



**RCNI Observations on the  
Criminal Justice (Miscellaneous Provisions) Bill  
2022 as initiated**

**September 2022**

### **Introduction – Rape Crisis Network Ireland**

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

### **Introduction – These Observations**

RCNI broadly welcomes the provisions in Parts 4 and 5 of the Criminal Justice (Miscellaneous Provisions) on harassment and stalking offences, on civil orders restraining stalking behaviours and on related matters, mostly to do with special measures being applied to hearings involving harassment and stalking offences and corresponding civil orders.

We are well aware from our work with survivors of sexual violence that both harassment and stalking may be sexual in nature and are capable of causing very serious harm to their victims. We also know that many stalking victims do not qualify for any order under the Domestic Violence Act 2018<sup>1</sup>, making it very difficult for them to obtain any order in a civil court restraining the stalker's behaviour. Part 5 of this Bill remedies this.

The current offence of harassment at Section 10 of the Non-Fatal Offences against the Person Act 1997<sup>2</sup> as amended - is defined quite narrowly. It applies only to a short, closed list of unacceptable behaviours. It also includes the almost archaic term "besetting", which conveys little to modern readers. A fresh approach was needed to broaden the reach of the offence and to ensure that it makes sense to anyone, especially any victim, who might have to consult it. The provisions in this Bill address both these concerns.

The new, dedicated offence of stalking which sets out an open list of stalking behaviours, is especially welcome. It is fair to say that harassment and stalking behaviours may overlap. However, not all stalking behaviours are persistent and conversely, some behaviours would not be regarded as part of a stalking pattern in isolation but might be if they became persistent. As stalking behaviours tend to get more serious over time, it is important that they are capable of being identified and stopped as soon as possible. It is also important that the list is open, as our experience shows us that stalkers are adept at finding novel ways in which to continue persecuting their victims.

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<sup>1</sup> That is, a safety or barring order or protection order or interim barring order or emergency barring order. See this link to access the statute itself: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie/Revised-Acts)

<sup>2</sup> Accessible via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie/Revised-Acts)

The dedicated stalking offence is important for another reason: the evidence from the UK is that once stalking was named in a series of criminal offences, dramatic increases in the reporting of these offences to the police followed. RCNI refers to the strong evidence cited by Senator Chambers and others in a debate on the Private Members' Bill containing a dedicated stalking offence<sup>3</sup> which was: prosecution rates for stalking behaviours went up dramatically in Scotland once a dedicated offence of stalking was introduced<sup>4</sup>. The Independent Parliamentary Inquiry into Stalking Law Reform found that while there had been a total of 70 prosecutions for stalking behaviours in the previous 10 years, there were 150 prosecutions in one area alone (Strathclyde) in the first 4 months after the dedicated offence of stalking<sup>5</sup> came into effect. England & Wales followed suit soon afterwards, introducing two dedicated offences of stalking and aggravated stalking<sup>6</sup> in 2012. There was a less dramatic but still marked rise in the numbers of charges brought under this Act in the three year period immediately following<sup>7</sup>.

Non-fatal strangulation and suffocation may be consensual activities in a sexual context. This means that unfortunately, they may also occur in a sexual context without the consent of the person being strangled or suffocated. For this reason, RCNI welcomes the provisions in this Bill criminalising both activities.

Finally, RCNI welcomes very much the application of a range of special measures to all the offences created by this Bill. These are particularly important because of the highly personal and distressing nature of harassment, stalking, and non-fatal strangulation and suffocation.

### **Structure of this document**

These Observations are almost entirely limited to Parts 4 and 5 of this Bill. Each relevant Section is reproduced below in the same order as in the Bill for easy reference in contrasting type. RCNI Observations and any Recommendations are set out underneath each Section. The document concludes with a brief additional Recommendation on a separate but related topic.

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<sup>3</sup> 2<sup>nd</sup> Stage Debate 22<sup>nd</sup> September 2021 18.45 Seanad Éireann, accessible online via this web-link: : <https://www.oireachtas.ie/en/debates/debate/seanad/2021-09-22/16/>

<sup>4</sup> Independent Parliamentary Inquiry into Stalking Law Reform, Main Findings and Recommendations (Justice Unions' Parliamentary Group, 2012) at 24.

