
MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS)

NATIONAL REPORT IRELAND

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2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

In the national reports we would like you to give a brief overview of which legislation/laws are relevant for victim protection purposes. Questions such as: 'Can you provide the key provisions which enable the imposition of protective orders?', 'What are the procedures by which these protection orders are imposed?', 'How can protection orders be enforced?' and 'Are there any recent reforms in protection order legislation?'

Next to the above questions – which all refer to the law in the books – we are also interested in how the law is implemented in practice. It is of vital importance to see how the laws work out in practice and if there are any impediments to their effective implementation. You are also asked to comment on the workings of protection orders in practice.

In many Member States protection orders can be obtained through multiple areas of law, so not only through criminal law, but also via a civil (summary) procedure, through administrative law or other areas of law. If this is the case in your Member State, please distinguish these areas of law when you answer the questions below.

What follows is the structure which the national legal reports should take with further guidance for each section. In case you are not able to answer a certain question, please state this specifically and include the reason why the question cannot be answered (e.g., 'no information available' or 'not applicable to domestic situation').

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

1) We would like to know about the different forms of protection orders in your country

a. Identify the laws in which protection orders are regulated.

Various forms of protection orders are granted, under the

- Domestic Violence Act 1996, as amended by the Domestic Violence (Amendment) Act 2002,
- Non-Fatal Offences Against The Person Act 1997
- Criminal Justice Act 2006, and
- Criminal Justice Act 2007

b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?

Protection orders in the sense of this study are regulated in both specific and generic laws. The specific laws are the DVA (sections 2,3,4 and 5) and DV(A)A (section 1). However orders for the protection of others are also provided for under generic law through the NFOAPA (section 10 (3)), which allows for civil injunctions against violent behaviour, and orders prohibiting perpetrators from any form of contact. Other forms of protection orders can be issued under the genericCJA 2006 and CJA 2007.

c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?

DVA

<http://www.irishstatutebook.ie/1996/en/act/pub/0001/index.html>

DV(A)<http://www.irishstatutebook.ie/2002/en/act/pub/0030/sec0001.html> - sec1

NFOAPA<http://www.irishstatutebook.ie/1997/en/act/pub/0026/print.html> - sec10

CJA 2006 s 101

<http://www.irishstatutebook.ie/2006/en/act/pub/0026/sec0101.html>

CJA 2007 s 26

<http://www.irishstatutebook.ie/2007/en/act/pub/0029/sec0026.html>

d. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?

Protection orders are imposed primarily through civil law. There are a number of pieces of legislation currently on the statute books in Ireland which allow the imposition of protection orders. Those of foremost relevance are the DVA and DV(A). These are civil (as opposed to criminal) legislation.

However, there are other ways in which criminal law also deals with protection orders.

Firstly, although protection orders are chiefly imposed under civil law, enforcement is via criminal law, because the Acts also make it a criminal offence for anyone to breach these court-imposed domestic violence orders. The Gardaí (police) may arrest without warrant anyone they have reasonable cause to believe has broken a domestic violence order.

Furthermore, many of the behaviours which are part of a pattern of domestic violence are criminal. These criminal offences are recorded/investigated by the Gardaí (police) and may be prosecuted through the courts under numerous pieces of general criminal legislation, notably the NFOAPA. The NFOAPA is of particular relevance to domestic violence as it legislates for assaults, threats to kill/ cause serious harm (including mental harm), harassment and other related offences, all of which are crimes. Section 10 prohibits harassment, including "besetting" i.e. attacking, of any person, and sub-sections 3 and 5 allow a court to grant a protection order, even if a conviction is not obtained.

- 2) Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible)

Under civil law (DVA and DV(A)) three different types of protection orders may be imposed.

To avail of protection under the domestic violence legislation, the victim must qualify as an applicant within the definition of the DVA. An applicant under DVA means

- ⑩ the spouse of the abuser, or
- ⑩ a person who has lived with the abuser as husband or wife for a period of at least six months in aggregate during the period of twelve months (in the case of a safety order), or nine months (in the case of a barring order) immediately prior to the application for the order, or
- ⑩ a parent of the abuser who is a victim of the abuse,

⑩ or a cohabitant who lives with the abuser in a non-contractual relationship¹.

Safety order

A safety order prohibits the person against whom the order is made (the respondent) from engaging in violence or threats of violence. It does not oblige that person to leave the family home. If the person does not normally live in the family home, it prohibits them from watching or being in the vicinity of where the person applying for the order (the applicant) and dependent children lives. A safety order can be made for up to five years.

Barring order

A barring order requires the respondent to leave the family home and stay away from the family home of the applicant and/or dependent children. It may also include terms prohibiting the respondent from using or threatening to use violence. A barring order can be made for up to three years. **However, a very significant limitation is that where the applicant for a barring order is not a spouse of the respondent, under s 3 (4) (a) DVA 1996 "...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."**

Once a summons has been issued for a safety order or a barring order the applicant can apply for a **protection order** or an **interim barring order** while waiting for the application to be heard in court.

