

# **NOWELL MELLER SOLICITORS LTD FAMILY LAW SERVICE**

## **LEAFLET NO.11 – DOMESTIC VIOLENCE**

### **A Guide to Part IV of Family Law Act 1996**

#### **What does the Act do to protect victims of domestic violence?**

Part IV of the Act provides for a single set of civil remedies to deal with domestic violence and to regulate occupation of the family home, through two specific types of order: the occupation order and the non-molestation order. It also extends the categories of people entitled to apply for these orders.

#### **What is 'domestic violence'?**

Domestic violence can begin at any stage of a relationship and may continue after the relationship has ended. It can take many forms - not just physical attacks but also bullying, threats, and mental and verbal abuse and humiliation.

Domestic violence is usually experienced by women, but this is not always the case: men can be victims of violence by their women partners. Domestic violence can arise in other family relationships as well. It cuts across all boundaries of social group, class, age, race, disability, sexuality and lifestyle.

Domestic violence is a serious matter and may lead to arrest by the police and to a criminal prosecution. Whether or not the criminal law is used, the civil law provides further protection to allow you to live safely. The civil law has been strengthened by the Family Law Act which makes the law simpler and clearer as well as giving better options for protection to a wider range of people suffering domestic violence.

#### **What is an occupation order?**

An occupation order decides who is allowed to occupy the home, and can direct the violent person to leave the home or part of it. It can also order that person not to come near the home. It can order the violent person to allow the victim of domestic violence to enter and stay in the home, or a part of it and may decide what rights each of them have to occupy the house.

## **Who can apply for an occupation order?**

Spouses, cohabitants, ex-spouses, ex-cohabitants, and other associated persons with existing rights in the property. The terms of the order and the factors to be considered vary according to whether or not the applicant is entitled to occupy the property, and their relationship to the other party or parties.

## **When will the civil court make such an order?**

The civil court will have to have regard to all the circumstances of the case, and in particular:

- the housing needs and resources of the parties and the children;
- the financial resources of the parties;
- the likely effect of an order (or lack of one) on the health, safety and well being of the parties or any relevant child;
- the conduct of the parties in relation to each other and otherwise.

The civil court will also operate a 'balance of harm' test. This means that the court must make an order if it appears that the applicant or child is likely to suffer harm attributable to the conduct of the respondent if an order is NOT made which is as great or greater than the respondent or child is likely to suffer if the order IS made.

## **What if the applicant is married to the respondent, or has a right to occupy the property?**

Where the applicant is entitled to occupy the property, either by virtue of the general law (i.e. they own or partly own the property) or by virtue of 'matrimonial home rights' (i.e. they are married to the owner), the applicant can apply for an order against anyone who is an 'associated person' as defined in the Act. A new term 'matrimonial home rights' describes spouses' statutory rights of occupation under the Act.

## **What if the applicant is an ex-spouse with no existing right to occupy?**

In such cases, there are three additional factors for the courts to consider:

- the length of time since the parties ceased to live together;
- the length of time since the marriage was dissolved or annulled;
- the existence of certain kinds of legal proceedings between the parties.

**What if the applicant is a cohabitant or ex-cohabitant with no existing right to occupy?**

The additional factors which the courts must consider are:

- the nature of the parties relationship;
- whether they have any children or whether there are children involved for whom the parties have parental responsibility;
- the length of time during which they have lived together as man and wife;
- the length of time since the parties ceased to live together;
- the existence of certain kinds of legal proceedings between the parties.

Secondly, although the courts must consider questions of the likelihood of harm being caused by the respondent, this does not impose a duty on the court to make an order as it would in the case of spouses or ex-spouses.

Thirdly, the order may be made for a maximum of six months and may be renewed only once.

**What if neither the applicant nor the respondent has a right to occupy?**

In such cases, an order may be made, for a maximum of six months, but will only have effect between the parties, and will not affect, for example, the rights of a third party entitled to occupy the property. Where the order is between spouses or ex-spouses, the order may be made for a maximum of six months (renewable). Where the order is between cohabitants or ex-cohabitants, the order may only be renewed once.

