

Domestic Violence Act 2018:

Introduction:

Safeguarding Ireland wishes to raise some important issues with regard to the *Domestic Violence Act 2018* (2018 Act) which was commenced on 1 January 2019 and which repeals both the *Domestic Violence Act 1996* (1996 Act) and the *Domestic Violence (Amendment) Act 2002*.

The purpose of the 2018 Act was to consolidate and to provide for a number of matters which are very welcome. Unfortunately, Safeguarding Ireland is of the view that there are some gaps in the legislation that need to be addressed in amending legislation as soon as possible.

Background Comment:

The 1996 Act provided that a health board could make an application on behalf of an applicant (as defined) or for a dependent person (as defined) for a number of orders which included a safety order or a barring order. The Health Services Executive (HSE) was established by the Health Act 2004 and came into operation on 1st January 2005. The functions of the health boards for the purposes of the 1996 Act were taken over by the HSE on 1st January 2005.

The Child and Family Agency Act 2013 established the Child and Family Agency as an independent legal entity and by virtue of Section 82 and Schedule 1 the functions of the HSE under the 1996 Act were transferred to the Child and Family Agency. The Child and Family Agency came into operation on 1st January 2014. However, the Child and Family Agency is very much limited to the safeguarding of children and dependents in the context of families and do not have any general function in relation to safeguarding adults. There is currently no independent legal entity with responsibility for adult safeguarding although this is provided for in the Adult Safeguarding Bill 2017 currently before the Oireachtas.

An important development in relation to adult safeguarding took place in late 2014. Following the Report on Aras Attracta, the HSE published its "*Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures*." The Social Care Division of the HSE set out in that policy the organisational arrangements for a Safeguarding and

Protection Team to be based in each of the 9 Community Health Care Organisations. They have a particular remit of ensuring appropriate responses to concerns and allegations of abuse of vulnerable persons. In 2017 over 10,000 concerns were reported to the HSE. These figures were, however, limited to the HSE Social Care Division and are not indicative of the full scale of concerns at national level. Mental Health, Primary Care and the Hospital Division also work extensively with vulnerable adults within the HSE. Safeguarding Ireland is aware that since 2014, it has been necessary for court applications to be made by HSE (in particular regarding cases where there has been involvement of its Safeguarding and Protection Teams) in relation to adults who are in very vulnerable situations.

In this context, given the establishment and development of the HSE Safeguarding and Protection Teams since 2014 and pending the enactment of Adult Safeguarding legislation some thought should have been given to the appropriateness of a Child and Family Agency (whose main remit is child safeguarding and dependents in the context of family) to be the single Agency making applications to court in respect of adults in vulnerable circumstances under the 2018 Act.

Safeguarding Ireland is also aware that since 2014 with the transfer of the functions from the HSE to the Child and Family Agency it has been necessary for the HSE to enter into a Memorandum of Understanding with the Child and Family Agency in order to process necessary court applications to protect vulnerable adults. Given the scale of concerns and the expertise and experience of the HSE Safeguarding and Protection Teams with regard to adults who need protection, it raises questions as to the appropriateness, even pending the enactment of Adult Safeguarding legislation, of the lack of direct access to the court by the HSE in this regard.

It is therefore necessary to look critically at some of the provisions in the 2018 Act.

1 Definitions:

(i) The 2018 Act provides in Section 2 that ‘Agency’ means the Child and Family Agency and ‘applicant’ as defined for the purposes of making an application to the court for a number of orders includes the Agency.

Comment:

Applicant for the purpose of the 2018 Act:

It is acknowledged that many of the applications to the court for orders in respect of matters covered in the 2018 will be made by an adult personally. However, the HSE continues to have responsibility in relation to adults particularly those in very vulnerable circumstances.

As stated above the 2018 Act identifies the Child and Family Agency as the only *agency* to make an application to the court on behalf of another. This requires immediate amendment to ensure that pending the enactment of the Adult Safeguarding Act and the establishment of the Adult Safeguarding Authority, the HSE should also be included

as an 'applicant' for the purpose of this Act to enable it to make applications directly to the court when it is necessary to do so.

The importance of including the HSE as an applicant is particularly relevant in relation to the power it would have under Section 11 in relation to an 'aggrieved person'.

(ii) Section 2 also provides the definition of a 'dependent person' which includes '*...if the child has attained full age is suffering from a mental or physical disability to such an extent that it is not reasonably possible for him or her to live independently of the applicant*'.

Comment:

Limitation to Dependent Person

The same definition of a 'dependent person' that was contained in the 1996 Act is also used in the 2018 Act. This definition refers to children over the age of 18. It is very limiting and could be interpreted as referring to adult child who may continue to live with a parent or other family member. Regrettably, this is a carryover from wording contained in the 1996 Act (over 24 years ago) and does not capture what is required today. It does not cover a large group of persons (mainly older people) some of whom may lack decision-making capacity and where they are subject to violence and coercive control for example where the adult child or grandchild, niece or nephew would be the 'respondent' for the purposes of the 2018 Act. Further provision needs to be made to permit applications to be made on behalf of such adults. The 2018 Act should have provided that the applicant may be the HSE in such circumstances.

The definition of a 'dependent person' should be deleted. It is important that in the context of modern Domestic Violence legislation a more appropriate definition is included to take account of much wider family living arrangements irrespective as to whether there is a dependency element and irrespective as to whether the 'applicant' and 'respondent' are spouses or in an 'intimate' relationship.

2 Offence of coercive control:

Safeguarding Ireland welcomes the new offence of 'coercive control' as provided for in Section 39 of the 2018 Act but is of the view that the definition of a 'relevant person' for the purpose of this section is far too narrowly defined.

Comment:

The HSE National Safeguarding Office Report of 2017 states that the average rate of psychological abuse over all age groups for persons over the age of 18 years is at 29% but the rate increase to 31% for those over the age of 65 years. It should also be recognised that the higher levels of abuse occur within the context of the family. The legislation should recognise this high risk group (as indicated by the increase in applications to the court by an older family member against a younger family member) and make provision for them in the 2018 Act. It is not appropriate to confine the

definition for the purposes of Section 39 to a spouse or civil partner or to a person who is or was in an intimate relationship with another.

3 Amendments required:

Safeguarding Ireland seeks the amendment of the *Domestic Violence Act 2018*:

- To include the HSE in the definition of an 'applicant'

- That the definition of 'dependent person' be replaced with a more appropriate definition to capture the living arrangements within families in a much wider context

- To make provision that an application may be made on behalf of a person who lacks decision-making capacity in accordance with the provisions of the *Assisted Decision-Making (Capacity) Act 2015* and

- To amend the definition of a 'relevant person' in Section 39 of the Act.

Although it is disappointing to note that the opportunity was not taken in the consolidation of the Domestic Violence legislation in 2018 to update and reform outmoded principles, definitions and concepts in the updated legislation, we would welcome amending legislation at the earliest opportunity.

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