Protection order

This is a temporary safety order. It gives protection to the applicant until the court decides on a safety or barring order application. It is intended to last until the case is heard and a decision made. It does not oblige the respondent to leave the family home.

Interim barring order

This is a temporary barring order. It is intended to last until the barring order application is heard in court and a decision made. A full court hearing must take place within eight working days of the granting of an interim barring order. The Court must be of the opinion that there are reasonable grounds for believing there is an immediate risk of significant harm to the applicant or any dependent person if the order is not made immediately and the granting of a protection order would not be sufficient to protect the applicant or any dependent person.

Other forms of protection orders in the sense of this study may also be imposed under the criminal law, in the following ways. As a condition to suspension from pre-trial detention (i.e. where an offender is granted bail) or as a condition for a suspended sentence, under the CJA2006 Section 101, a court can impose a range of conditions including an order restricting the offender's movements. This is a **Restriction on Movement Order (ROM)**. This possibility arises in the case of certain offences (mainly public order and assault offences (in principle also including domestic violence cases) where the offender is charged or may be sentenced to imprisonment of three months or more. As an alternative to imposing a custodial sentence, the court can impose restrictions on the movements of those convicted of certain offences. The order can restrict movement in whichever way the court considers appropriate, including a prohibition forbidding an offender from being in a particular place for a particular period or requiring him to stay away from a certain named street or premises during certain hours or for a certain period, not exceeding 6 months.

Offences under the NFOAPA which could give rise to restriction on movement orders through CJA 2006 are Section 2 (assault), Section 3 (assault causing harm), Section 9 (coercion), Section 10 (harassment).

¹ DVA 1996 s 2, s 3

In addition certain offences under the Criminal Justice (Public Order) Act 1994 can also give rise to a protection order, namely Section 6: (threatening, abusive or insulting behaviour in a public place), Section 8: (failure to comply with direction of a Garda), Section 11: (entering building, etc, with intent to commit an offence), Section 13: (trespass on a building, etc), Section 16: (affray) and Section 19: (assault or obstruction of peace officer).In addition, under CJA 2007 s 26, a **Protection of Persons Order (POP)** can be imposed prohibiting the offender from harassing a protected person.

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. In other words, make sure that the following questions are filled in separately for each category of protection order. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law which persons can apply for a protection order (question 3).

- 3) a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?

Civil law:

The victim may apply for a protection order (barring or safety order) under the domestic violence legislation². In addition, section 6 of the Domestic Violence Act 1996 sets out that the Health Service Executive (HSE) may seek a safety or barring order against a violent adult on behalf of an adult victim or a dependent child. However the HSE must ascertain the views of the adult victim and the court must have regard to the wishes of the adult victim or person who is in fear of applying for an order for the child. The court will not grant the HSE a barring order or interim barring order on behalf of a child unless the person who is in fear of applying for an order for the child is willing and able to provide care for it.

Criminal law

In the case of the Non-Fatal Offences Against the Person Act, the act does not specify who can apply for such an order, but as it is the criminal law, the Gardaí (police) bring the charge, often following a complaint by the victim, and the court makes the order as it sees fit. The same is true of the other criminal laws under which protection orders may be issued (CJA 2006 and CJA 2007),

- b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)

The Health Service Executive (HSE) can apply to the court for a protection order in respect of an adult or child victim under the domestic violence legislation (civil law)³. In the case of the criminal law, the prosecuting authorities can apply for a Restriction on Movement Order (ROM), or a Protection of Persons Order (POP), or the court may decide to issue such an order on its own initiative. A ROM restricts a person's movements and a POP instructs a person to stay away from another person. Before it issues a restriction on movement order (ROM) or a protection of persons order (POP), the court will ask the probation services to prepare a report, because those services must be satisfied that the offender is suitable and prepared to comply with such an order.

- c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?

Under domestic violence legislation, the court can issue an immediate order called a Protection Order ⁴

² Domestic Violence Act, 1996 s 2,3,4,5

³ DVA 1996 s 6

⁴ DVA 1996 s 5

pending a decision on an application for a Safety or Barring Order. This has the same effect as a Safety Order but as it is only intended to last until the court decides the case, it is temporary. In exceptional cases the court may grant an Interim Barring Order⁵. There must be evidence of immediate risk of significant harm to the person applying and a Protection Order must also be considered insufficient in the circumstances. Evidence is usually given by the person who is in fear of violence swearing an affidavit before a court clerk, giving factual details of the violent situation. This order can be granted without the knowledge of the alleged offender (an ex parte application), but that person must be served immediately with a copy of the statement upon which the order was made. A full court hearing of the facts must take place within eight working days of the Interim Barring Order being made.

Ex-parte does not arise in criminal law.

