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*Number 35 of 2011*

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**CRIMINAL LAW (DEFENCE AND THE DWELLING) ACT  
2011**

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[No. 35.]

*Criminal Law (Defence and the  
Dwelling) Act 2011.*

[2011.]

ACTS REFERRED TO

Children Act 2001

2001, No. 24

Non-Fatal Offences against the Person Act 1997

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*Number 35 of 2011*

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**CRIMINAL LAW (DEFENCE AND THE DWELLING) ACT  
2011**

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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 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.

[19th December, 2011]

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;

“curtilage”, in relation to a dwelling, means an area immediately surrounding 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—

- (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 constructed or adapted for use as a dwelling and is being so used, or
- (c) a part of a dwelling;

“Minister” means the Minister for Justice and Equality;

“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—

- (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
- (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,
  - (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.

(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
- (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.

(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.

(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—
  - (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.

(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.

(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—

(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

(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.

(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—

“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—

(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

(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.

(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—

(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.

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.

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):

“(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,

(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

(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):

“(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.”.

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 Public Expenditure and Reform, 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 2011. Short title and commencement.

(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.