<sup>5</sup> contrary to Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010

<sup>6</sup> contrary to Sections 2A and 4A of the Protection against Harassment Act 1997, respectively

<sup>7</sup> "Stalking offences up 33% across UK- police figures" Reuters 24 June 2015 available at <https://www.rtt.com/uk/269455-stalking-harassment-offences-rise/>.

**Criminal Justice (Miscellaneous Provisions) Bill 2022 as initiated – Extracts with Commentary and Recommendations**

PART 4

OFFENCES OF HARASSMENT, STALKING, NON-FATAL STRANGULATION AND  
NON-FATAL SUFFOCATION

**Definition (Part 4)**

10. In this Part, “Act of 1997” means the Non-Fatal Offences against the Person Act 1997.

**Non-fatal strangulation or non-fatal suffocation**

11. The Act of 1997 is amended by the insertion of the following section after section 3:

“3A. (1) A person shall be guilty of an offence who, without lawful excuse, intentionally or recklessly—

(a) strangles or suffocates another, or

(b) causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to suffocation or strangulation.

(2) In a prosecution for an offence under subsection (1), it shall be a defence for the accused to show that the other consented to the strangulation or suffocation of which the offence consists.

(3) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both.

(4) A person charged with an offence under subsection (1) may, if the evidence does not warrant a conviction for that offence but warrants a conviction for an offence under section 3, be found guilty of an offence under section 3.

(5) In this section and section 4A (inserted by section 12 of the Criminal Justice (Miscellaneous Provisions) Act 2022)—

‘strangle’ includes applying, directly or indirectly, force to the neck of another so as to impede breathing or the circulation of blood;

‘suffocate’ includes—

(a) asphyxiating another, and

(b) impeding the breathing of another, including by—

(i) covering the mouth or nose,

(ii) constricting the chest, or

(iii) blocking, by means of a foreign object, the airways, of the other.”.

**RCNI Observation:**

**Re new Section 3A(2) inserted into the Non-Fatal Offences against the Person Act 1997 by Section 11 Criminal Justice (Miscellaneous Provisions) Bill 2022:**

RCNI's concern about this defence is that it may have the unintended consequence of leading people to think that there is a safe level of consensual non-fatal strangulation and suffocation when according to the best available medical evidence, there may be no such thing. Of course, RCNI does not have either relevant medical expertise or access to the relevant medical journals and other specialised research materials.

However, we can point to sources of information available to the general reader but aimed at medical professionals, which indicate that in fact, there is no safe level of consensual non-fatal strangulation and/or suffocation, as even quite small amounts of pressure carry huge risks of severe damage and even death<sup>891011</sup>. We note that this defence is not in Section 12 (offence of non-fatal strangulation or non-fatal suffocation causing serious harm).

**RCNI Recommendations**

- At a minimum, delete Subsection (2) from the proposed Section 3A Non-Fatal Offences Against the Person 1997, inserted by Section 11 of this Bill.
- If the best possible legal advice is that it would be constitutionally sound to do so, consider adding a clause to both the proposed Section 11 and Section 12 offences to the effect that consent is not a defence to either one.

**Harassment or stalking**

13. The Act of 1997 is amended by the substitution of the following section for section 10:

“10. (1) A person shall be guilty of the offence of harassment where —

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<sup>8</sup> See for example, “An Overview of Strangulation and Nursing Implications” (2016), accessible online via this web-link: <https://evawintl.org/wp-content/uploads/AnOverviewofStrangulationInjuriesandNursingImplications.pdf> where it is made clear (among other things) that a mere 3 or 5 minutes of pressure in the wrong place on the neck have fatal consequences;

<sup>9</sup> See also from the same source (Website of End Violence against Women International, US based NGO): “Non-Fatal Strangulation Documentation Toolkit”, accessible online via this web-link: [IAFN-Non-FatalStrangulationDocumentationToolkit.pdf \(evawintl.org\)](https://evawintl.org/wp-content/uploads/Non-Fatal-Strangulation-Documentation-Toolkit.pdf) – which provides a detailed list of references;

<sup>10</sup> See again from the same source, “Domestic Violence Report” which is a US based legal overview of strangulation. At page 96, the defence of “she likes to be strangled” is demolished, and earlier, at page 92, the authors open the chilling conclusion to their case review with “Non-fatal strangulation cases are the edge of a homicide”: This Report may be accessed via this web-link: [DVR 1906.indd \(evawintl.org\)](https://evawintl.org/wp-content/uploads/DVR_1906.indd)

<sup>11</sup> We refer readers generally to the work of Dr Diana Faugno, forensic nursing specialist and academic (US based), in the area of non-fatal strangulation.