**Does the court have to take into account whether or not the applicant is, or has been, married to the respondent?**

Where the court is considering making any occupation order in favour of a cohabitant or former cohabitant, and is required to consider the nature of the parties' relationship, it is to have regard to the fact that the parties have not given each other the commitment involved in marriage.

### **What is a non-molestation order?**

A non-molestation order is about behaviour. It can stop one person pestering, threatening or being violent to another person or to any child involved. It can prohibit particular actions and behaviour or molestation in general.

### **Who can apply for one?**

Under the Act, the following 'associated persons' are able to apply for such an order:

- people who are or have been married to each other;
- people who, although not married to each other, are living together or have lived together as husband and wife (cohabitants or ex-cohabitants);
- people who live or have lived in the same household (other than as employer and employee, or landlord and tenant or lodger);
- certain relatives (e.g. parents, grandparents, in-laws, brothers, sisters);
- people who have agreed to marry one another;
- the parents of a child, or people with parental responsibility for the child;
- where a child is adopted, the natural parents and grandparents of the child, the adoptive parents, and the child.

An associated person other than a spouse/ex-spouse/cohabitant/ex-cohabitant may only apply for an occupation order where they are already entitled to occupy the property.

### **What happens if somebody disobeys the court order?**

The breach of a non-molestation order is now a criminal offence and

offenders will usually be arrested by the police and brought before a criminal court.

In addition, when it makes an occupation order, the civil court can give the police the power to arrest a person who has used or threatened violence against you or any child involved. If the person then disobeys the occupation order, the police will arrest them, and bring them before the civil court.

If the civil court does not give the police a power of arrest and the person disobeys the occupation order, you can ask the civil court to issue a warrant for their arrest.

### **How do I apply for an order?**

You can apply on the appropriate form to any family proceedings court or county court dealing with family cases. The court will be able to provide you with a copy of the form but will not be able to give you legal advice. You should consult a specialist family solicitor for legal advice and for help in completing the application forms.

### **What can be done in an emergency?**

If an order needs to be made urgently, the court has power to do so immediately, before the person against whom the order is being made is told that you have applied.

The court must consider whether there is a risk of significant harm from that person to you or to any child involved if the order is not made immediately.

If the court makes this type of order, it must allow the person against whom the order is made an opportunity to put their side of the case. This will happen at a further hearing to which everyone involved can come and give evidence.

### **How does the Act protect children?**

Under the earlier legislation, where a court makes an emergency protection order or interim care order, it is the CHILD, and not the suspected abuser, who has to be removed from the home.

The Act made an important amendment to the Children Act 1989 to enable the court to attach an exclusion requirement for the protection of children when making an emergency protection or interim care order. This permits the removal of a suspected abuser from the home instead of having to remove the child.

A child under 16 may apply for a non-molestation order, or in certain circumstances an occupation order if they are entitled to occupy the property, but the leave of the court is required. Leave will only be given if the court is satisfied that the child has sufficient understanding to make the application.

### **Can I get Public Funding (Legal Aid) to apply for an order?**

Public Funding (Legal Aid) may be available if your savings and income are within the current financial limits and you have a reasonable case. General information about Public Funding and about costs is given in our other leaflets. An initial FREE INTERVIEW is usually available and advice will be given as to your possible eligibility for Public Funding.

As holders of a Community Legal Service Franchise in Family Law, we can grant you an Emergency Funding Certificate in urgent cases (if you qualify financially) to make an immediate application to a court without having to wait for the Legal Services Commission to process an application for Funding.

### **Other possible sources of help**

The following telephone numbers may also be helpful:

Women's Aid National Help line - 0345 023468

Welsh Women's Aid - 01222 390874

Victim Support - see local phone book or ask the police

The Samaritans - see local phone book

Local Women's Aid Group or Refuge - see local phone book or ask police.

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NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.

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