

(6) (a) On or before the expiration of a safety order to which subhead (5) relates, a further safety order may be made by the District Court or by the Circuit Court on appeal from the District Court for a period of five years, or such shorter period as the court may provide for in the order, with effect from the expiration of the first-mentioned order.

(b) On or before the expiration of a safety order to which *paragraph (a)* does not relate, a further safety order may be made by the District court for a period of five years, or such shorter period as the court may provide for in the order, with effect from the expiration of the first-mentioned order.

(7) Notwithstanding subhead (5), so much of a safety order as was made

- (i) for the benefit of a dependent person who is not of full age shall expire in accordance with such order or upon such person reaching full age, whichever first occurs, or
- (ii) where such person is under the age of 23 and is receiving full-time education or instruction at any university, college, school or other educational establishment, the order shall expire in accordance with such order or, upon the person ceasing full-time education or reaching the age of 23, whichever first occurs, or
- (iii) where such person has a physical or intellectual disability which prevents the person from living independently of the applicant, the order shall expire in accordance with such order or upon recovery from the disability, whichever first occurs.

(8) The court shall not make a safety order on an application for a barring order unless there is also an application for a safety order before the court concerning the same matter.

Head 3

Barring order

Provide along the following lines:

(1) In this section “the applicant” means a person, other than the Child and Family Agency or the Health Service Executive, who has applied or on whose behalf the Child and Family Agency or the Health Service Executive have applied by virtue of Head 6 for a barring order against another person (in this section referred to as “the respondent”) and the person so applying or on whose behalf the Child and Family Agency or the Health Service Executive have so applied—

(a) is the spouse of the respondent, or

(b) is the civil partner of the respondent, or a person who was a party to a civil partnership with the respondent that has been dissolved under the Act of 2010, or

(c) is not the spouse or civil partner within the meaning of the Act of 2010 of the respondent and is not related to the respondent within the prohibited degrees of relationship, but lived with the respondent in an intimate and committed relationship, or

(d) is a parent of the respondent and the respondent is a person of full age who is not, in relation to the parent, a dependent person.

(2) (a) Where the court, on application to it, is of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person so requires, it may, subject to Head 7 and having taken into account any order made or to be made to which subheads 2(a) or (e) of Head 9 relate, by order (in this Act referred to as a “barring order”

(i) direct the respondent, if residing at a place where the applicant or that dependent person resides, to leave such place, and

(ii) whether the respondent is or is not residing at a place where the applicant or that dependent person resides, prohibit that respondent from entering such place until further order of the court or until such other time as the court shall specify.

(b) In deciding whether or not to grant a barring order the court shall have regard to the safety and welfare of any dependent person in respect of whom the respondent is a parent or *in loco parentis*, where such dependent person is residing at the place to which the order, if made, would relate.

(3) A barring order may, if the court thinks fit, prohibit the respondent from doing one or more of the following, that is to say:

(a) using or threatening to use violence against, molesting or putting in fear the applicant or that dependent person, or

(b) if he or she is residing at a place other than the place where the applicant or that dependent person resides, watching or besetting a place where the applicant or that dependent person resides, or

(c) following or communicating with the applicant, including by electronic means, other than for such purposes as the court may specify.

And the court may make such order subject to such exceptions and conditions as it may specify.

(4) (a) In respect of a person who is an applicant by virtue of paragraph (c) or (d) of subhead (1), the court shall not make a barring order in respect of the place where the applicant or dependent person resides where the respondent has a legal or beneficial interest in that place but—

(i) the applicant has no such interest, or

(ii) the applicant's interest is, in the opinion of the court, less than that of the respondent.

(b) Where in proceedings to which this section applies the applicant states the belief, in respect of the place to which *paragraph (a)* relates, that he or she has a legal or beneficial interest in that place which is not less than that of the respondent, then such belief shall be admissible in evidence.

(5) Without prejudice to Head 27, nothing in this Act shall be construed as affecting the rights of any person, other than the applicant or the respondent, who has a legal or beneficial interest in a place in respect of which the court has made an order under this section.