(a) the person, without lawful authority or reasonable excuse, persistently, by his or her acts, intentionally or recklessly, at the time when the acts occur or when the other becomes aware of them—

- (i) seriously interferes with another's peace and privacy, or
- (ii) causes alarm, distress or harm to the other, and

(b) the person's acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other, at the time when the acts occurred or when the other becomes aware of them.

(2) A person shall be guilty of the offence of stalking where—

(a) the person, without lawful authority or reasonable excuse, by his or her acts, intentionally or recklessly causes another, at the time when the acts occur or when the other becomes aware of them—

(i) to fear that violence will be used against him or her or another person connected to him or her, or

(ii) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities, and

(b) the person's acts are such that a reasonable person would realise that the acts would cause the other, at the time when the acts occur or when the other becomes aware of them, to fear that violence will be used against him or her or another person connected to him or her, or serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

(3) Without prejudice to the generality of subsections (1) and (2), the acts referred to in those subsections include the following:

(a) following, watching, monitoring, tracking or spying upon a person;

(b) pestering a person;

(c) impersonating a person;

(d) communicating with or about a person;

(e) purporting to act or communicate on behalf of a person;

(f) disclosing to other persons private information in respect of a person;

(g) interfering with the property (including pets) of a person;

(h) loitering in the vicinity of a person;

(i) causing, without the consent of the person, an electronic communication or information system operated by a person to function in a particular way;

(j) breaching a court order—

(i) made pursuant to this section or Part 5 of the Criminal Justice (Miscellaneous Provisions) Act 2022, or

(ii) otherwise restraining the person from communicating with or about the other person or, within such distance as is specified in the order, approaching the other or the place of residence, education or employment of the other person.

(4) Where a person is guilty of an offence under subsection (1) or (2), the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such

period as the court may specify, communicate by any means with or about the other person or that the person shall not approach within such distance as the court shall specify of the place of residence, education or employment of the other person.

(5) A person who fails to comply with the terms of an order under subsection (4) shall be guilty of an offence.

(6) A person guilty of an offence under subsection (1), (2) or (5) shall be liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment to a fine or a term of imprisonment not exceeding 10 years, or to both.

(7) Without prejudice to any other enactment or rule of law, a court shall, in determining the sentence to be imposed on a person for an offence under this section, treat as an aggravating factor the fact that the person has previously been convicted of an offence against the other person or a person connected with the other person.

(8) Subject to subsections (9) and (10), where subsection (7) applies the court shall impose a sentence which is greater than that which would have been imposed in the absence of such factor. (9) Subsection (7) shall not apply where the court considers that there are exceptional circumstances justifying it not applying that subsection.

(10) The sentence imposed as a result of the application of subsection (7) shall not be greater than the maximum sentence permissible for the offence concerned.

(11) A person charged with an offence under subsection (2) may, if the evidence does not warrant a conviction for that offence but warrants a conviction under subsection (1), be found guilty of an offence under subsection (1).

(12) A reference in subsection (7) to an offence against a person includes a reference to an offence involving damage of the property of the person.”

**New Section 10 (1) inserted into the Non-Fatal Offences against the Person Act 1997 by Section 13 Criminal Justice (Miscellaneous Provisions) Bill 2022: Offence of Harassment; Section 10 (4) as above (power of court to make an order upon conviction for harassment or stalking offence)**

### RCNI Observations

**Section 10(1):** RCNI welcomes this reform of the current Section 10 offence of harassment because it is broadly drafted to include any persistent behaviour which would fit the definition of harassment yet also helpfully lists examples of such behaviour. We welcome this new wording also because it dispenses with the archaic language of the original (“besetting” is not a word in common use any longer). Further, RCNI welcomes the express inclusion of acts of harassment even if the victim is not aware of them at the time at which they occur but only learns about them later.

