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**AN BILLE UM AN DLÍ COIRIÚIL (COSAINN AGUS AN
TEAGHAIS) 2010**
**CRIMINAL LAW (DEFENCE AND THE DWELLING) BILL
2010**

*Mar a tionscnaíodh
As initiated*

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ACTS REFERRED TO

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2001, No. 24

Non-Fatal Offences against the Person Act 1997

1997, No. 26



**AN BILLE UM AN DLÍ COIRIÚIL (COSAINN AGUS AN
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2010

BILL

5

entitled

AN ACT RELATING TO THE LIABILITY OF A PERSON
REGARDING THE USE OF FORCE BY HIM OR HER IN
HIS OR HER DWELLING OR IN A DWELLING IN
10 WHICH HE OR SHE IS A LAWFUL OCCUPANT
AGAINST A PERSON WHO ENTERS THE DWELLING;
TO AMEND THE NON-FATAL OFFENCES AGAINST
THE PERSON ACT 1997; AND TO PROVIDE FOR
RELATED MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“act” includes omission and a reference to committing or doing an
act includes a reference to making an omission;

20 “curtilage”, in relation to a dwelling, means an area immediately sur-
rounding or adjacent to the dwelling which is used in conjunction
with the dwelling, other than any part of that area that is a public
place;

“dwelling” includes—

25 (a) a building or structure (whether temporary or not) which
is constructed or adapted for use as a dwelling and is
being so used,

(b) a vehicle or vessel (whether mobile or not) which is con-
structed or adapted for use as a dwelling and is being so
used, or

30 (c) a part of a dwelling;

“Minister” means the Minister for Justice and Law Reform;

“public place” means any place to which the public have access
whether as of right or by permission and whether subject to or free
of charge.

(2) In this Act, a reference to a dwelling includes a reference to the curtilage of the dwelling.

Justifiable use of force, etc.

2.—(1) Notwithstanding the generality of any other enactment or rule of law and subject to *subsections (2) and (3)*, it shall not be an offence for a person who is in his or her dwelling, or for a person who is a lawful occupant in a dwelling, to use force against another person or the property of another person where— 5

(a) he or she believes the other person has entered or is entering the dwelling as a trespasser for the purpose of committing a criminal act, and 10

(b) the force used is only such as is reasonable in the circumstances as he or she believes them to be—

(i) to protect himself or herself or another person present in the dwelling from injury, assault, detention or death caused by a criminal act, 15

(ii) to protect his or her property or the property of another person from appropriation, destruction or damage caused by a criminal act, or

(iii) to prevent the commission of a crime or to effect, or assist in effecting, a lawful arrest. 20

(2) *Subsection (1)* shall not apply where the person uses force against—

(a) a member of the Garda Síochána acting in the course of his or her duty,

(b) a person assisting a member of the Garda Síochána acting in the course of his or her duty, or 25

(c) a person lawfully performing a function authorised by or under any enactment.

(3) *Subsection (1)* shall not apply where the person using the force engages in conduct or causes a state of affairs for the purpose of using that force to resist or terminate an act of another person acting in response to that conduct or state of affairs, but *subsection (1)* may apply, if the occasion for the use of force arises only because the person using the force concerned does something he or she may lawfully do, knowing that such an occasion will arise. 30 35

(4) It is immaterial whether a belief is justified or not if it is honestly held but in considering whether the person using the force honestly held the belief, the court or the jury, as the case may be, shall have regard to the presence or absence of reasonable grounds for the person so believing and all other relevant circumstances. 40

(5) It is immaterial whether the person using the force had a safe and practicable opportunity to retreat from the dwelling before using the force concerned.

(6) (a) A person shall be regarded as using force in relation to another person if he or she— 45

(i) applies force in relation to or causes an impact on the body of that other person,

(ii) threatens to apply force in relation to or cause an impact on the body of that other person, or

(iii) detains that other person.

5 (b) A person shall be regarded as using force in relation to property belonging to another person if he or she—

(i) applies force to that property,

(ii) causes an impact on that property, or

(iii) threatens to apply force to or cause an impact on that property.

10 (7) The use of force shall not exclude the use of force causing death.

(8) An act is criminal notwithstanding that the person doing the act—

15 (a) if charged with an offence in respect of it, would be acquitted on the ground that—

(i) he or she acted under duress,

(ii) his or her act was involuntary,

(iii) he or she was in a state of intoxication, or

20 (iv) he or she was insane so as not to be responsible according to law for the act,

or

(b) was a person to whom section 52(1) of the Children Act 2001 applied.

25 (9) The references in *subsection (1)(b)* to protecting a person or property from a criminal act include references to protecting the person or property from the continuation of the act, and the reference to preventing the commission of a crime or to effecting, or assisting in effecting, a lawful arrest shall be similarly construed.

(10) In this section—

30 “intoxication” means being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances;

“property” means property of a tangible nature, whether real or personal, including money and—

35 (a) shall be regarded as belonging to any person—

(i) having custody or control of it,

(ii) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest), or

40 (iii) having a charge over it,

(b) where property is subject to a trust, the persons to whom the property belongs shall be regarded as including any person having a right to enforce the trust, and

(c) property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation. 5

(11) For the avoidance of doubt, a reference in this section to property includes, unless the context otherwise requires, a reference to a dwelling.

No obligation to retreat from dwelling.

3.—Nothing in this Act shall operate to require— 10

(a) a person to retreat from his or her dwelling, or

(b) a lawful occupant in a dwelling to retreat from the dwelling.

General defences.