(6) Where a barring order has been made, any of the following may apply to have it varied, that is to say:

(a) if the application for the order was made by the Child and Family Agency or the Health Service Executive in respect of any dependent person by virtue of Head 6—

(i) the Child and Family Agency,

(ii) the Health Service Executive,

(iii) the person referred to in subhead (1)(c) of that section, or

(iv) the respondent to that application;

(b) if the application for the order was made by the Child and Family Agency or the Health Service Executive in any other case by virtue of Head 6—

(i) the Child and Family Agency,

(ii) the Health Service Executive,

(iii) the person who was the applicant for the order, or

(iv) the respondent to that application;

(c) in any other case—

(i) the person who was the applicant for the order, or

(ii) the person who was the respondent to the application for the order,

and the court upon hearing any such application shall make such order as it considers appropriate in the circumstances.

(7) For the purposes of subhead (6), a barring order made by a court on appeal from another court shall be treated as if it had been made by that other court.

(8) A barring order, if made by the District Court or by the Circuit Court on appeal from the District Court, shall, subject to subhead 9(a) and Head 13, expire three years after the date of its making or on the expiration of such shorter period as the court may provide for in the order.

(9) (a) On or before the expiration of a barring order to which subhead (8) relates, a further barring order may be made by the District Court or by the Circuit Court on appeal from the District Court for a period of three years, or such shorter period as the court may provide for in the order, with effect from the expiration of the first-mentioned order.

(b) On or before the expiration of a barring order to which *paragraph (a)* does not relate, a further barring order may be made by the District Court for a period of three years, or such shorter period as the court may provide for in the order, with effect from the expiration of the first-mentioned barring order.

(10) Notwithstanding subhead (8), so much of a barring order as was made

(i) for the benefit of a dependent person who is not of full age shall expire in accordance with such order or upon such person reaching full age, whichever first occurs, or

- (ii) where such person is under the age of 23 and is receiving full-time education or instruction at any university, college, school or other educational establishment, the order shall expire in accordance with such order or, upon the person ceasing full-time education or reaching the age of 23, whichever first occurs, or
- (iii) where such person has a physical or intellectual disability which prevents the person from living independently of the applicant, the order shall expire in accordance with such order or upon recovery from the disability, whichever first occurs.

(11) The court shall not make a barring order on an application for a safety order unless there is also an application for a barring order before the court concerning the same matter.

(12) For the purposes of subheads (2) and (3), an applicant or a dependent person who would, but for the conduct of the respondent, be residing at a place shall be treated as residing at such place.

Head 4

Interim barring order

Provide along the following lines:

(1) If, on the making of an application for a barring order or between the making of such application and its determination, the court is of the opinion that there are reasonable grounds for believing that—

(a) there is an immediate risk of significant harm to the applicant or any dependent person if the order is not made immediately, and

(b) the granting of a protection order would not be sufficient to protect the applicant or any dependent person,

the court may, subject to Head 7 and having taken into account any order made or to be made to which paragraph (a) or (e) of subhead (2) of Head 9 relates, by order (in this Act referred to as an “interim barring order”)—

- (i) direct the respondent, if residing at a place where the applicant or that dependent person resides, to leave such place, and
- (ii) whether the respondent is or is not residing at a place where the applicant or that dependent person resides, prohibit that respondent from entering such place until further order of the court or until such other time as the court shall specify.

(2) Subheads (3), (5), (6), (7) and (12) of Head 3 shall apply to an interim barring order as they apply to a barring order.

(3) (a) 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.

(b) The application for such an order shall be grounded on an affidavit or information sworn by the applicant.

(c) An affidavit or information sworn by the applicant for a barring order shall state whether the property from which it is sought to bar the respondent on an interim basis is a place of business for the respondent or includes or abuts the respondent’s place of business.

(d) if an interim barring order is made *ex parte*—

(i) a note of evidence given by the applicant shall be prepared forthwith—

(l) by the judge,

(II) by the applicant or the applicant's solicitor and approved by the judge,

or

(III) as otherwise directed by the judge,

and

(ii) a copy of the order, affidavit or information and note shall be served on the respondent as soon as practicable.

(e) 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.

(f) The order shall contain a statement of the effect of paragraph (d).

(g) In paragraph (d) 'working days' means days other than Saturdays, Sundays or public holidays (within the meaning of the Organisation of Working Time Act, 1997).

(4) An interim barring order shall cease to have effect on the determination by the court of the application for a barring order.

Head 5

Protection order

Provide along the following lines:

(1) If, on the making of an application for a safety order or a barring order or between the making of such an application and its determination, the court is of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant for the order concerned or of any dependent person so requires, the court may by order (in this Act referred to as a “protection order”) prohibit the respondent to the application from—

(a) using or threatening to use violence against, molesting or putting in fear the applicant or that dependent person, or

(b) if he or she is residing at a place other than the place where the applicant or that dependent person resides, watching or besetting a place where the applicant or that dependent person resides, or

(c) following or communicating with the applicant, including by electronic means, other than for such purposes as the court may specify.