**Section 10 (4):** Finally, RCNI notes with surprise that the power of the Court to make an order restraining the behaviour of the accused person on acquittal for an offence of either harassment or stalking, where it is in the interests of justice to do so, has been omitted from this Bill, although it did appear in the draft Heads of the same Bill. In our respectful submission, this is a very useful power which does help to encourage victims of harassment to make and sustain complaints to the Gardaí and could continue to do so, if it were restored in this Bill. Such an order can be made in a proper case without the need for independent legal proceedings and with the minimum of formality and delay.

### RCNI Recommendations:

- Restore the power of the Court to make a restraining order on the acquittal of a person accused of either harassment, which is in the current version of Section 10 at subsections (3) and (5).
- Apply that power also to stalking offences under inserted Section 10(2), set out below.

### Inserted Section 10 (2) – Offence of Stalking:

#### RCNI Observations:

- RCNI submits with respect that the threshold for this stalking offence is inappropriately high. In our view, it is really important that stalking activities are identified and “nipped in the bud” while they are still at a relatively low level, as they tend to escalate over time and on some occasions, they culminate in the worst possible outcome, homicide. Therefore, the threshold for prosecuting the offence needs to be relatively low.
- On a related point, the current threshold is very similar in one of its limbs to the threshold for coercive control contrary to Section 39 of the Domestic Violence Act 2018, which is a “pattern offence”. For that reason, it may not be the most appropriate threshold for an offence which is not necessarily a pattern offence, as one incident of stalking (if it was serious enough) would be enough to make it out.
- See the second limb of inserted Section 10(2) (a)(ii) below with the text replicating that of the relevant part of Section 39 DVA 2018 in purple type for easy reference:

“(ii) serious alarm or distress **that has a substantial adverse impact on his or her usual day-to-day activities**”

- RCNI submits that if the best legal advice available is not to replicate the “alarm, distress or harm” threshold of the harassment offence in the stalking offence, then the second limb should read simply, “serious alarm, distress or harm” – full stop. We ask the rhetorical question: why should the victim have to wait until the stalking has had a substantial adverse effect on their usual day-to-day activities? If action is not



taken swiftly against either a series of more minor stalking behaviours, or else a single, serious form of stalking, there may be grave consequences long before this threshold is reached.

**RCNI Recommendation:** Either replicate the wording of the relevant limb of the threshold for the harassment offence (“alarm, distress or harm”), or if this is not advised, omit the words “that has a substantial adverse impact on his or her usual day-to-day activities from the second limb (ii) of inserted Section 10 (2) (a).

PART 5  
CIVIL ORDERS AGAINST RELEVANT CONDUCT

**Definitions (Part 5)**

15. (1) In this Part, “court” means the District Court, or, on appeal from the District Court, the Circuit Court.

(2) For the purposes of this Part, “relevant conduct” means conduct engaged in, without lawful authority or reasonable excuse, by the respondent towards the applicant or, where relevant, a person connected to the applicant, that would reasonably be considered likely to cause the applicant—

(a) to fear that violence will be used against the applicant or person, or

(b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

(3) Without prejudice to the generality of subsection (2), the conduct referred to in that subsection includes the following:

(a) following, watching, monitoring, tracking or spying upon a person;

(b) pestering a person;

(c) impersonating a person;

(d) communicating with or about a person;

(e) purporting to act or communicate on behalf of a person;

(f) disclosing to other persons private information in respect of a person;

(g) interfering with the property (including pets) of a person;

(h) loitering in the vicinity of a person;

(i) causing, without the consent of the person, an electronic communication or information system operated by a person to function in a particular way.

(4) A reference in this Part to an order under section 16 includes a reference to such an order as varied under section 17 and to a further order made under section 18.

**Order under section 16**

16. (1) A— (a) person (in this Part referred to an “applicant”), or

(b) a member of the Garda Síochána, acting in accordance with section 19, on behalf of an applicant, may apply to the court for an order under this section against another person (in this Part referred to as a “respondent”).

(2) An application under subsection (1) shall be made on notice to the respondent concerned.