- 4) a. Are protection orders available for all types of victims or crimes, or only for a certain subset of victims or crimes (e.g., only victims of domestic violence, stalking, female victims)? In other words, can all victims receive protection?
All victims of violent crimes or offences can receive protection.

Victims under the Domestic Violence Acts can receive protection, provided however that they comply with the definition of “applicant” under the Acts. An applicant under DVA means

- ⑩ the spouse of the abuser, or
- ⑩ a person who has lived with the abuser as husband or wife for a period of at least six months in aggregate during the period of twelve months (in the case of a safety order), or nine months (in the case of a barring order) immediately prior to the application for the order, or
- ⑩ a parent of the abuser who is a victim of the abuse,
- ⑩ or a cohabitant who lives with the abuser in a non-contractual relationship⁶.

In other cases, e.g. where the victim is in a relationship with the perpetrator but has lived with him/her for less than six months, the gardai (police) can apply for a protection order under NFOAPA or CJA.

- b. Can protection orders be issued independent from other legal proceedings (e.g., independent from criminal proceedings if the victim does not wish to press charges or independent from divorce proceedings)?

A protection order can be obtained by the victim, or by the health authorities under DVA 1996 s 6, and a protection order can be obtained by the Gardaí (police) under the NFOAPA, or a ROM under CJA 2006 or a POP under CJA 2007. A court hearing is always necessary, although this will be expedited where temporary protection is needed on an urgent basis.

- 5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)

Under the DVA, a safety, protection, barring or interim barring order is applied for at the local District Court

⁵ DVA 1996 s 4

⁶ DVA 1996 s 2, s 3

Office (in the Dublin Area application is made to the Dublin District Family Law Court). At the District Court Office, the Court staff will supply the forms needed to make the application. A solicitor is not necessary to make an initial application, but legal representation is recommended for a full court hearing.

The court clerk will arrange a court date for a court hearing and the summons for the court hearing is supplied at the time of the application. A summons is sent to the respondent by ordinary post.

When the barring order, safety order, protection order or interim barring order is obtained, the applicant shows it to the Gardaí (police) in her/his local Garda (police) station. A copy of the order will be sent to the Superintendent of the local Garda Station by registered post the following day.

In the case of the criminal law, under NFOAPA or CJA the Gardaí (police) bring a case under the criminal justice legislation and the court decides on an order as part of sentencing.

b. Could you give an indication of the length of the proceedings?

It depends on the circumstances of the case and on which court hears the case. Waiting times for a full hearing can be lengthy. The waiting time varies from court to court. Latest figures ⁷ indicate a range of 3 to 30 months waiting time in the Circuit courts, and 1 to 10 weeks in the various District courts.

c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

A safety order, barring order, interim barring order or protection order takes effect from the time the court grants it, once the respondent is notified of the order. This can be done verbally, together with the production of a copy of the order. If the respondent is in court when the order is made the respondent is considered to be notified without further steps. Otherwise, a copy of the order will be sent to the respondent by ordinary post. In some cases, the Judge may direct the Gardai (police) to serve the order on the respondent, i.e. the Gardai (police) will hand the order directly to the respondent.

d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

While waiting to go to court to get a barring or safety order, interim orders such as a protection order ⁸ or an interim barring order ⁹ can be obtained immediately. If a protection order or interim barring order is required the District Court Judge will hear the case on the same day of making the application for a full barring order or safety order. Interim barring orders are available for a maximum of eight days following which the full hearing for a barring or safety order must be heard.

If a protection or interim barring order is not needed immediately, it can be sought at any time before the case for a barring or safety order is heard.

In criminal law, a ROM or POP is issued either in pre-trial proceedings (e.g. as a condition for granting bail), or as part of sentencing and then will take effect only after sentencing.

⁷ Courts Service Annual Report 2012

⁸ DVA 1996 s 5

⁹ DVA 1996 s 4

- 6) a. What are the application requirements in order to (successfully) apply for a protection order? In other words, under what conditions will a protection order be imposed?

The DVA applies to a person who can comply with the definition of “applicant” under the act. An applicant under DVA means **the spouse of the abuser, or a person who has lived with the abuser as husband or wife for a period of at least six months in aggregate during the period of twelve months (in the case of a safety order, and nine months in the case of a barring order) immediately prior to the application for the order, or a parent of the abuser who is a victim of the abuse, or a cohabitant who lives with the abuser in a non-contractual relationship**¹⁰.

The court will grant an order where it believes that a person’s safety or welfare, or the safety or welfare of a dependant, requires that an order is granted. Under domestic violence legislation, welfare includes both physical and psychological welfare. For ex-parte cases (a protection or interim barring order) the only requirement is to attend in person. Any available evidence of the need for protection will be required for the full hearing - this includes reports from general medical practitioners, hospitals or the Gardaí (police). Proof of identity such as a passport or driver's licence must also be shown.

- b. Is legal representation/advice of victims required by law or in practice?

A solicitor is not necessary to make an initial application, but legal representation is advisable for the full hearing.

