CHAPTER 636

DOMESTIC VIOLENCE PREVENTION ACT

AN ACT to safeguard the interests of persons who may be at risk of domestic violence by establishing a procedure which provides for the issuance of a domestic violence risk warning.

18th July, 2023

ACT XVIII of 2023.

1. The short title of this Act is the Domestic Violence Prevention Act. Short title.

2. In this Act, unless the context otherwise requires: Interpretation.

"applicant" means any person who initiates the procedure in terms of this Act;

"application" means the request submitted to the Police to initiate the procedure in terms of this Act;

"conduct certificate" means the conduct certificate issued in accordance with the provisions of the Conduct Certificates Ordinance; Cap. 77.

"Minister" means the Minister responsible for the Police, unless stated otherwise;

"domestic violence" shall have the same meaning assigned to it by article 2 of the Gender-Based Violence and Domestic Violence Act in so far as it relates to the applicant or to the vulnerable person under this Act; Cap. 581.

"domestic violence risk warning" means that information disclosed by the Police to the person at potential risk in terms of this Act;

"person at potential risk" means the person to whom a domestic violence risk warning is issued by the Police in terms of this Act;

"person of concern" means the person in relation to whom the application is filed;

"Police" means the officers of the Malta Police Force assigned with the Victim Support Agency in terms of the provisions of article 3(2)(b) of the Victim Support Agency (Establishment) Order; L.S. 595.37.

"vulnerable person" means a person who is under the age of sixteen (16), or who has a mental disorder or other

condition, or who is considered by the competent court to be particularly at risk when taking into account the person's age, the maturity, the health, the mental disability and other conditions, including any situation of dependence as well as the psychological state and, or emotional state of the said person.

Application and initial meeting.

3. (1) A person who is:

(a) the spouse, civil union partner, or cohabitant of the person of concern; or

(b) in an informal relationship with the person of concern;

and who believes that he may be at risk of domestic violence from the person of concern, may submit an application to the Police, requesting the issuance of a domestic violence risk warning in terms of this Act:

Provided that the parent or legal guardian of a vulnerable person, who is in a relationship with a person of concern in terms of sub-paragraphs (a) or (b), and who believes that the person of concern may pose a risk of domestic violence to the vulnerable person, may also submit an application to the Police, requesting the issuance of a domestic violence risk warning in terms of this Act.

(2) Each applicant shall prove, to the satisfaction of the Police, the existence of a relationship with the person of concern in terms of sub-article (1), or, in the case of a parent or legal guardian, proof of parentage or tutorship of the vulnerable person, as well as the existence of a relationship between the vulnerable person and the person of concern in terms of sub-article (1).

(3) Once the application is submitted, the Police shall hold an initial meeting with the applicant.

(4) During the initial meeting, the Police shall assess the application, verify the identity of the applicant and determine whether the applicant fulfils all the necessary criteria for the purpose of initiating the procedure in terms of this Act.

(5) The Police shall assure the applicant that his safety and that of the vulnerable person, as the case may be, is of the utmost importance, and that the person of concern shall not be informed of this procedure.

(6) The Police shall warn the applicant that the entire procedure shall be kept confidential, and the application shall include a declaration to this effect:

Provided that if the applicant is not willing to make this declaration, the Police shall not proceed any further with the

application.

(7) The Police shall inform the applicant that if, at any time during the procedure, the Police believe that a crime is being committed, or has been committed, the Police shall file a report in accordance with the criminal investigation procedures, and in these circumstances it may not be possible to maintain confidentiality.

(8) The Police shall provide the applicant with information on available support services and the Police shall agree upon a safe means of communication with the applicant.

(9) The Police shall give its final decision in terms of article 6 within seven (7) working days from the initial meeting through the means of communication agreed upon pursuant to sub-article (8).

(10) If during the initial meeting, the Police determine that further information is required or that the applicant or the vulnerable person, as the case may be, does not qualify in terms of this Act, the Police shall reject the application and note said decision in the records of the case in terms of sub-article 7(4).

(11) The Police shall provide an electronic mechanism, which shall be free of charge, by means of which a person may request the holding of an initial meeting in accordance with sub-article (3), during which an application may be submitted.

Right to understand and be understood.

4. Throughout the procedure described in this Act, the Police shall ensure that communication with the applicant and, or with the vulnerable person, as the case may be, takes place in a language which such person understands.

Police verifications. Cap. 77.

5. (1) Without prejudice to the Conduct Certificates Ordinance, when the Police proceeds with the application in terms of this Act, the Police shall request a copy of the conduct certificate of the person of concern.

(2) If a conviction is registered in the conduct certificate of the person of concern, the Police shall, in order to determine whether that conviction relates to domestic violence, request, access and process information:

(a) that results from the register of criminal convictions pursuant to the Conduct Certificates Ordinance; Cap. 77.

