



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Dr Caoimhe Archibald
Chair**

Committee for Economy
Room 205, Parliament Buildings
Ballymiscaw, Stormont
Belfast
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By email to: committee.economy@niassembly.gov.uk

7 January 2021

Dear Chair,

Re: Call for Views – Domestic Abuse (Safe Leave) Bill

The Northern Ireland Human Rights Commission (the Commission) welcomes the Committee for Economy's call for views on the Domestic Abuse (Safe Leave) Bill.

The Commission, pursuant to Section 69(4) of the Northern Ireland Act 1998, shall advise the Assembly whether a Bill is compatible with human rights. In addition, the Commission, pursuant to section 78A(6) of the Northern Ireland Act 1998, must advise the Assembly whether a Bill is compatible with Article 2(1) of the Ireland/Northern Ireland Protocol. In accordance with these functions, the following advice is submitted to the Committee for Economy (the Committee) to assist the Committee's scrutiny of the Domestic Abuse (Safe Leave) Bill.

The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.

The Commission highlights below the relevant human rights standards to assist the development of legislation and policy in this area.

Human Rights Standards

The Commission welcomes the introduction of the Bill to make provision for an entitlement to paid safe leave for victims of domestic violence and abuse. The State has a positive obligation to protect and provide redress for victims of human rights abuse. Domestic violence and abuse engage and violate, for victims, a number of human rights. The primary standards are set out below.

ECHR

Article 8 ECHR provides that everyone has the right to respect for private and family life, home and correspondence. The European Court of Human Rights (ECtHR) has held that includes physical and psychological integrity. The obligation extends to protecting citizens from violence by others, including private individuals.¹ There must be in place effective and accessible means of protecting the right.² Moreover, with domestic violence, the State is responsible for protecting victims in individual cases when the risk of violence is known or should reasonably be known. If measures designed to protect victims of violence are not used in an individual case, the State is responsible for the breach.³

Article 14 ECHR protects against discrimination in the enjoyment of another Convention right, on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Domestic violence and abuse affect women and girls disproportionately. Therefore, in the enjoyment of Article 8 rights, Article 14 is also engaged. The State must identify and address the disproportionate, discriminatory impact of domestic violence and abuse.

Protocol Article 2

The Ireland/Northern Ireland Protocol, Article 2, obligates the UK Government and the NI Executive to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the EU. Protocol Article 2 also obligates the UK Government to "keep pace" with the six equal treatment EU Directives listed Annex 1 of the Protocol.⁴ Additionally, there are other pieces of EU law that underpin the Rights, Safeguards and Equality of Opportunity chapter in the Belfast (Good Friday) Agreement, which fall within this non-diminution guarantee. While the UK Government has stated that it does not envisage rolling back rights relating to this retained law, it has committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.⁵

¹ For example, *Milićević v. Montenegro*; *Nitecki v. Poland*; *Sentges v. the Netherlands*; *Odièvre v. France*; *Glass v. the United Kingdom*.

² For example, *Airey v. Ireland*; *McGinley and Egan v. the United Kingdom*; *Roche v. the United Kingdom*.

³ For example, *Levchuk v. Ukraine*; *Bevacqua and S. v. Bulgaria*; *A v. Croatia*; *Hajduová v. Slovakia*; *Kaluczka v. Hungary*; *B. v. Moldova*.

The Annex 1 Directives listed as part of Protocol Article 2 includes the Recast Equal Treatment (Employment) Directive, which sets out a framework for ensuring the implementation of the principle of equal opportunities and treatment of men and women in matters of employment and occupation.⁶ Article 27 of the Directive clarifies that the measures contained in the Directive are a minimum standard and does not stop the state from introducing additional measures of protection.⁷ Annex 1 also includes the Equal Treatment (Social Security) Directive, which provides for the progressive implementation of the principle of equal treatment between men and women in the field of social security and social protection.⁸ As the Domestic Abuse (Safe Leave) Bill concerns both employment and social protection, these provisions fall within scope of Protocol Article 2.

