



## DOMESTIC VIOLENCE: THE LEGAL POSITION

The Family Homes and Domestic Violence (Northern Ireland) Order 1998 recognises the wide spectrum of behaviours associated with domestic violence and provides protection for certain categories of people, which are defined in the order as 'associated persons', against assault, harassment and other types of molestation under two separate measures.

The first of these measures is what is known as a 'Non Molestation Order' which can be granted on behalf of an associated person or relevant child to prevent a person from 'molestation.' 'Molestation' itself is not specifically defined in the order, but in practice this term covers any behaviour which is intended to cause distress or harm. In deciding whether to grant such an order, the court must have regard to all the circumstances of the case, including the need to secure the health, safety and wellbeing of the person applying for the order or any relevant child.

The second measure which the court can impose under this legislation is what is known as an 'Occupation Order' which relates to the parties' occupation of their home or any other relevant property. A court can grant an order to enforce a person's right to remain in occupation of a property, to enter a property or parts of it, to have peaceful use and enjoyment of a property, or to prohibit, suspend or restrict a person's right to occupy a property. The court can also provide for a person to remove personal effects, furniture or other contents or restrain the respondent from disposing of any estate in the house. In deciding whether to grant such an order, the court must have regard to the housing needs and resources of the parties and any relevant child, the financial resources of the parties, the likely effect of any order and the conduct of the parties.

Where there is a need for immediate protection, the court may grant either of these orders on an emergency basis, without giving the notice which is otherwise required to the respondent if it considers it to be 'just and convenient to do so'. Given the repercussions of granting such orders, the courts will only do so where the circumstances of the case are such that an emergency order is required to prevent significant harm to the applicant or a child, or where an applicant will be deterred from pursuing such an application if an immediate order is not made, or where there is reason to believe that the respondent is aware of the proceedings but will attempt to evade service.

Once an order is granted, it takes effect when it is served on the Respondent. Any person who contravenes a Non Molestation or Occupation Order is guilty of a criminal offence and may be prosecuted.

There are various organisations which specialise in providing counselling, advice and assistance to those who are suffering or who have suffered from domestic violence. If

however you require legal assistance, such as the remedies outlined above, contact a solicitor who has experience in this particular field for advice as to how best to proceed, in the particular circumstances of your own case.