And the court may make the protection order subject to such exceptions and conditions as it may specify.

(2) Where a protection order has been made, any of the following may apply to have it varied, that is to say:

(a) if the application for the order was made by the Child and Family Agency or the Health Service Executive in respect of any dependent person by virtue of Head 6—

(i) the Child and Family Agency,

(ii) the Health Service Executive,

(iii) the person referred to in subhead (1)(c) of that Head, or

(iv) the respondent to that application;

(b) if the application for the order was made by the Health Service Executive or the Child and Family Agency in any other case by virtue of Head 6—

(i) the Child and Family Agency,

(ii) the Health Service Executive,

(iii) the person who was the applicant for the order, or

(iv) the respondent to that application;

(c) in any other case—

(i) the person who was the applicant for the order, or

(ii) the person who was the respondent to the application for the order,

and the court upon hearing any such application shall make such order as it considers appropriate in the circumstances.

(3) For the purposes of subhead (2), a protection order made by a court on appeal from another court shall be treated as if it had been made by that other court.

(4) (a) A protection order may be made *ex parte*.

(b) The application for such an order shall be grounded on an affidavit or information shown by the applicant,

(c) If a protection order is made *ex parte*-

(i) a note of evidence given by the applicant shall be prepared forthwith-

(I) by the judge,

(II) by the applicant or the applicant's solicitor and approved by the judge,

Or

(III) as otherwise directed by the judge,

and

(ii) a copy of the order, affidavit or information and note shall be served on the respondent as soon as practicable.

(5) A protection order shall cease to have effect on the determination by the court of the application for a safety order or a barring order.

(6) Notwithstanding subhead (5), so much of a protection order as was made

(i) for the benefit of a dependent person who is not of full age shall expire in accordance with such order or upon such person reaching full age, whichever first occurs, or

- (ii) where such person is under the age of 23 and is receiving full-time education or instruction at any university, college, school or other educational establishment, the order shall expire in accordance with such order or, upon the person ceasing full-time education or reaching the age of 23, whichever first occurs, or
- (iii) where such person has a physical or intellectual disability which prevents the person from living independently of the applicant, the order shall expire in accordance with such order or upon recovery from the disability, whichever first occurs.

(7) For the purposes of this section, an applicant or a dependent person who would, but for the conduct of the respondent, be residing at a place shall be treated as residing at such place.

Head 6

Power of the Child and Family Agency or the Health Service Executive to apply for certain orders

Provide along the following lines:

(1) Subject to subheads (2), (3) and (4), this Head shall apply where the Health Service Executive or Child and Family Agency—

(a) become aware of an alleged incident or series of incidents which in its opinion puts into doubt the safety or welfare of a person (in this section referred to as the “aggrieved person”),

(b) have reasonable cause to believe that the aggrieved person has been subjected to molestation, violence or threatened violence or otherwise put in fear of his or her safety or welfare,

(c) are of the opinion that there are reasonable grounds for believing that, where appropriate in the circumstances, a person would be deterred or prevented as a consequence of molestation, violence or threatened violence by the respondent or fear of the respondent from pursuing an application for a safety order or a barring order on his or her own behalf or on behalf of a dependent person, and

(d) consider, having ascertained as far as is reasonably practicable the wishes of the aggrieved person or, where the aggrieved person is a dependent person, of the person to whom *paragraph (c)* relates in respect of such dependent person, that it is appropriate in all the circumstances to apply for a safety order or a barring order or both in accordance with this Act on behalf of the aggrieved person.

(2) The Child and Family Agency or the Health Service Executive may apply to the court on behalf of the aggrieved person for a safety order or a barring order for which the aggrieved person or, where the aggrieved person is a dependent person, the person to whom subhead (1)(c) relates in respect of such dependent person could have applied.

(3) Where an application is made by the Child and Family Agency or the Health Service Executive by virtue of this section, the court shall, in determining whether, and if so to what extent, to exercise any of its functions under Heads 2, 3, 4, 5, or 13, have regard to any wishes expressed by—

(a) the aggrieved person, or

(b) where the aggrieved person is a dependent person, the person to whom subhead (1)(c) relates in respect of such dependent person and, where the court considers it appropriate, such dependent person.