(3) The court, on application to it under this section, may make an order under this section where it is of the opinion that—

(a) there are reasonable grounds for believing that the respondent has engaged in relevant conduct towards the applicant or, where relevant, a person connected to the applicant, and

(b) the making of the order is, in all of the circumstances, necessary for, and proportionate to, the purpose of protecting the safety and welfare of the applicant.

(4) An order under this section may prohibit the respondent from doing any or all of the following in respect of the applicant, or where relevant, a person connected to the applicant:

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

(b) following or communicating by any means with or about the person;

(c) approaching, within such distance as the court shall specify, the place of residence, education or employment of the person;

(d) engaging in such other forms of relevant conduct as the court specifies.

(5) An order under this section may be subject to such exceptions and conditions as the court specifies.

(6) An order under this section shall have effect for a period of 5 years from the date on which it is made, or such shorter period as may be specified by the court.

### **RCNI General Observations on Sections 15 and 16 (definitions and orders respectively):**

This new procedure through which a stand-alone civil order may be obtained to restrain stalking behaviours is very welcome. It means that the protection of the court is available even though a stalking victim may not be eligible for any order under the Domestic Violence Act 2018, and even if there is no criminal charge of stalking allowing the accused person’s behaviours to be restrained by bail conditions set by the Court. Essentially, it means that the protection of the court will now become available to many more victims of stalking. RCNI is also glad to see that the list of behaviours which may constitute “relevant conduct” is an open one and that these orders may be obtained in the District Court. These two things also make the protection of the court more accessible to those who need it.

RCNI also broadly welcomes the power which will be given to a Garda officer to apply for a civil order against relevant conduct, subject to the safeguard in Section 19(2) of the Bill which obliges the Garda member concerned to seek out the views of the stalking victim in advance of making any application for a Section 16 order on his or her behalf, to the extent that this is practicable.

Finally, RCNI submits that it would be very helpful and appropriate to include within Section 16 an explicit **ex parte** procedure. It may happen that there is so serious a risk of immediate and significant harm to the applicant from one or more forms of stalking that an ex parte order is needed to provide an effective remedy.

There is a precedent for the introduction of an ex parte element into this Head which might be adapted, among the proposed amendments to the (then) Harassment, Harmful Communications and Related Offences Bill 2020 which were before the Seanad on 18<sup>th</sup> December 2020, footnoted below.<sup>12</sup>

### RCNI Specific Observation on Section 15:

#### Threshold for “relevant conduct” against which a Section 16 civil order may be granted, set out at Section 15(2)(b):

Our observations on this are essentially the same as those relating to the proposed new offence of stalking above.

- RCNI respectfully submits that the threshold for establishing that certain unwanted behaviours amount to “relevant conduct” (i.e. stalking behaviour ) is set too high to ensure that these orders really do protect victims of stalking. It is essential that stalking activities are “nipped in the bud” while they are still relatively minor, as they tend to escalate over time and if unrestrained, may culminate in actual homicide. It follows that the threshold for establishing that certain behaviour is “relevant conduct” needs to be relatively low.
- The current threshold is very similar in one of its limbs to the corresponding threshold for coercive control contrary to Section 39 of the Domestic Violence Act 2018, which is a “pattern offence”. For that reason, it may not be the most appropriate threshold to establish that certain behaviours do in fact constitute “relevant conduct” - as one incident of stalking (if it was serious enough) would be enough to make it out.
- See the second limb of Section 16(2) below with the text replicating that of the relevant part of Section 39 DVA 2018 in purple type for easy reference:

“(b) serious alarm or distress **that has a substantial adverse impact on his or her usual day-to-day activities**”

- RCNI submits that the second limb should read simply, “serious alarm, distress or harm”. In our respectful submission, the threshold for “relevant conduct” as drafted

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<sup>12</sup> Harassment, Harmful Communications and Related Offences Bill 2020, Numbered List of Amendments (Seanad) dated 18 December 2020 and available online via this link: <https://data.oireachtas.ie/ie/oireachtas/bill/2017/63/seanad/3/amendment/numberedList/eng/b63a17d-scnl1.pdf>

currently may be too high to ensure that an order restraining stalking behaviour can be granted in any case where there is no actual violence or threat of violence. The result may be that the victim of the stalking behaviour is not protected from its future escalation because in such a case, it may take some time for the behaviour to have a “substantial adverse effect on their usual day-to-day activities”. However, the grim reality is that if action is not taken swiftly against either a series of more minor stalking behaviours OR a single, serious form of stalking, there may be grave consequences long before this threshold is reached.