(b) registered by the Malta Police Force; or

(c) registered by the Courts of Malta.

(3) Upon determining that the registered conviction is related to domestic violence, the Police shall proceed with the issuance of a domestic violence risk warning:

Provided that before communicating the decision, the Police officer concerned shall request his direct superior or another officer designated for such purpose by the Commissioner of Police, to review the said decision and either confirm and countersign, or overturn it:

Provided further that any decision shall be kept in the records of the case in terms of article 7(4), and if the original decision is overturned, the reason thereof shall also be recorded.

Police decision.

6. (1) Every final Police decision shall be verbally communicated to the applicant and, in any case, the Police shall clearly explain to the applicant the process which led to its decision.

(2) Where the Police conclude that a domestic violence risk warning should not be issued, the Police shall communicate and explain this to the applicant and, provide information related to support services offered by governmental or non-governmental organisations.

(3) Where the Police conclude that a domestic violence risk warning should be issued, the Police shall:

(a) communicate and explain this to the applicant and the vulnerable person, as the case may be;

(b) explain that due to a domestic violence conviction registered in the person of concern's conduct certificate, there is a potential risk of domestic violence; and

(c) provide information related to support services offered by governmental or non-governmental organisations:

Provided that when a domestic violence risk warning is issued, the Police shall not divulge any further information other than that which is strictly necessary for the purposes of this Act:

Provided further that when the application is filed by a parent or legal guardian of a vulnerable person, the Police shall serve a domestic violence risk warning to the vulnerable person in the applicant's presence and, if necessary, also in the presence of a professional trained by the agency in accordance with the Gender-Based Violence and Domestic Violence Act.

Cap. 581.

Data protection.
S.L. 586.08.

7. (1) Nothing in this Act shall prejudice the applicability of the Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations.

S.L. 586.08.

(2) The Police, acting in its capacity of a controller in terms of regulation 2 of the Data Protection (Processing of Personal Data by Competent Authorities for the Purposes of the Prevention,

Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations, shall perform all the relevant data processing operations which are strictly necessary and proportionate to the objectives pursued in terms of this Act.

(3) The processing of personal data, including the processing of special categories of personal data, for the purposes of this Act shall fully comply with the principles relating to the processing of personal data in accordance to regulation 4 of the Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations. S.L. 586.08.

(4) The Police shall compile and maintain a record of each application and each process, irrespective of the outcome, and such records shall be retained for a period of three (3) years and shall not be used or processed for any other purpose, except for verification purposes in relation to the same case for which they were compiled.

Appropriate safeguards.

8. (1) The controller, taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity of the rights and freedoms of the data subjects, both at the time of the determination of the means for processing as well as at the time of the processing itself, shall implement appropriate technical and organisational measures, in an effective manner and to integrate the necessary safeguards into the processing, in order to protect the rights of the data subjects and to ensure a level of security appropriate to the risk.

(2) The data protection officer designated by the controller in terms of regulation 32 of the Data Protection (Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations shall be involved and consulted about any case and in a timely manner on any issues in relation to the protection of personal data processed for the purposes of this Act. S.L. 586.08.

(3) For the purpose of ensuring and in order to be able to demonstrate that the processing of personal data is performed in accordance with the provisions of Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations, the controller shall implement the appropriate data protection policies, which policies shall be periodically reviewed and updated where necessary. S.L. 586.08.

(4) Access to any personal data, including special categories of personal data processed for the purposes of this Act, shall be reserved exclusively to the duly authorised staff of the controller. Access shall

be limited to the extent needed for the performance of the controller's functions in accordance with the purposes of the Act, and to what is necessary and proportionate to the objectives pursued in terms of this Act.

Restriction of the rights of the data subjects. S.L. 586.08.

9. (1) The controller may restrict the rights and obligations provided for in Part III of the Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations, where these restrictions are considered as a necessary and proportionate measure for the performance of the functions of the controller pursuant to this Act.

(2) The data protection officer shall be consulted by the controller in any case in a timely manner during the entire process of applying the restriction.

(3) The controller shall apply the restriction referred to in sub-article (1) for as long as the reasons justifying them remain applicable following a necessity and proportionality test. The reasons justifying the restrictions shall be documented and made available to the Information and Data Protection Commissioner, when and as required.

(4) Where the reasons for a restriction no longer apply, the controller shall lift the restriction and inform the data subject concerned accordingly and comply with the rights and obligations provided for in Part III of the Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations.

S.L. 586.08.

(5) The controller shall review the application of the restriction referred to in this article and depending on the outcome of said review inform the data subject accordingly.

Power of the Minister to make regulations.

10. The Minister may make regulations to implement and to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may provide for any consequential matter, incidental to or connected with the provisions of this Act.