(4) The provisions of paragraphs (a) and (b) of subhead (1) need not be complied with—

(a) where the application relates to an aggrieved person who is a dependent person, or

(b) in respect of so much of an application as relates to an aggrieved person where such person is a dependent person, if the court is of the opinion that there is reasonable cause to believe that—

- (i) such dependent person has been or is being assaulted, ill-treated, sexually abused or seriously neglected, or
- (ii) such dependent person's health, development or welfare has been, is being or is likely to be avoidably impaired or seriously neglected, and that if the order is made the likelihood of harm to such dependent person will not arise or will be materially diminished.

(5) The court shall not make a barring order or an interim barring order where the aggrieved person is a dependent person unless the Child and Family Agency or the Health Service Executive satisfy the court that the person to whom subhead (1)(c) relates in respect of such dependent person is willing and able to provide reasonable care for such dependent person.

Head 7

Power to make orders, etc., under Child Care Act, 1991

Provide along the following lines:

(1) Where in proceedings for any order under this Act, other than proceedings to which Head 6 relates, it appears to the court that it may be appropriate for a care order or a supervision order to be made under the Child Care Act, 1991, with respect to a dependent person concerned in the proceedings, the court may, of its own motion or on the application of any person concerned, adjourn the proceedings and direct the Child and Family Agency to undertake an investigation or, as the case may be, further investigations of such dependent person's circumstances.

(2) Where proceedings are adjourned and the court gives a direction under subhead (1), the court may give such directions under the Child Care Act, 1991, as it sees fit as to the care and custody of, and may make a supervision order under that Act in respect of, the dependent person concerned pending the outcome of the investigation by the Child and Family Agency concerned.

(3) Where the court gives a direction under subhead (1) in respect of a dependent person, the Child and Family Agency concerned shall undertake an investigation of such dependent person's circumstances and shall consider if it should—

(a) apply for a care order or a supervision order under the Child Care Act, 1991,

(b) provide services or assistance for such dependent person's family, or

(c) take any other action in respect of such dependent person.

(4) Where the Child and Family Agency undertakes an investigation under this section and decides not to apply for a care order or supervision order under the Child Care Act, 1991, with respect to the dependent person concerned, it shall inform the court of—

(a) its reasons for so deciding,

(b) any service or assistance it has provided, or intends to provide, for such dependent person and his or her family, and

(c) any other action which it has taken, or proposes to take, with respect to such dependent person.

Head 8

Application of section 9(2) of Family Home Protection Act, 1976 or of section 34(2) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, to certain Orders and of Orders restricting disposal or removal of household chattels

Provide along the following lines:

(1) Subsection (2) of Section 9 (which restricts the right of a spouse to dispose of or remove household chattels pending the determination of matrimonial proceedings) of the Family Home Protection Act, 1976, shall apply between the making of an application, against the spouse of the applicant, for a barring order or a safety order and its determination, and if an order is made, while such order is in force, as it applies between the institution and final determination of matrimonial proceedings to which that section relates.

(2) For the avoidance of doubt, it is hereby declared that the court which is empowered under subsection (2)(b) of section 9 of the Family Home Protection Act, 1976, to grant permission for any disposition or removal of household chattels (being household chattels within the meaning of that section) is, notwithstanding anything in section 10 of that Act, the court before which the proceedings (including any proceedings for a barring order or a safety order) have been instituted.

(3) Section 34(2) (which restricts the right of a civil partner to dispose of or remove household chattels) of the Act of 2010 shall apply between the making of an application against the civil partner of the applicant for a barring order or a safety order and its determination, and if an order is made, while the order is in force, as it applies between the institution and final determination of dissolution proceedings to which that section relates.

(4) A court which is empowered under section 34(2)(b) of the Act of 2010 to grant permission for any disposition or removal of household chattels within the meaning of that section is, notwithstanding anything in section 140 of that Act, the court before which the proceedings (including any proceedings for a barring order or a safety order) have been instituted.

Head 9

Hearing of applications under various Acts together

Provide along the following lines:

(1) Where an application is made to the court for an order under this Act, the court may, on application to it in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the orders referred to in *subsection (2)*.