**RCNI Recommendations:**

- Include an explicit ex parte procedure to address situations in which there is a risk of immediate and significant harm arising from “relevant conduct” in Section 16;
- Omit the words “that has a substantial adverse impact on his or her usual day-to-day activities” from Section 15 (2) (b).

**Protection against cross-examination by applicant or respondent**

20. (1) Where—

- (a) an application is made to a court under section 16, 17 or 18,
- (b) a person under the age of 18 years is to give evidence, and
- (c) the applicant or respondent proposes to cross-examine the person referred to in paragraph (b) personally, the court shall direct that the applicant or the respondent, as the case may be, may not personally cross-examine the witness unless the court is of the opinion that the interests of justice require the applicant or respondent to conduct the cross-examination personally.

(2) Where—

- (a) an application is made to a court under section 16, 17 or 18,
- (b) a person who has attained the age of 18 years, being the applicant for the order or the person connected to the applicant towards whom the relevant conduct to which the application relates is alleged to have been engaged in, is to give evidence, and
- (c) the applicant or respondent proposes to cross-examine the person referred to in paragraph (b) personally, the court may direct that the applicant or the respondent, as the case may be, may not personally cross-examine the witness unless the court is of the opinion that the interests of justice require the applicant or respondent to conduct the cross-examination personally.

(3) Where an applicant or respondent, as the case may be, is prevented from cross-examining a witness by virtue of subsection (1) or (2), the court shall—

- (a) invite the applicant or respondent to arrange for a legal representative to act for him or her for the purpose of cross-examining the witness, and
- (b) require the applicant or respondent to notify the court, by the end of such period as it may specify, as to whether a legal representative is to act for him or her for that purpose.

(4) If by the end of the period referred to in subsection (3)(b), the applicant or respondent has notified the court that no legal representative is to act for him or her for the purpose of cross-examining the witness or no notification has been received by the court and it appears to the court that no legal representative is to so act, the court shall consider whether it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative appointed to act for the applicant or respondent for that purpose.

(5) If the court decides under subsection (4) that it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative appointed to act for the applicant or respondent for that purpose, the court shall appoint a legal representative (chosen by the court) to cross-examine the witness on behalf of the applicant or respondent.

**RCNI Observations:** This provision in itself is very welcome indeed. However, we think it ought to be amended to remove the distinction between witnesses under 18 and those over 18 facing the possibility of being personally cross-examined by the person whom they have accused of stalking. Many victims of stalking behaviours are over 18, but very few would be able to face this ordeal, despite their age. In fact, our view is that the fear of personal cross-examination would be enough in many cases to result in victims of stalking withdrawing proceedings altogether. This is because of the intimate, insidiously intrusive and psychologically damaging nature of this form of abuse. We think that for this new procedure to be truly effective, this distinction between witnesses under 18 and those over 18 should be abolished.

**RCNI Recommendation:** Amend the Section so that both applicants and respondents under 18 **and** those over 18 **will** be granted an order restraining cross-examination in person if they ask for it, unless the interests of justice require such cross-examination, in the opinion of the Court.

#### **Requirement to give reasons for certain decisions**

21. Where an application is made to a court under section 16, 17 or 18, the court shall give reasons for its decision—

- (a) to grant or refuse the application,
- (b) if applicable, to make the order applied for subject to exceptions or conditions, or
- (c) if applicable, to vary the exceptions or conditions referred to in paragraph (b).

**RCNI Observation:** RCNI welcomes this provision. We submit respectfully that judges should also have to give reasons for their decisions in relation to whether or not personal cross-examination will be allowed under Section 20 above, as well as reasons for their decisions on whether or not to allow applicants to give evidence by video-link under Section 27 below.

**RCNI Recommendation:** Amend Section 21 to include also decisions under Sections 20 and 27 of this Bill within its reach.

### **Taking effect of relevant order**

22. (1) A relevant order shall take effect on notification of the making of the order concerned being given to the respondent.

(2) Oral communication to the respondent by or on behalf of the applicant of the fact that a relevant order has been made, together with production of a copy of the relevant 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 relevant order is made, that respondent shall be taken for the purposes of subsection (1) to have been notified of its making.