- c. Is free legal representation/advice available?

Yes, under the general civil legal aid scheme. In order to qualify for legal aid in civil cases, the applicant’s disposable income and assets must be below a certain limit, there must be merit to the case and there must be no more satisfactory way of resolving the problem.

- 7) a. What types of protection can be provided for in the orders (e.g., ‘no contact’ orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?

A **safety order** under the Domestic Violence Act 1996 is an order of the court which prohibits the violent person from further violence or threats of violence, though not obliging the violent party to leave the family home. A safety order can last up to 5 years. A **barring order** prohibits the violent person from entering the home and lasts for 3 years. A **protection of persons order** can be made under s 26 (4) of the Criminal Justice Act 2007 for up to 7 years¹¹. Under the Non-Fatal Violence Against the Person Act (through CJA 2006) the court can impose a **restriction on movement order** on those convicted of certain offences. The order can restrict movement in whichever way the court considers appropriate, including a prohibition forbidding an offender from being in a particular place for a particular period or requiring him to stay away from a certain named street or premises during certain hours or for a certain period, not exceeding 6 months.

- b. Is there an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction or barring order)? For how long can the violent/threatening person be barred?

A barring order is an order of the court which prohibits the violent person from further violence or threats of violence, and removes the violent party from the home. A barring order can last for up to 3 years and can be renewed by applying for a further order before the previous one has expired.

¹⁰ DVA 1996 s 2, s 3

¹¹ <http://www.irishstatutebook.ie/2007/en/act/pub/0029/sec0026.html>

c. Which of these types of protection are imposed most often in practice?

Protection orders are the most common in practice, followed by safety orders, then barring orders, and least common are interim (ex parte) barring orders.

d. Can the different types of protection orders also be imposed in combination with each other (e.g., a no contact order and a prohibition to enter a street)?

Combinations of civil and criminal orders do not seem possible, as it is the victim who applies to court under the Domestic Violence Act for a safety, protection or barring order, whereas the Gardaí (police) apply to court for a restriction of movement order under the Non-Fatal Violence Against the Person Act, in cases where the Domestic Violence Act would not apply (e.g. where the victim is not living with the abuser or has not been living with the abuser for 6 months out of the last 9 or 12 months).

e. If so, which combinations are most popular in general?

n/a

- 8) a. Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person?

In formulating a **safety order** under DVA 1996 s 2(2), the court will direct that the restrained person "shall not use or threaten to use violence against, molest or put (the victim) in fear", and if the respondent is not resident in the household, the order will direct the restrained person not to watch or beset the place where the other person lives. The court may also include any other conditions or exceptions in its order.

In formulating a **barring order** under DVA 1996 s3 (or an **interim barring order** under DVA 1996 s 4), the court will direct a restrained person who is living in the household to leave it, and whether or not living there it will prohibit that person from entering the place until further order or as specified. A barring order may also (although it is not a legal requirement) prohibit the respondent from using or threatening to use violence against the applicant or any dependent person; molesting or putting in fear the applicant or any dependent person; attending at or in the vicinity of, or watching or besetting a place where the applicant or any dependent person resides; and may also impose any (unspecified) exceptions and conditions.

In formulating a **protection order** under **DVA 1996 s 5**, the court will direct that the respondent to the application shall not use or threaten to use violence against, molest or put in fear the applicant or a dependent person, nor (if not living in the household) watch or beset the place where the applicant or that dependent person resides. The court may make the protection order subject to such exceptions and conditions as it may specify.

In formulating a **restriction on movement order (ROM)** under the CJA 2006 s 101, as a pre-trial condition or alternative to a sentence under the NFOAPA 1997 or CJ(PO)A 1994, the court may restrict the offender's movements to such extent as it thinks fit. A restriction on movement order is subject to a maximum of 6 months and, during that period, the offender shall keep the peace and be of good behaviour. A restriction on movement order must specify the restrictions that are to apply to the offender's movements, in particular the period during which it is in force, the period(s) in each day/week during which the offender must be in any specified place, and the time or periods during which the offender shall not be in any specified place.

A protection of persons order (POP) (under CJA 2007s 26(4)) provides that the offender is prohibited from engaging in any behaviour that, in the opinion of the court, would be likely to cause the victim of the

offence concerned or any other person named in the order fear, distress or alarm or would be likely to amount to intimidation of any such person. A protection of persons order may be made for a maximum of 7 years.

b. How does this work in practice? How elaborate are these protection order decisions in general?

No information

9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?

The court is free to decide.

b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?

In the case of restriction of movement orders (ROM) under the Criminal Justice Act 2006, in determining the place(s) or class(es) of place(s) that the offender is required not to be and the times and periods to be specified in the order the court shall have regard to the following factors:

(a) the nature and circumstances of the offence;

(b) the time that the offender committed the offence;

(c) the place where the offence was committed; (d) the likelihood of the offender committing another offence in the same or similar place(s) or class(es) of place(s)¹².

c. Which factors do they take into account in practice?