(2) The provisions to which subhead (1) relates are as follows, that is to say:

(a) an order under section 11 (as amended by the Status of Children Act, 1987 and by the Children and Family Relationships Act 2015) of the Guardianship of Infants Act, 1964;

(b) an order under section 5, 5A, 6, 7 or 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (as amended by the Status of Children Act, 1987);

(c) an order under section 5 or 9 of the Family Home Protection Act, 1976;

(d) an order under section 30 of the Act of 2010 (as amended by section 137 of the Children and Family Relationships Act 2015), section 34 of the Act of 2010 (as amended by section 138 of the Children and Family Relationships Act 2015) and section 45 of the Act of 2010 (as amended by section 140 of the Children and Family Relationships Act 2015);

(e) an order under the Child Care Act, 1991.

Head 10

Taking effect of orders

Provide along the following lines:

- (1) A safety order, barring order, interim barring order or protection order shall take effect on notification of its making being given to the respondent.
- (2) Oral communication to the respondent by or on behalf of the applicant of the fact that a safety order, barring order, interim barring order or protection order has been made, together with production of a copy of the 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.
- (3) If the respondent is present at a sitting of the court at which the safety order, barring order, interim barring order or protection order is made, that respondent shall be taken for the purposes of subhead (1) to have been notified of its making.
- (4) An order varying a safety order, barring order, interim barring order, or protection order shall take effect on notification of its making being given to the person who was the other party in the proceedings for the making of the safety order, or barring order and for this purpose subheads (2) and (3) shall apply with the necessary modifications.

Head 11

Copies of orders to be given to certain persons

Provide along the following lines:

(1) The court, on making, varying or discharging a safety order or a protection order, shall cause a copy of the order in question to be given or sent as soon as practicable—

(a) to the applicant for the safety order or, in respect of a protection order, the applicant for the safety order or barring order concerned,

(b) to the respondent to the application for the safety order or, in respect of a protection order, the respondent to the application for the safety order or barring order concerned,

(c) where the Child and Family Agency or the Health Service Executive by virtue of Head 6 made the application for the safety order or, in respect of a protection order, for the safety order or barring order, to the Child and Family Agency or the Health Service Executive,

(d) to the member of the Garda Síochána in charge of the Garda Síochána station for the area in which the person for whose benefit the safety order, protection order was made resides, and

(e) where the order in question is a variation or discharge of a safety order, protection order and the person for whose benefit the order was made had previously resided elsewhere, to the member of the Garda Síochána in charge of the Garda Síochána station for the area in which that person had so resided but only if that member had previously been sent under this subsection a copy of such safety order, protection order, or any order relating thereto.

(2) The court on making, varying or discharging a barring order or an interim barring order shall cause a copy of the order in question to be given or sent as soon as practicable to—

(a) the applicant for the barring order,

(b) the respondent to the application for the barring order,

(c) where the Child and Family Agency or the Health Service Executive by virtue of Head 6 made the application for the barring order concerned, the Child and Family Agency or the Health Service Executive,

(d) the member of the Garda Síochána in charge of the Garda Síochána station for the area in which is situate the place in relation to which the application for the barring order was made, and

(e) where the order in question is a variation or discharge of a barring order or an interim barring order and the place in respect of which the previous order was made is elsewhere, to the member of the Garda Síochána in charge of the Garda Síochána station for the area in which is situated that place but only if that member had previously been sent under this subsection a copy of such barring order or interim barring order or any order relating thereto.

(3) The court—

(a) on making a safety order, a barring order, an interim barring order, or a protection order on the application of, or on behalf of, a person who is not of full age, or

(b) on varying or discharging an order to which *paragraph (a)* relates,

shall cause a copy of the order in question to be given or sent as soon as practicable to the Child and Family Agency or the Health Service Executive for the area in which the person resides.

(4) The validity of any order to which this section relates shall not be affected by non-compliance with the other provisions of this section.

Head 12

Effect of appeal from order

Provide along the following lines:

(1) An appeal from a safety order, or a barring order shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination.

(2) An appeal from a protection order or an interim barring order shall not stay the operation of the order.

Head 13

Discharge of orders

(1) Where a safety order, barring order, interim barring order or protection order has been made, any of the following may apply to the court that made the order to have the order discharged, that is to say:

(a) if the application for the order was made by the Child and Family Agency or the Health Service Executive in respect of any dependent person by virtue of Head 6—

- (i) the Child and Family Agency,
- (ii) the Health Service Executive,
- (iii) the person referred to in subhead (1)(c) of that section, or
- (iv) the respondent to that application;

(b) if the application for the order was made by the Child and Family Agency or the Health Service Executive in any other case by virtue of Head 6—

- (i) the Child and Family Agency,
- (ii) the Health Service Executive,
- (iii) the person who was the applicant for the order, or
- (iv) the respondent to that application;

(c) in any other case—

- (i) the person who was the applicant for the order, or
- (ii) the person who was the respondent to the application for the order,

and thereupon the court shall discharge the order if it is of the opinion that the safety and welfare of the applicant or such dependent person for whose protection the order was made does not require that the order should continue in force.