The rights, safeguards and equality of opportunity provisions set out in the relevant Chapter of the Belfast (Good Friday) Agreement include the right of victims “to remember as well as contribute to a changed society”.⁹ EU obligations underpinning the rights of victims include the Victims’ Directive as well as other relevant EU laws which support victims.¹⁰

The UK Government has confirmed that the Victims’ Directive falls within the scope of Protocol Article 2.¹¹ The Victims’ Directive reinforces existing national laws and EU minimum standards on victims’ rights and support and protection for victims of crime.¹² The Directive recognises that where physical, sexual, psychological or economic violence is committed in a close relationship, this can cause psychological and physical trauma and such victims are therefore in need of special protection measures.¹³ Moreover, the Directive acknowledges that women are disproportionately impacted by this harm.¹⁴ As the Domestic Abuse (Safe Leave) Bill concerns victims and survivors of domestic abuse, these provisions fall within scope of Protocol Article 2.

⁶ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

⁷ Article 27, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

⁸ Council Directive 79/7/EEC of 1 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

⁹ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

¹⁰ Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012; Directive 2011/36/EU ‘Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011; Directive 2011/92/EU, ‘Parliament and Council Directive on combating the sexual abuse and sexual exploitation of children and child pornography’, 13 December 2011; Directive 2004/80/EC, ‘Council Directive relating to the compensation to crime victims’, 29 April 2004.

¹¹ UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’, (NIO, 2020), at para 13.

¹² Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

¹³ Recital 18, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012. See also; Article 22, Article 23 and Article 26.

¹⁴ Ibid.

The Commission recommends that the Committee obtains the Department’s Human Rights Impact Assessment, which should identify and address the human rights impacts of domestic violence and abuse. It should also specify the measures in the Bill which will ensure better realisation of rights for victims and survivors.

International Human Rights Standards

The UN Committee against Torture (UN CAT Committee) and UN Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) have highlighted domestic violence and abuse as a persistent issue in GB and Northern Ireland.¹⁵ Both UN Committees have highlighted the disproportionate impact on women and girls and the need for gender sensitive policies to provide protection, prosecution and redress.¹⁶

The UN CAT Committee, in its 2019 Concluding Observations on the UK, raised concerns about sexual and gender-based violence, recording increasing numbers of domestic abuse crimes and sexual offences, mainly against women, while also recording low prosecution and conviction rates.¹⁷ The UN CAT Committee recommended “that all domestic violence cases, in all United Kingdom (UK) territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if they are convicted, are punished with appropriate sanctions”.¹⁸ Furthermore, that “victims have access to effective remedies and means of protection, including strong police protection”.¹⁹

The UN CEDAW Committee, in its 2019 Concluding Observations on the UK, noted “with particular concern the inadequacy of laws and policies to protect women in Northern Ireland (from gender-based violence)” and recommended that the UK ratify the Istanbul Convention.²⁰ The Commission agrees that the Convention should be ratified.

The Commission welcomes the Domestic Abuse (Safe Leave) Bill as a positive and proactive approach to addressing persistent issues associated with the prevalence of domestic violence and abuse in NI. Safe leave for victims of domestic abuse will protect victims from harm by enhancing opportunities to pursue effective remedies.

¹⁵ Sunday Life, ‘Northern Ireland is most dangerous place in Europe for women’, Available at: <https://www.belfasttelegraph.co.uk/sunday-life/northern-ireland-is-most-dangerous-place-in-europe-for-women-41095214.html>

¹⁶ CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 56; CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 29.

¹⁷ Ibid.

¹⁸ CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

¹⁹ CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

²⁰ CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 29.

Istanbul Convention

The Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) provides a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. The UK Government intends to ratify the Istanbul Convention and is currently in the process of addressing areas of non-compliance. The Istanbul Convention is specific on the issue of protecting women and girls from violence but can also be used as guidance on how to develop legislation and policy. Some Articles of the Convention are worth noting in particular in this submission.

Article 8, which concerns financial resources, requires state parties to allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of the Convention, including those carried out by non-governmental organisations and civil society.

Article 20 provides for general support services and requires state parties to take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment. Furthermore, that State Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services, and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

The Commission recommends the Committee and Department use the Istanbul Convention as their guide to implement the development of legislation and policies to address domestic abuse and sexual abuse, to ensure compliance with the convention ahead of the UK's commitment to ratify the Convention. This should include proactive measures such as safe leave for victims as an appropriate financial policy to combat domestic abuse and access services to facilitate recovery.

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The UN Basic Principles set out the basic rights of victims of crime, including access to justice and fair treatment, restitution, compensation and assistance. The Principles define victim as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or

omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.²¹

The Principles require that victims receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means. Police, justice, health, social service and other personnel should receive training to sensitise them to the needs of victims. There should be guidelines ensuring proper and prompt aid. In providing services and assistance to victims, particular attention should be given to those who have special needs because of the nature of the harm inflicted.²² The Commission believes safe leave is a proactive response in line with the UN Basic Principles.