No information

10) a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses (“person A is no longer allowed to be within 200 meters of the victim’s house”)?

A barring order will order a person “to leave the place where the *applicant *and any dependent person(s) reside(s) at *(in the Court District aforesaid)”, and inter alia from “attending at or in the vicinity of, or watching or besetting a place where, *the applicant/any dependent person resides during the period aforesaid.”¹³. The place is not defined other than by name.

A restriction of movement order under the CJA 2006 may impose an obligation to avoid contact with a specific person. It can also involve an obligation not to enter certain localities, places or defined areas. The relevant court form provides “*that the offender not be in/at between the times of a.m./p.m. on each day and a.m./p.m. the following day onof each week (or on every day of the week)*”.¹⁴

¹² Criminal Justice Act, 2007 s 101 (5)

¹³ (* = delete as appropriate). District Court rules O.58, r.52 Schedule C Form 59.4
<http://www.courts.ie/rules.nsf/lookuppagelink/CDCB2FF808C225FB8025763A0052D12F?opendocument&l=en>

¹⁴ District Court Rules O. 28A, r.15 and 16 Schedule B Form 28A.10
<http://www.courts.ie/rules.nsf/53bd32841fc5bbf280256d2b0045bb5d/9da6b450fe0fe00c80257651004ed843?OpenDocument>

In practice, such orders are made by the Courts without any uniformity. Courts sometimes insert such obligations as requirements of probation supervision, so they are implemented as part of the specific programme of interventions constructed for the individual.

b. What is the average scope of an order that prohibits someone to enter a certain area (one street, multiple streets, a village)?

No information

11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?

Safety orders are granted for 5 years and are renewable, barring orders for 3 years renewable. Application can be made for varying the term. Interim orders e.g. interim barring orders are for a maximum of 8 days, after which the case must be heard, and protection orders are generally temporary, until the date of the hearing. Restriction on movement orders are issued for a maximum of 6 months. All are issued for a specified period.

b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?

The court takes into account the requirements of the safety or welfare of the applicant or any dependent person.

c. What is the average duration of the different protection orders (half a year, one year, two years)?

No information available

12) .a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?

Victims can apply for the order to be varied (including shortened or lifted) under DVA and CJA 2006. Under DVA 1996 this is provided for in s 13(1). In the case of ROMs, s 103 of CJA 2006 allows for an application to be made to vary a RMO by substituting another period or time or another place. Persons who can make the application include the offender, the owner or person in charge of, or adult person habitually residing at, the place(s) specified in the order, or a member of the police service. There is no provision for victims to request the cessation of a Protection of Persons order under CJA 2007.

b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims' need for a protection order or do victims have to bring this up themselves?

Yes. Even where the health board requests a protection order, it will ascertain "as far as is reasonably practicable" the wishes of the victim.¹⁵

c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

They can decide which order to apply for under DVA and as applicant will be heard by the court, but the judge makes the decision as regards scope and duration, subject to what is stated above at Question 12. In the case

¹⁵ Domestic Violence Act, 1996 s.6(d) <http://www.irishstatutebook.ie/1996/en/act/pub/0001/print.html - sec6>

of ROMs and POPs, there is no provision in the acts for the victim to influence the type of protection order, presumably this will be on the evidence and order applied for by the prosecuting garda (police officer).

13) a. Can offenders formally challenge/appeal the imposition of protection orders?

Yes, there is an appeal to the district or circuit court. They can also apply for the order to be varied or discharged¹⁶.

b. To what extent (if any) do the wishes of the offender influence the imposition of protection orders? Are, for instance, (disproportionate) disadvantageous consequences for the offender taken into account?

The requirement of the safety and welfare of the applicant prevails in domestic violence protection orders. In the criminal law, under CJA 2006 and 2007 the court must consider the offender's circumstances and be satisfied that he or she is a suitable person in respect of whom an ROM or POP may be made.

b. Can offenders influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

No.

14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of 'sending a message' to the offender)?

These considerations do not play a role in the court's decision.

15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g., as evidence of a pattern of violence)?

Yes

16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?

Yes, any dependent persons are included.

b. How is the order granted/implemented if the violent partner has visitation rights?

If the violent partner has visitation rights access to children can still be granted, but may be supervised if necessary.

c. Are there any problems with protection orders and custody/visitation decisions by the courts?

¹⁶ Domestic Violence Act 1996 , s 13 <http://www.irishstatutebook.ie/1996/en/act/pub/0001/print.html - sec12>

If the court does not see any problems in the perpetrator's attitude to the children, it may allow unsupervised access even if the adult victim would prefer supervised. Another problem is that domestic violence refuges may not have facilities for access or supervised access visits by the violent partner.¹⁷

17) a. Are so-called 'mutual protection orders' (i.e., protection orders that restrain both the victim and the offender) allowed in your country?