(2) On determination of any matrimonial cause or matter or any annulment or dissolution proceedings under the Act of 2010, between the applicant and the respondent or of any proceedings between them under the Guardianship of Infants Act, 1964, as amended by the Children and Family Relationships Act 2015, the court determining any such cause, matter or proceedings may, if it thinks fit, discharge any safety order, barring order, interim barring order, emergency barring order or protection order.

(3) For the purposes of this section, an order made by a court on appeal from another court shall be treated as if it had been made by that other court.

Head 14

Exercise of jurisdiction by court

Provide along the following lines:

(1) The jurisdiction of the court in respect of civil proceedings under this Act may be exercised—

(a) as regards the Circuit Court, by the judge of the circuit, and

(b) as regards the District Court, by the judge of the District Court for the time being assigned to the District Court district,

where the applicant resides or, if the application is for a barring order, where there is situate the place in relation to which that application was made.

(2) For the purposes of subhead (1), the court may treat any person concerned as residing at a place where that person would, but for the conduct of the respondent, be residing at.

(3) Where a judge of the District Court to whom subhead (1) relates is not immediately available, the jurisdiction of the District Court under that subsection may be exercised by any judge of the District Court.

Head 15

Rules of court

Provide along the following lines:

(1) For the purpose of ensuring the expeditious hearing of applications under this Act, rules of court may make provision for the service of documents otherwise than under section 7 (as amended by section 22 of the Courts Act, 1971) of the Courts Act, 1964, in circumstances to which that section relates.

(2) This section is without prejudice to section 24 of the Interpretation Act 2005 which provides for rules of court.

Head 16

Hearing of civil proceedings, etc.

Provide along the following lines:

(1) Subject to the provisions of Part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 and Head 17(2), civil proceedings under this Act shall be heard otherwise than in public.

(2) (a) Civil proceedings under this Act before the District Court shall be as informal as is practicable and consistent with the administration of justice.

(b) District Court judges hearing and determining civil proceedings under this Act and barristers and solicitors appearing in such proceedings shall not wear wigs or gowns.

(3) Civil proceedings under this Act before the Circuit Court shall be heard by the Circuit Family Court and, accordingly, the provisions of section 32 and subsection (1) and (2) of section 33 of the Judicial Separation and Family Law Reform Act, 1989, shall apply to such proceedings.

(4) Subsections (3) and (4) of section 33 of the Judicial Separation and Family Law Reform Act, 1989 shall apply to High Court civil proceedings under this Act.

Head 17

Accompaniment

Provide along the following lines:

(1) Where a person, who is reporting a domestic violence incident to An Garda Síochána, or appears to An Garda Síochána to be a victim of such an incident, requires assistance to understand or be understood due to the impact of the incident, she or he may be accompanied by a person of his or her choice, including a support worker, in dealing with An Garda Síochána.

(2) In addition to being accompanied by her or his legal representative in court, an applicant may be accompanied in court by a person of his or her choice, including a support worker, unless a reasoned decision has been made by the court to the contrary.

“support worker” means a volunteer of, or any person employed under a contract of service or under a contract for services by an organisation and trained to provide support to victims of crime.

Head 18

Views of a child for whom an order is sought

(1) Where an order is sought on behalf of a child, the court shall, where it considers it relevant in relation to the proposed order or that part of a proposed order in relation to the child, seek the views of the child who is capable of forming his or her own views, prior to deciding whether or not to make the order, having regard to the age and maturity of the child. The court may draw on the assistance of an expert to ascertain the child's views where necessary.

(2) The child's views should be taken into account only in deciding an application on behalf of a child or that part of an application relating to the child.

(3) The Minister may, in consultation with the Minister for Children and Youth Affairs, by regulation specify-

(a) the qualifications and expertise of an expert appointed under this section, and

(b) the fees and allowable expenses that may be charged by such an expert.