4.—Nothing in this Act shall operate to prejudice any defence recognised by law as a defence to a criminal charge. 15

Civil liability.

5.—Notwithstanding the generality of any other enactment or rule of law concerning the civil liability of persons in relation to trespassers, a person who uses such force as is permitted by *section 2* in the circumstances referred to in that section shall not be liable in tort in respect of any injury, loss or damage arising from the use of such force. 20

Amendment of Non-Fatal Offences against the Person Act 1997.

6.—Section 18 of the Non-Fatal Offences against the Person Act 1997 is amended—

(a) by the substitution of the following subsection for subsection (3): 25

“(3) For the purposes of this section an act is ‘criminal’ notwithstanding that the person doing the act—

(a) if charged with an offence in respect of it, would be acquitted on the ground that—

(i) he or she acted under duress, 30

(ii) his or her act was involuntary,

(iii) he or she was in a state of intoxication, or

(iv) he or she was insane so as not to be responsible according to law for the act,

or 35

(b) was a person to whom section 52(1) of the Children Act 2001 applied.”,

and

(b) by the insertion of the following subsection after subsection (8): 40

“(9) In subsection (3) ‘intoxication’ means being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.”.

5 **7.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

8.—(1) This Act may be cited as the Criminal Law (Defence and the Dwelling) Act 2010. Short title and commencement.

10 (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.



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**AN BILLE UM AN DLÍ COIRIÚIL (COSAINN AGUS
AN TEAGHAIS) 2010
CRIMINAL LAW (DEFENCE AND THE DWELLING)
BILL 2010**

EXPLANATORY MEMORANDUM

Background

1. The main purpose of this Bill is to clarify and update the law in relation to the application of justifiable self defence for occupiers of a home dwelling who may be obliged to defend themselves or their property against attack from an intruder entering with the intention of committing a criminal act. The Bill also amends a certain provision of the *Non-Fatal Offences Against the Person Act 1997*. The provisions contained in this Bill are an acknowledgement that the home should be a place of safety for those who live in it and that the application of self-defence in the context of an attack in the home may be different from a situation which obtains in other circumstances.

Provisions of the Bill

Section 1

Interpretation

2. This section defines the key terms used in the Bill. *Subsection (1)* provides a definition for the term “curtilage”, meaning the area immediately surrounding or adjacent to the dwelling and which is used in conjunction with it, other than any part of that area which is a public place. That is to say any place where the public may have access whether of right or with permission and whether such access is free of charge or subject to charge. The term “dwelling” is defined as including a structure, whether temporary or not, which is constructed or adapted for use as a dwelling and which is being used for that purpose. The term dwelling also includes a vehicle or a vessel which is constructed or adapted for use as a dwelling and is being used in that way. All references in the Bill to a dwelling includes a reference to the curtilage of the dwelling.

Section 2

Justifiable use of Force

3. This section sets out the circumstances in which a person who is a lawful occupant may use force in his or her dwelling against another person or against the property of another person. Force may be used if the lawful occupant believes that the person against whom the force is used has entered the dwelling for the purpose of committing a criminal act. The section sets out that

such force as may be used is lawful if the occupant believes that the force being used is reasonable in the circumstances which they believe them to be at the time, in order to protect the occupant himself or herself or another from injury, assault detention or death. Reasonable force may be used to protect the occupant's property or the property of another from appropriation destruction or damage caused by a criminal act or to prevent a crime being committed or to effect or assist in effecting a lawful arrest. *Subsection 2 of Section 2* sets out the circumstances where the provisions of *Subsection (1)* do not apply if force is used. Force may not be used against a Garda acting in course of his or her duty or against a person assisting a Garda who is acting in the course of his or her duty, or against a person who is lawfully performing a function authorised by or under any enactment. *Subsection 5* states that it is immaterial whether the person using the force had an opportunity to retreat from the dwelling before using the force. *Subsection 6* outlines what is meant by the use of force against a person and against property. *Subsection 7* points out that the use of force in the circumstances provided for in the section shall not exclude the use of force causing death. *Subsection 8* sets out what is meant by a criminal act and states that an act is criminal for the purposes of this Bill, notwithstanding the fact that a person charged with an offence in respect of that act would be acquitted if they acted under duress, if the act was involuntary, if the person was in a state of intoxication, if he or she were insane or if the act was done by a person to whom *section 52(1)* of the *Children's Act 2001* applied.

Section 3

No obligation to retreat from the dwelling

4. This section explicitly states that there is no obligation on the part of a person or a lawful occupant of a dwelling to retreat from his or her dwelling.

Section 4

General Defence

5. This Section states that nothing in the Bill will operate to prejudice any defence which is recognised by law as a defence to a criminal charge.

Section 5

Civil Liability

6. This Section states that a person who uses force as permitted by *Section 2*, in the circumstances referred to in that section, will not be liable in tort for any injury, loss or damage arising from the use of such force.

Section 6

Amendment of Non Fatal Offences Against the Person Act 1997

7. This section amends *Section 18(3)* of the *Non-Fatal Offences Against the Person Act 1997* in order to take account of *Section 52 subsection (1)* of the *Children Act 2001* which did not apply at the time of the enactment of the 1997 Act.

Section 7

8. This section specifies that any administrative expenses which may be incurred by the Minister in respect of this Bill, if enacted, may be sanctioned by the Minister for Finance and paid out of moneys provided by the Oireachtas.

Section 8

Short title and commencement

9. This Section sets out the short title of the Bill and that it shall come into operation on such day or days that the Minister may appoint by order or orders.

*An Roinn Dlí agus Cirt agus Athchóirithe,
Iúil, 2010.*