These are not known here.

b. If not, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?

They are not prohibited but are not provided for in law and apparently have not arisen.

18) a. Are protection orders provided free of charge?

The applicant can represent her/himself and the court clerk will assist the applicant in filling out the application form free of charge. However it is normal and advisable to obtain legal representation for the full hearing.

b. If not, who has to pay for the legal costs/court fees?

Free legal aid is available, subject to a means test.

c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

It is not considered a major barrier due to the availability of legal aid.

¹⁷ Office of the Minister for Children Department of Health and Children, "Listening to children: Children's stories of domestic violence, Dublin, October 2007, Executive Summary, P.2
http://www.dcy.gov.ie/documents/publications/listening_childrens_stories_domestic_violence_11_oct_07.pdf

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).

19) Where and how are protection orders registered?

Under civil law (DV legislation), the victim will be given a copy at the hearing and a copy of the order is sent to the local Garda (police) station. However while the local police station will presumably retain records, there is no domestic violence register which can be consulted by potential victims. A campaign has been launched this year to call for such a register.¹⁸

Under criminal law, orders do not appear to be registered; there have been calls for a violence register to be created.¹⁹

20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?

Under the DVA the victim will be given a copy of the order at the hearing. Under criminal law there is no direct requirement that the victim be informed. In the case of ROMs (CJA, 2006 s 101), the “consent of the owner, or the person in charge, of the place(s) concerned” is required before a Restriction on Movement order can be made²⁰. If the RMO prohibits an offender from being at a named residence, the victim might be the owner or person habitually in charge, in which case the victim would be informed. However, neither the victim nor the owner or person habitually in charge are amongst those formally required under the Act to be given a certified copy of the Restriction of Movement Order.²¹

b. In what way is the victim informed? Does this happen automatically? By mail or letter?

As above

21) Who is or which authorities are responsible for monitoring the compliance with protection orders? In other words, who checks whether these orders are violated or not?

The local Gardaí or police would be responsible for monitoring compliance under DVA, as well as the probation service in the case of ROMs or POPs.

22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera).

House visits. In criminal cases the offender may be required to sign on with a police station, and/or to work with the probation service

¹⁸ <http://www.unitedleftalliance.org/do-or-die-foundation-raise-awareness-about-domestic-violence/>

¹⁹ <http://www.advic.ie/policies/violent.asp>

²⁰ Criminal Justice Act, 2006 s 101 (9).

²¹ Criminal Justice Act, 2006 s 101 (12)

b. Which of these activities do they generally undertake in practice?

House visits, and cooperation with the probation service.

c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?

Electronic monitoring was provided for under the CJA 2006, but this part of the act was not enacted and .has never been put into practice.

d. Are protection orders actively monitored or is it generally left up to the victim to report violations?

No comprehensive information, but probably left largely to the victim

e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?

No information. May depend on whether local area is a city or village.

23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?

Yes

b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?

It probably would not play any role in establishing or proving a violation.

c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?

No information.

24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?

Victim has to make a complaint

b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

Victim has to make a complaint

25) a. What are possible reactions/sanctions if a protection order is violated?

Fine and/or imprisonment

b. Are there only formal reactions/sanctions available, or are there also informal reactions possible to the breach of a protection order (e.g., a change of the conditions, a warning)?

No

c. Which (official or unofficial) reaction usually follows on a protection order violation?

Arrest and prosecution (if police are notified)

d. In your opinion, are the sanctions/reactions to protection order violations 'effective, proportionate and dissuasive'?

No, because they depend on action by victim who is often afraid or reluctant to complain

26) a. Is the violation of civil, administrative or other protection orders criminalized?
In other words, is the violation of any protection order an offense in itself?

Yes

b. If so, what is the range of sanctions (minimum and maximum penalty) attached to a violation?

The person violating the order is liable on summary conviction to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both.²²

c. If so, how do the police generally react to a violation of a civil, administrative or other protection order?

They will arrest the offender without a warrant

d. If not, can the victim still call in the help of the police and how do the police react?

N/a

27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?

The police can arrest without a warrant and the court must hear the case.

b. If so, are they obliged to report all violations or do they have a discretionary power not to report violations?

They do not have discretion in law

c. If so, how is this discretionary power used in practice?

N/a

28) Do supervising authorities receive training in how to monitor and enforce protection orders?

The Gardaí (police) receive training but not on an ongoing basis. Indications are that gardaí would like to receive more training²³.

²² Domestic Violence Act, 1996, s 17

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

*This section inquires after the presence of (empirical) studies into the **nature and incidence** of protection orders in your country. If such studies have been conducted, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

- 29) Is there any (empirical) information available on the number of protection orders imposed on a yearly basis in your country? How often are protection orders imposed on a yearly basis? Please distinguish per area of law

The Courts Service publishes information on protection orders issued under the domestic violence legislation in its annual report. Based on its figures, 7, 789 orders were issued in 2012 - 3,849 Protection orders, 2,255 Safety orders, 1,165 Barring orders and 520 Interim barring orders.²⁴

- 30) a. Which types of protection orders (no contact, prohibitions to enter an area, eviction from the family home, other) are imposed most often?