(4) Without prejudice to the generality of subhead (3), regulations under that subhead may provide for:

(a) the qualifications, and the minimum level of professional experience, to be held by an expert,

(b) the minimum standards that shall apply to the performance by an expert of his or her functions under this section, and

(c) such other matters as the Minister considers necessary to ensure that experts are capable of performing their functions under this section.

Head 19

Referrals to Support Services

(1) The Court Service shall provide an applicant with information on and contact details for domestic violence support services.

(2) When granting a barring order or a safety order, the court may direct a respondent to engage with services to address issues relating to the respondent's behaviour which may have contributed to the granting of the order. The services may include but are not limited to:

- (a) a domestic violence perpetrator programme,
- (b) an addiction service,
- (c) a counselling or psychotherapy service, or
- (d) a service in relation to financial planning.

(3) The court may consider the engagement of the respondent with services, and the outcome of such engagement, when hearing any application for a variation of or an appeal from an order under Heads 2, 3 or 5 or when hearing an application for a further order. Where the court hears evidence under this section, it shall have regard to any views that the applicant may have on the respondent's engagement with services and on the outcome of such engagement.

(4) A court may consider the engagement of the respondent with services, and the outcome of such engagement, when hearing proceedings for an offence under Head 20. Where the court hears evidence under this section, it shall have regard to any views that the applicant may have on the respondent's engagement with services, and on the outcome of such engagement.

Head 20 Offences

Provide along the following lines:

(1) A respondent who—

(a) contravenes a safety order, a barring order, an interim barring order, a protection order, or

(b) while a barring order or interim barring order is in force refuses to permit the applicant or any 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 such dependent person from so doing,

shall be guilty of an offence and shall be liable on summary conviction to a Class B fine or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both.

(2) Subhead (1) is without prejudice to the law as to contempt of court or any other liability, whether civil or criminal, that may be incurred by the respondent concerned.

Head 21

Arrest without warrant

Provide along the following lines:

- (1) (a) Where a member of the Garda Síochána has reasonable cause for believing that, in respect of an order under this Act, an offence is being or has been committed under Head 20 the member may, on complaint being made to him or her by or on behalf of the person who was the applicant to which the order relates, arrest the respondent concerned without warrant.

(b) For the purpose of arresting a respondent under *paragraph (a)*, a member of the Garda Síochána may enter, if need be by force, and search any place where the member, with reasonable cause, suspects the respondent to be.

Head 22

Costs

Provide along the following lines:

The costs of any civil proceedings under this Act shall be in the discretion of the court.

Head 23

Restrictions on those present in the courtroom

Provide along the following lines:

- (1) In proceedings relating to an offence under Head 20, the judge shall exclude from the court during the hearing all persons except officers of the court, persons directly concerned in the hearings, any person accompanying the victim under Head 17, bona fide representatives of the Press, as provided for under Head 16, and such other persons (if any) as the judge may at his or her discretion permit to remain.
- (2) The Minister may make regulations outlining the persons who may be present in the courtroom for such proceedings.

Head 24

Anonymity of victim and person charged

Provide along the following lines:

(1) Where a person is charged with an offence under Head 20, any person who publishes or broadcasts any information, including—

(a) any photograph of, or that includes a depiction of, the victim or the person charged, or of any dependent of either of them or a child to whom either is in loco parentis, or

(b) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the victim or the person charged, or of any dependent of either of them or a child to whom either is in loco parentis,

that is likely to enable the identification of the victim or the person charged, shall, subject to any direction under subhead (2), be guilty of an offence.

(2) If any matter is published or broadcast in contravention of subhead (1), the following persons shall be guilty of an offence namely:

(a) in the case of matter published in a newspaper or periodical publication, the proprietor, the editor and the publisher thereof;

(b) in the case of matter published in any other written publication, the publisher thereof, and

(c) in the case of matter broadcast, any person who transmits or provides the programme in which the broadcast is made and any person who performs functions in relation to the programme corresponding to those of the editor of a newspaper.

(3) Subject to subhead (1), the judge of the court in which proceedings for an offence are brought may, where he or she considers that the interests of justice so require, direct that such information as he or she shall specify in the direction may be published or broadcast in such manner and subject to such conditions as he or she may specify in the direction.

(4) A direction under this section shall be in writing.

(5) In this section—

“ broadcasts ” means transmits, relays or distributes by wireless telegraphy or by any other means, or by wireless telegraphy in conjunction with any other means, of communications, sounds, signs, visual images or signals intended for reception by any person whether such communications, sounds, signs, visual images or signals are received by that person or not;

“publishes” means publishes to any person, and includes publishing on the internet.

