

Criminal Law (Defence of Life and Property) Bill 2007

General Scheme

Criminal Law (Defence of Life and Property) Bill 2007: A Bill to revise the law relating to the application of legitimate defence in the context of unlawful intrusion or trespass on the home dwelling.

- Head 1: Short title and commencement**
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Head 1: Short title and commencement

Provide that -

- (1) This Bill may be cited as the Criminal (Law Defence of Life and Property) Bill 2007.
- (2) The Minister for Justice, Equality & Law Reform shall appoint a day as a commencement day for this Bill.

Head 2 – Definitions and interpretation

Provide that -

- (l)(a) “dwelling” means a house, apartment, building, mobile home/caravan, vessel or other structure ordinarily used for habitation and includes any building or structure, though movable or temporary or a portion thereof that is the time being the person’s home (or place of lodging).
 - (b) “curtilage” is the area or other building in the vicinity of the house and ordinarily used in conjunction with it and includes any driveway, access path, garden or yard.
 - (c) “arrestable offence” has the meaning it has in section 2 of the Criminal Justice Law Act 1997 as amended by section 8 of the Criminal Justice Act 2006.
 - (d) “use of force” has the meaning set out in Head 3.
 - (e) “harm” means harm to body or mind and includes pain and unconsciousness.
 - (f) “Property” means property of a tangible nature, whether real or personal, including money and animals that are capable of being stolen
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- (2)(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act.
 - (b) a reference to a section is a reference to a section of this Act unless it is indicated that a reference to some other enactment is intended.

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that a reference to some other enactment is intended.

Head 3 – Meaning of Use of Force

Provide that -

- (1) for the purposes of Heads 4 & 5 of this Bill –
 - (a) a person uses force in relation to another person or property not only when he or she applies force to, but also where he or she causes an impact on, the body of that person or that property;
 - (b) a person shall be treated as using force in relation to another person if –
 - (i) he or she threatens that person with its use, or
 - (ii) he or she detains that person without actually using it;and
 - (c) a person shall be treated as using force in relation to property if he or she threatens a person with its use in relation to property.
- (2) Heads 4 & 5 shall apply in relation to acts immediately preparatory to the use of force as they apply in relation to acts in which force is used.
- (3) A threat of force may be reasonable although the actual use of force may not be.

Head 4 – Justifiable use of force, protection of persons or property, prevention of crime.

Provide that -

(1) The provisions of this Bill shall apply to the use of force by a person in their dwelling or in the curtilage of the dwelling in which the person was residing or normally resided, and the use of such force for any of the following purposes, if only such as is reasonable in the circumstances as he or she believes them to be, does not constitute an offence -

- (a) to protect himself or herself or a member of the family of that person or another from injury, assault or detention caused by a criminal act; or
- (b) to protect himself or herself or (with the authority of that other) another from trespass to the person; or
- (c) to protect his or her property from appropriation, destruction or damage caused by a criminal act or from trespass or infringement.
- (d) To protect property belonging to another from appropriation, destruction or damage caused by a criminal act or from trespass or infringement; or
- (e) To prevent crime or a breach of the peace.

(2) For the purposes of this Head an act involves a “crime” or is “criminal” although the person committing it, if charged with an offence in respect of it, would be acquitted on the ground that –

- (a) he or she was under (12) years of age; or
- (b) he or she acted under duress, whether by threats or of circumstances; or
- (c) his or her act was involuntary; or

- (d) he or she was in a state of intoxication, or
- (e) he or she was insane, so as not to be responsible,
according to law, for the act.

(3) The references in subhead (1) to protecting a person or property from anything includes protecting the person or property from its continuing; and the reference to preventing crime or a breach of the peace shall be similarly construed.

(4) For the purposes of this Head the question whether the act against which force is used is of a kind mentioned in any of the paragraphs (a) to (e) of *subhead (1)* shall be determined according to the circumstances as the person using the force believes them to be.

(5) The use of force by a person in assisting in a lawful arrest, if only such as is reasonable in the circumstances as he or she believes them to be, does not constitute an offence.

(6) For the purposes of the above subsection (5) the question as to whether the arrest is lawful shall be determined according to the circumstances as the person using the force believes them to be.

(7) The defence provided by this Head does not apply to a person who causes conduct or a state of affairs with a view to using force to resist or terminate it; but the defence may apply although the occasion for the use of force arises only because the person does something he or she may lawfully do, knowing that such an occasion will arise.

(8) Property shall be treated for the purposes of *subhead (1)(c)* as belonging to any person –

- (a) having the custody or control of it;

- (b) having in it any proprietary right or interest (not being an equitable interest arising from an agreement to transfer or grant an interest); or
- (c) having a charge on it;

and where property is subject to a trust, the persons to whom it belongs shall be treated as including any person having a right to enforce the trust.

(d) Property of a corporation sole shall be treated for the purposes of the aforesaid provisions as belonging to the corporation notwithstanding a vacancy in the corporation.

Head 5 – Grounds for defence and scope of the Bill

- (1) In any criminal prosecution to which this act applies, it shall be a defence for the accused to show –
- (a) that the act or acts alleged took place in the dwelling or in or on the curtilage of the dwelling in which the accused was residing or normally resided, and
 - (b) that the injured party was either alone or with others trespassing or attempting to trespass on the dwelling or on the curtilage of the dwelling in circumstances giving rise to the reasonable belief on the part of the accused that such trespass or attempted trespass was done for the purposes of committing an arrestable offence, and
 - (c) that the act or acts alleged against the accused are believed by the accused to entail the justifiable use of force within the meaning of Head 4(1) above.
- (2) For the purposes of Head 4 and subsection (1) (b) and (c) above It is immaterial whether such belief is justified or not if it is honestly held but the presence or absence of reasonable grounds for the belief is a matter which the court or jury is to have regard, in conjunction with any other relevant matters, in considering whether the person honestly held the belief.
- (3) The provisions of Section 20 (4) of the Non Fatal Offences Against the Person Act 1997 shall not apply in cases where the facts mentioned in paragraphs (a) and (b) of subsection (1) above have been established by the accused.

Or

Where a person applies force in the defence of his or her dwelling against a person who has entered in or on the dwelling or the curtilage

thereof, with intent to commit an arrestable offence or having entered as a trespasser commits or attempts to commit any such offence, the fact that they may have had an opportunity to retreat shall not be taken into account in determining whether the application of such force was legitimate.

- (4) Notwithstanding Head 4, a person who believes circumstances to exist which would justify or excuse the use of force under that subsection has no defence if he or she knows that the force is used against a member of An Garda Síochána acting in the course of a member's duty or a person so assisting such member unless he or she believes the force to be immediately necessary to prevent harm to himself or herself or another.

Head 6 – Civil Liability

Where the provisions of this Bill apply, no civil liability shall apply to a person in respect of any injury arising from his or her actions in relation to a trespasser who has entered the dwelling or curtilage with criminal intent.