Information is only available under DVA. Protection orders under DVA are imposed most often (abusive person is prohibited from further violence or threats of violence, but is not required to leave the home). Next is safety orders (prohibits the abuser from further violence or threats of violence; does not oblige the violent person to leave the family home; if the abusive person is non-resident, prohibits him/her from being in the vicinity of or watching home). Next most common are Barring orders (requires abusive person to leave the home) followed by Interim Barring orders.

- b. Which combinations of protection orders are most popular?

No information

- 31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?

IPV and stalking

- 32) Is there any (empirical) information available on specific victim and offender characteristics?
a. Are protection orders generally imposed against male offenders on behalf of female victims?

That is generally understood to be the case, but empirical evidence is lacking as gender breakdown figures for protection orders are not published. As regards domestic violence generally, in 2005 the National Crime Council (NCC) in association with the Economic and Social Research Institute (ERSI) published Ireland's first large study to investigate the effects of domestic violence against men and women, which showed that more women than

²³ Kinsella, D. "Is the Domestic Violence Policy 1996 (and related legislation) being utilised effectively by Gardai and does it provide adequate powers to deal with Domestic Violence in Ireland?" Dublin, 2009 <http://www.amen.ie/thesis.html>

²⁴ Courts Service Annual Report 2012, p 51
[http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/87BE463114EF96FF80257BA20033953B/\\$FILE/Courts Service Annual Report 2012.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/87BE463114EF96FF80257BA20033953B/$FILE/Courts%20Service%20Annual%20Report%202012.pdf)

No information available on frequency of criminal law protection orders

men suffer severe domestic abuse, but that when severe and minor abuse were combined, they suffered almost equally²⁵. However very few men report abuse to the Gardaí (police).

b. Which percentage of the restrainees already had a prior police record?

Unknown

c. Which percentage of the restrainees already had a previous protection order imposed against him/her?

Annual figures are not known. Last year (2012) 235 people received jail terms for breaking barring and safety orders granted by the courts to protect families experiencing domestic violence. However, almost half (115) of the 235 who broke court orders received a suspended sentence.²⁶ It has emerged that a high proportion of allegations are withdrawn by complainants. Many fail to progress their complaint, refuse to testify, or reconcile with their abusive partner. There were 1,159 allegations of breaches of barring and safety orders last year, but 530 allegations were struck out or withdrawn²⁷

2.2.4. PROTECTION ORDER EFFECTIVENESS

*This section inquires after the presence of (empirical) studies into protection order **effectiveness** and the reaction to the violation of protection orders. If any such studies have been conducted in your country, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?

Very little research appears to have been done on this question. One piece of academic research by a police officer concludes that by and large domestic violence legislative powers are adequate but that improvements should be made on the level of enforcement, as police are unsure of the full range of powers open to them and do not carry out their duties in a fully effective manner²⁸. There is no study of the effectiveness or otherwise of protection orders in relation to unwanted contact. The Probation Service works with perpetrators of Domestic Violence who have been before the criminal courts on offences such as breach of a barring/ protection order, or assault of a spouse or partner, and has developed Protocols in relation to the assessment and management of perpetrators of domestic violence in the community. The protocols have the dual functions of ensuring that

²⁵ [http://www.esri.ie/pdf/BKMNEXT056_Domestic Abuse.pdf](http://www.esri.ie/pdf/BKMNEXT056_Domestic%20Abuse.pdf)

²⁶ Courts Service, Annual Report 2012
[http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/87BE463114EF96FF80257BA20033953B/\\$FILE/Courts Service Annual Report 2012.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/87BE463114EF96FF80257BA20033953B/$FILE/Courts%20Service%20Annual%20Report%202012.pdf)

²⁷ <http://www.independent.ie/irish-news/235-get-jail-terms-for-breaching-barring-orders-29405004.html>

²⁸ Kinsella, D. "Is the Domestic Violence Policy 1996 (and related legislation) being utilised effectively by Gardaí and does it provide adequate powers to deal with Domestic Violence in Ireland?" Dublin, 2009
<http://www.amen.ie/thesis.html>

perpetrators are held accountable and have the opportunity to change their abusive/ violent behaviours and that victims are safeguarded.²⁹ Again, the effect on reducing unwanted conduct has not been analysed.

b. Which percentage of the imposed protection orders are violated?

Information not available

c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?

Not known

d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?

No

34) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?

No

35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?

a. How often (what percentage) do violations lead to a formal reaction?

Unknown

b. How often (what percentage) do violations lead to an informal reaction?

Unknown

c. How often (what percentage) do violations lead to no reaction?