Head 25

Offences under Head 24

(1) Any person who commits an offence under subhead (1) of Head 24 shall be liable upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both, except where the applicant consents in court to be so identified or where there is summary disposal for a minor offence.

2) A person who contravenes a direction under subhead (3) of head 24, including a condition of such a direction, shall be guilty of an offence and shall be liable on summary conviction to a fine or imprisonment for a term not exceeding 3 years, or both and upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both.

(3) (a) Where an offence under Head 24 has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(b) Where the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(4) It shall be a defence for a person who is charged under Head 24 to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the matter alleged to have been published or broadcast was a matter specified in the said Head 24.

Head 26

Provision for evidence by television link

Provide along the following lines:

Amendment of Criminal Evidence Act 1992

(1) Insert a new subsection (1) in section 12 of the Criminal Evidence Act, 1992, after 12(e):

(1) Sections 13, 17 and 18 of this Part applies to

(a) an offence under Head 20;

(b) proceedings under Heads 2, 3, 4 or 5 reading a reference in this Part to an 'offence' as if it was to proceedings under sections 2, 3, 4 or 5 as the case may be of the Domestic Violence Act, 1996, and reading a reference in this Part to 'the accused' as if it was to a respondent to proceedings under sections 2, 3, 4 or 5 as the case may be of the Domestic Violence Act 1996.

Head 27

Saving provisions

Provide along the following lines:

(1) Where, by reason only of an interim barring order or a barring order, a person is not residing at a place during any period, that person shall be deemed, for the purposes of any rights under the Statutes of Limitation, 1957 and 1991, the Landlord and Tenant Acts, 1967 to 1994, and the Housing (Private Rented Dwellings) Acts, 1982 and 1983, to be residing at that place during that period.

(2) Except in so far as the exercise by a respondent of a right to occupy the place to which a barring order or an interim barring order relates is suspended by virtue of the order, the order shall not affect any estate or interest in that place of that respondent or any other person.

Head 28

Expenses

Provide along the following lines:

The expenses incurred by the Minister for Justice and Equality or by the Minister for Children and Youth Affairs or any other Minister of the Government in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Head 29

Commencement

Provide along the following lines:

(1) This Act shall come into operation on the day or days that the Minister may appoint by order or orders, other than generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Head 30
Short title

This Bill may be cited as the Domestic Violence (Amendment and Consolidation) Bill 2015.

SCHEDULE

Provide along the following lines:

Enactments repealed

Number / Year	Short Title	Extent of repeal
1/1996	Domestic Violence Act (1996)	The whole Act.
30/2002	Domestic Violence (Amendment) Act (2002)	The whole Act

ACTS REFERRED TO

Adoption Acts, 1952 to 2010

Age of Majority Act 1985, No. 2 of 1985

Child and Family Agency Act 2013, No. 40 of 2013

Child Care Act 1991, No. 17 of 1991

Children and Family Relationships Act 2015

Civil Law and (Miscellaneous Provisions) Act 2011, No. 23 of 2011

Civil Liability and Courts Act 2004, No. 31 of 2004.

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, No. 24 of 2010

Courts Act 1964, No. 11 of 1964

Courts Act 1971, No. 36 of 1971

Courts and Civil Law (Miscellaneous Provisions) Act 2013, No. 32 of 2013.

Domestic Violence (Amendment) Act 2002, No. 30 of 2002

Family Home Protection Act 1976, No. 27 of 1976

Family Law Act 1995, No. 26 of 1995

Family Law (Divorce) Act 1996, No. 33 of 1996

Family Law (Maintenance of Spouses and Children) Act 1976, No. 11 of 1976

Family Law (Miscellaneous Provisions) Act 1997, No. 18 of 1997

Family Law (Protection of Spouses and Children) Act 1981, No. 21 of 1981

Guardianship of Infants Act 1964, No. 7 of 1964

Health Act 1970, No. 1 of 1970

Health Act 2004, No. 42 of 2004

Housing (Private Rented Dwellings) Acts 1982 and 1983

Interpretation Act 2005, No. 23 of 2005

Judicial Separation and Family Law Reform Act 1989, No. 6 of 1989

Landlord and Tenant Acts 1967 to 1994

Non-Fatal Offences against the Person Act 1997, No. 26 of 1997

Status of Children Act 1987, No. 26 of 1987

Statutes of Limitation Acts 1957 and 1991