(4) A court may direct that a relevant order be served personally by a member of the Garda Síochána on a respondent who is not present at a sitting of the court at which the order is made in any case where—

(a) there are reasonable grounds for believing that the respondent may evade service of the order, or

(b) there is any other good and sufficient reason to so direct.

(5) In this section, “relevant order” means —

(a) an order under section 16 or 18, or

(b) an order under section 17, other than an order discharging an order under section 16.

**RCNI Observation:** In the context of stalking, the power of the court under Section 22(4) above to direct a member of An Garda Síochána to serve the order on the respondent is particularly welcome. Very few victims of stalking would feel able to serve a civil order against relevant conduct themselves because this would involve them in unwanted, distressing and even potentially traumatising contact with the stalker, and may place them at risk of physical assault and/or a further escalation in the stalking behaviour by way of intimidation or retaliation.

### **Hearing of proceedings**

25. (1) Subject to section 40 of the Civil Liability and Courts Act 2004 and section 28, an application under section 16, 17 or 18 shall be heard otherwise than in public.

(2) Proceedings under this Part shall be as informal as is practicable and consistent with the administration of justice.

(3) Judges hearing and determining proceedings under this Part, and barristers and solicitors appearing in those proceedings, shall not wear wigs or gowns.

### **Special sitting of District Court**

26. (1) A member of the Garda Síochána not below the rank of sergeant may request the Courts Service to arrange a special sitting of the District Court for the purposes of the making of an application under this Part—

(a) where a person has informed the member that he or she wishes to make an application under section 16, 17 or 18, and

(b) at the time the person so informs the member, there is no District Court sitting in the district court district in which that person would make such an application if that court was sitting.

(2) The Courts Service may, with the consent of a judge of the District Court exercising jurisdiction in accordance with section 24, arrange such special sittings of the District Court in the district court district referred to in subsection (1)(b) as may be necessary for the purposes specified in that subsection.

(3) In this section, “special sitting” means a sitting of the District Court at a place and time not standing appointed for the time being under section 26 of the Courts of Justice Act 1953 or section 40 or 42 of the Courts (Supplemental Provisions) Act 1961 for the transaction of the business of the District Court.

**RCNI Observations on both Sections 25 and 26 taken together:** Hearings otherwise than in public and special sittings for civil orders against relevant conduct are both very welcome. They will both have the effect of making these orders more accessible to victims of stalking.

#### **Evidence through television link for civil proceedings**

27. (1) In proceedings under this Part, a person (other than the respondent) may give evidence through a live television link—

(a) where that person has not attained the age of 18 years, unless the court sees good reason to the contrary,

(b) in any other case, with the leave of the court.

(2) Evidence given under subsection (1) shall be video-recorded or audio-recorded.

(3) Where live television link facilities are not in operation in a circuit court or district court district, and in the opinion of the court concerned it is desirable that evidence in proceedings under this Part be given through a live television link, the court may by order transfer the proceedings to a circuit or district court district in relation to which those facilities are in operation.

(4) Where a court transfers proceedings under subsection (3), the jurisdiction of the court to which the proceedings have been transferred may be exercised—

(a) in the case of the Circuit Court, by the judge of the circuit concerned, and

(b) in the case of the District Court, by the judge of that court for the time being assigned to the district court district concerned.

(5) In this section, “video-recorded” means a recording on any medium from which a moving image may, by any means, be produced and includes the accompanying soundtrack (if any).

**RCNI Observation:** The difficulty for an applicant of sharing the same (often quite small) space with the respondent in a stalking case can hardly be overstated, so that this provision in itself is very welcome. Our view is that its existence will encourage many victims of stalking to come forward to seek civil orders against relevant conduct. However, we are also aware that many victims of stalking are over 18 but nevertheless might find it extremely daunting, perhaps even re-traumatising, to be present in the same room as the stalker. In our respectful submission, it should not be necessary for anyone in this position to have to seek the leave of the court to give evidence by video-link. It should be provided for any applicant who requests it, regardless of their age, unless the court sees good reason to the contrary.

**RCNI Recommendation:** Amend the Section so as to remove the distinction between applicants under 18 and those over 18, and treat them all as if they were under 18.