Unknown

²⁹ http://www.cosc.ie/en/COSC/Final_Electronic_NS_full_doc_3_March.pdf/Files/Final_Electronic_NS_full_doc_3_March.pdf

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

36) Which impediments are present in your country when it comes to:

a. Problems with protection order legislation

Legislation seems adequate for the most part. However, protection for non-spousal victims by means of barring orders needs to be strengthened, by removing the requirements under DVA s 3 that an applicant must have been co-habiting for six out of the previous nine months, and must have a legal or beneficial interest in the property at least equal to that of the respondent.

b. Problems with protection order imposition/issuing/procedure

Urgent cases will be heard immediately, but waiting times for a full court hearing can be significant in district courts (up to 10 in weeks)

c. Problems with protection order monitoring

More data and analysis are needed

d. Problems with protection order enforcement

Police can be uncertain of law or whether and how to intervene³⁰

One problem is that the victim needs to make a formal complaint at a police station in order to enforce a protection order where there has been a breach of an order, even if the police have been summoned to the house to help.

e. Problems with protection order effectiveness?

insufficient monitoring and analysis

37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?

Interim (i.e. emergency) barring orders are provided for under the DVA but they are not in practice available on a Friday night or during a Bank Holiday weekend, as a hearing is required and the courts do not sit at the weekends. The gardaí (police) have the power to arrest an offender for violation of an order but the victim must come to the police station to make a complaint in person, which they are often unaware of or are afraid to do. The police need more training to be fully aware of their powers and obligations in domestic violence situations. Provision of refuges and shelters is inadequate.

Non-spousal partners are not covered by barring orders unless they have been cohabiting for 6 months out of the previous 9 months and crucially, the victim has an equal or greater interest (ownership) in the property³¹.

While the DVA 1996, as amended, does offer some important legal protections, groups such as Women's Aid have identified significant shortcomings in Ireland's existing legislative framework.³²

³⁰Kinsella, D. 2009 "Is the Domestic Violence Policy 1996 (and related legislation) being utilised effectively by Gardaí and does it provide adequate powers to deal with Domestic Violence in Ireland?"

³¹ DVA 1996 s 3, see above under Question 2

³² <http://pila.ie/bulletin/june-2013/5-june-2013/guest-piece-by-katie-dawson-bl-domestic-violence-the-need-for-reform/>

- ⑩ The legislation should allow people who are not living together to seek a safety order.
- ⑩ DVA1996 does not provide for Emergency Orders
- ⑩ nor does it address the serious issue of stalking or harassment where parties are not in an intimate relationship.
- ⑩ The 1996 Act does not provide for non-harassment or restraining orders.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- a. imposition
- b. monitoring, and
- c. enforcement of protection orders?

No information

39) Which factors increase the effectiveness of protection orders? In your opinion, which factor(s) contribute most to the success of protection orders?

No information

40) What would you consider promising practices in your country when it comes to protection orders? Why?

No information

41) Do you have any recommendations to improve protection order legislation, imposition, supervision, enforcement and effectiveness?

The situation would be improved if Ireland would sign the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence³³. It has been pointed out that domestic violence should be defined as a crime and a human rights abuse under Irish law, and that deficiencies as regards the need for emergency out-of-hours protection must be remedied.³⁴ There is also a clear need for the gardai (police) to be properly informed and trained as to their powers of arrest.

³³ Dawson, K., 2013 "Domestic Violence - The need for reform"

<http://pila.ie/bulletin/june-2013/5-june-2013/guest-piece-by-katie-dawson-bl-domestic-violence-the-need-for-reform>

³⁴ Speech 5 Aug 2013 by Senator Marie Moloney "Domestic Violence Statistics are shocking"
<http://www.labour.ie/press/2013/05/08/domestic-violence-statistics-shocking-moloney/>

2.2.7. FUTURE DEVELOPMENTS

42) Do protection orders feature at the moment in current discussions (in politics) on the protection of victims?

No

43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?

The government has committed in its legislative reform agenda to provide reformed and consolidated domestic violence legislation to address all aspects of domestic violence, threatened violence and intimidation. However no bill has been published yet.

b. If so, what will change?

Unknown as bill has not yet been published.

c. Are there at the moment any pilots in your country with a new approach to victim protection orders?

Not to my knowledge

44) Which (if any) developments in protection order legislation or enforcement do you foresee in the nearby future?

Nothing foreseen

45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State?

It is seen as a positive development, but will not strengthen national situation regarding protection orders

GLOSSARY

CJ(PO)A	Criminal Justice (Public Order) Act 1994
CJA 2006	Criminal Justice Act, 2006
CJA 2007	Criminal Justice Act, 2007
DVA	Domestic Violence Act, 1996
DV(A) A	Domestic Violence (Amendment) Act, 2002
NFOAPA	Non-Fatal Offences Against the Person Act, 1997
RMO	Restriction on Movement Order
POP	Protected Person Order
Gardaí, garda	Irish police