General Comments on the Bill

The Commission welcomes the Bill as a step towards the positive realisation of Article 8 and Article 14 ECHR rights but the Commission recommends that the Committee and Department use the Istanbul Convention and UN Basic Principles to guide the legislation to ensure a human rights-based approach to addressing the needs of victims and survivors of domestic abuse. Furthermore, that the Department ensure they are meeting their requirements in regards to Protocol Article 2, ensuring that relevant standards falling within the scope of Article 2, such as the Victims' Directive, are also adhered to.

The Commission welcomes the intent of the Bill to provide for "safe leave" as paid leave, designed to be used by the employee to deal with issues relating to domestic abuse. The Commission notes the issues identified and agrees but reminds the Committee that the list of issues includes, but is not limited to: obtaining legal advice and pursuing legal proceedings and remedies; finding alternative accommodation; taking advantage of healthcare, including mental health care; obtaining welfare support; and, protecting family members.

The Commission recommends that this list should not be exhaustive and the Bill should provide flexibility as to what can fall within the scope of requirements for safe leave.

The introduction of safe leave is an opportunity for Northern Ireland to present as a leading example; it will be the first (but unlikely the last) jurisdiction within the UK to implement legislation for safe leave. The Commission welcomes the Bill's provision for at least 10 days of safe leave to be applied for in each leave year. For completeness, the Committee should also consider provisions relating to practical arrangements. For example, whether conditions may be attached and whether (and how) notice should be given.

²¹ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

²² UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

New Zealand is an example of another jurisdiction where safe leave has been implemented. There, a person can apply to take 10 days of paid leave each year as well as a short-term flexible working arrangement for up to two months.²³ NI could also follow a flexible arrangement.

The Commission recommends that Regulations providing for reasonable conditions should allow for flexibility in regards to when leave can be taken, and allow for situations where leave is needed in a case of emergency, where notice cannot be given to an employer.

The Commission welcomes the Bill's intention to avoid restricting provision based on a victim's length of service with that employer. However, the Commission is concerned that victims may be excluded from eligibility for safe leave due to their employment status. Women (and members of minority ethnic groups) are much more likely to be in informal employment and would therefore be disproportionately affected by such a restriction.²⁴ Furthermore, women are much more likely to be victims of domestic abuse.²⁵ The provision should therefore extend to those in less formal or casual employment arrangements.

The Commission recommends that in addition to there being no restriction on length of service before a victim can access safe leave, the Bill should also make explicit that workers in informal employment should also be eligible for safe leave.

The Commission welcomes the requirement for guidance and the review of that guidance. The Commission recommends that guidance should offer advice to employers, particularly as to the nature of such applications being sensitive, emotive and confidential.

The Commission welcomes the requirement on the Department for the Economy to produce an annual report on the operation of regulations. The report must include, in particular, information about compliance with the regulations by employers and evidence of the effectiveness of the regulations and their impact on victims of domestic violence and abuse. The Commission recommends that the annual report includes disaggregated data. The UN CEDAW Committee, in its 2019 concluding observations on the UK, recommended that the UK Government and NI Executive "systematically collect and publish data, disaggregated by sex, gender, ethnicity, disability and age, throughout the whole of its territory to inform policymaking and assess the impact of measures taken".²⁶ Furthermore, Article 11 of the Istanbul Convention also highlights the importance of data collection and research, which must be disaggregated if it is to be helpful.

²³ Available at: <https://www.govt.nz/browse/work/domestic-violence-leave/>.

²⁴ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 43.

²⁵ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 56; CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 29.

²⁶ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 26(d).

Lastly, the Commission reminds the Committee that the Department is obliged to screen new legislation for Article 2 compliance. The European Union (Withdrawal Agreement) Act 2020 amended section 24(1) of the Northern Ireland Act 1998 to include a statutory duty on a Minister or Northern Ireland department to ensure that legislation is compatible with Protocol Article 2. While the Commission has not identified a breach of Protocol Article 2 within the Bill, it advises that there is a statutory obligation to screen new legislation to ensure its compatibility with Protocol Article 2.

I hope these comments are helpful. Should any further human rights issues arise the Commission remains at the disposal of the Committee for further advice or engagement as necessary.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Kilpatrick', written in a cursive style.

Alyson Kilpatrick BL
Chief Commissioner