### **Right to be accompanied in court in certain circumstances**

28. (1) Subject to subsection (2), an applicant may, in addition to being accompanied by his or her legal representative (if any), be accompanied in court by an individual of his or her choice.

(2) The court may refuse to allow an applicant to be accompanied in court by a particular individual at any stage in the proceedings which relate to the applicant if the court considers that it would not be in the interests of justice for the individual concerned to accompany, or continue to accompany, the applicant and where the court so refuses it shall give reasons for such refusal.

**RCNI Observation:** This is a very welcome and appropriate support for any victim of stalking. In our view, it will have the effect of increasing effective access to these orders for these victims. In our respectful submission, if the court has an objection to a particular individual providing accompaniment to an applicant, the court should advise that applicant that the matter may be adjourned if s/he wishes for a short time to enable him or her to find another suitable person to accompany him or her throughout the hearing.

**RCNI Recommendation:** This section should be amended to place an obligation on the court to advise the applicant that the matter may be adjourned for a short time if s/he so wishes to enable him or her to find another suitable person to accompany him or her throughout the hearing. The relevant provisions in the Criminal Justice (Victims of Crime) Act 2017<sup>13</sup> might be adapted for this purpose.

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<sup>13</sup>For example, see Section 7 (4), (5), (6), and (7), accessible online via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)



### **Extraterritoriality**

31. (1) An order under section 16, 17 or 18 may be made against a respondent who –
- (a) resides or is present in the State, or
  - (b) intends to come to the State.
- (2) An order under section 16, 17 or 18 may be made for the benefit of an applicant who –
- (a) resides or is present in the State, or
  - (b) where subsection (1)(a) applies, does not reside or is not present in the State.
- (3) In determining whether to make an order under section 16, 17 or 18, the Court may take into account conduct that occurred –
- (a) inside or outside the State, and
  - (b) before or after the coming into operation of this Part.

**RCNI Observation:** This extra-territoriality provision is most welcome, as in this age of internet abuse including some forms of stalking, the relevant conduct may take place anywhere and may well have been begun before the coming into operation of this Part of the Bill. RCNI's view is that this provision too will make the protection of the court more accessible to victims of stalking behaviours.

### **Offence**

32. (1) A person who contravenes an order made against him or her under section 16, commits an offence and shall be liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months.
- (2) Subsection (1) is without prejudice to the law relating to contempt of court or any other liability, whether civil or criminal, that may be incurred by the person concerned.

### **Arrest without warrant**

33. (1) Where a member of the Garda Síochána has reasonable cause for believing that an offence is being or has been committed under section 32(1), the member may, on complaint being made to him or her by or on behalf of the person who was the applicant under section 16, 17 or 18, as the case may be, for the order concerned, arrest the respondent concerned without warrant.
- (2) For the purpose of arresting a respondent under subsection (1), a member of the Garda Síochána may enter, if need be by force, and search a place where the member, with reasonable cause, suspects the respondent to be.

### **RCNI Observations on Sections 32 and 33 taken together:**

RCNI welcomes these provisions as without them, it would be very difficult to enforce these orders effectively. The power of arrest is an essential addition to the offence itself.

### **Conclusion**

## RCNI Observations on the Criminal Justice (Miscellaneous Provisions) Bill 2022 09/22

In summary, this Bill is a very valuable addition both to the current list of available offences against the person and to the powers of our civil courts to restrain stalking behaviours without waiting for criminal charges to be brought, where this is appropriate. It also takes a broad view of the needs of the victims of these offences and does much to help access to these civil orders to be as easy as possible. It fills some large gaps in protection and needs to be enacted as soon as possible. Hopefully it will be improved even further during that process.

Finally, **RCNI also recommends** that the opportunity be taken in this Bill to amend Section 3 of the Non-Fatal Offences against the Person Act 1997 (assault causing harm) to increase the maximum penalty from five years to ten years.

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**Rape Crisis Network Ireland clg**

**Carmichael Centre**

**North Brunswick Street**

**Dublin D07 RAH8**

**Tel: 087 963 5201**

**Email: [legal@rcni.ie](mailto:legal@rcni.ie)**

**Website: [www.rcni.ie](http://www.rcni.ie)**