

Peter Hall

Clerk to the Committee for the Economy  
(via email)

Netherleigh  
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Your Ref: EC504/22

**RE: Domestic Abuse (Safe Leave) Bill**

Thank you for your letter of 13 January 2022 seeking the Department for the Economy's assessment of the Domestic Abuse (Safe Leave) Bill, in its current form.

This Bill, as put forward by Rachel Woods MLA, proposes to introduce a statutory provision of at least 10 days paid leave in each leave year for workers and employees that are victims or survivors of domestic abuse. The Bill makes provision for the entitlement to Safe Leave to become a "Day One" right, meaning that it would be available from the first day of employment. The Bill also provides that the entitlement to leave should apply to both employees and workers. It is intended that the specific detail of these statutory provisions would be made by regulations brought forward by the Department for the Economy. The Bill also places a duty on the Department to produce guidance on any regulations and to produce an annual report.

The Department recognises that domestic abuse is a scourge on our society and there is a need for government and society as a whole to take action to tackle domestic abuse in all its forms. There is also a recognition that there is a need for

society to support victims and survivors of domestic abuse as much as possible, including in the workplace when that is the appropriate place to do so.

In recent years, there has been a growing recognition among many employers of the need to provide better support for workers who are victims and survivors of domestic abuse. It is encouraging that many progressive and compassionate employers already have pay and leave arrangements in place for workers who face this distressing circumstance.

There are many ways in which employers can provide the necessary support to employees that are victims or survivors of domestic abuse. This can include pay and leave arrangements, as well as other forms of support such as: encouraging the individual to contact a specialist support agency; ensuring the employee does not work alone or in an isolated area; and keeping a record of any incidents of abuse in the workplace, including persistent telephone calls, emails and other forms of communication. The Department for the Economy welcomed the guidance produced by the Departments for Justice and Health – ‘Guidance for Employers on Developing a Workplace Policy on Domestic and Sexual Violence and Abuse’. This can provide a valuable source of support and information for employers.

The Department understands that, whilst there are a number of positive moves by a range of employers to institute safe leave, the Bill sponsor and others consider that primary legislation is the only mechanism to ensure equality of access to a right to safe leave.

The Department recognises the level of interest in this emotive and distressing issue and the desire to take prompt legislative action to address it. It is essential that any proposed interventions achieve the desired goal of supporting victims and survivors in the workplace. The Minister for the Economy is generally supportive of the broad principles within the Bill, provided it is workable and operable.

The Department has some general comments on the Bill in its current form.

## **Definitions**

The Bill relies on the “domestic abuse” definition specified in the Domestic Abuse and Civil Proceedings Act 2021 (DACP). There would need to be further exploration of this issue to fully understand the implications of this definition. It is important any

definition used in the Bill does not have unintended consequences that mean the intentions of the bill are not fully realised.

The Department also notes the comments made by the Northern Ireland Women's European Platform (NIWEP) in their submission to the Committee. In their written submission, they expressed a concern that, under the Criminal Law (Northern Ireland) Act 1967, it is a crime to fail to report a suspected criminal offence. Proper consideration and advice is required as to whether this legislation could have an impact on the proposals in this Bill. This is an issue that would need to be clarified before any legislation could become operational otherwise there is a risk that the effectiveness of the Bill could be seriously undermined.

There may also be a need to consider if other definitions and terminology within the Bill require expansion or further refinement, in order to ensure there is sufficient clarity throughout the Bill.

### **Costs to businesses / Remuneration for those taking Safe Leave**

It is understood from the Explanatory and Financial Memorandum that, at the substantive core of this Bill, it will be the employer's responsibility to provide for and pay costs associated with the periods of leave. In that regard, this proposed leave entitlement is more akin to annual leave than to other family-related leave entitlements which entail statutory payments and interaction with the tax and benefits systems.

The Bill Sponsor points to research that suggests that costs to employers will be offset against the benefits and savings to be made. However, it will be necessary to carry out a full assessment of the cost of any such provision on employers, with a particular assessment as to the potential for any disproportionate impact this may have on micro, small and medium sized employers. This would need to be fully assessed at any consultation stage.

It will also be necessary to ensure that the Bill clearly sets out the intention for the employer to pay the leave and that the enabling powers are sufficient to permit the Department to make regulations that outline how remuneration while on safe leave should be calculated.

## **Notice Requirements and confidentiality and record keeping**

There is no detail in the Bill on how the sensitive matter of seeking supporting information from victims and survivors will be addressed. The Department understands that there is a desire that no, or minimal, evidence of abuse should be required before a worker could exercise their right to avail of the leave. This is an understandable position to adopt given the sensitive nature of the issue at the heart of these measures. However, there will be a requirement on the Department to fully assess the operational ramifications of whether or not to permit employers to seek evidence when drafting any associated regulations. The Department has noted that a similar paid leave regime introduced in New Zealand does provide for employers to seek evidence but it appears that it does not oblige them to do so. All perspectives on this matter would need to be fully explored in any future consultation, should the Bill proceed.

Alongside the issue of evidence, another matter which will require sensitivity and clarity when drafting supporting regulations is the requirements for record keeping associated with requests. There will inevitably be a need for employers to keep certain records. This is also an issue that would require careful and sensitive consideration and full consultation.

Without due consideration, the handling, or indeed mishandling, of these matters, run the risk of undermining the employer/worker relationship and could potentially result in further trauma for an individual at an already distressing time. It is also possible that some workers could be reluctant to discuss such issues with their employer or have concerns about confidentiality of records. It will be essential for further consideration to be given to these matters and consultation with those who would be impacted by the proposed legislation.

## **Remedy**

Most employment rights also provide for a means of enforcement or a remedy should an individual feel those rights have been infringed. It will be necessary to

ensure that there are sufficient powers in the Bill to permit the Department to make the necessary regulations.

## **Annual Report**

The Bill proposes to place an obligation on the Department to publish an annual report containing information about:

- compliance with the regulations by employers; and
- evidence of the effectiveness of the regulations and their impact on victims of domestic abuse.

Having a statutory obligation to review the effectiveness of legislative measures is something that the Department is familiar with. It appears reasonable to include such an obligation in this case given that the detail of the policy will be determined by regulations made by the Department. However, this provision may require further consideration to ensure that the parameters of any report permit the Department to carry out any such review, or any duty to report, in an effective and sensitive way.

It appears that the Bill does not contain a provision requiring employers to report to the Department that leave has been requested or taken. Employers will be responsible for paying remuneration to employees who take safe leave and therefore the Department will not have access to any data on uptake of leave. Employers do not routinely report to the Department on the exercise of other employment rights. Given the extreme sensitivity of the issue, it would not seem appropriate for the Department to gather or retain such information, or place employers under an obligation to provide it as a matter of routine. As already highlighted, the wider issue about appropriate record keeping and confidentiality also applies in this regard.

It may also be difficult to assess the impact of the effectiveness of the regulations on an annual basis. It is suggested that a more suitable arrangement may be for the Department to conduct a statutory review of the regulations at a set period after the regulations are operable: perhaps two or three years. This is an approach which has been adopted in other legislation and could be preferable here.

## **Commencement**

The Department notes that the Bill provides that Section 1 (the regulation making powers) would come into operation on such day or days as the Department for the Economy may by order appoint. The other provisions come into operation on Royal Assent. This means that the Department would have a statutory obligation to produce guidance and prepare an annual report relating to regulations that have not yet been made.

The Department is aware that there has been discussion about whether or not there should be a set commencement date for the provisions section to become operational.

With regards to introducing a timeframe within which section 1 becomes operational, it is highlighted that the Bill, as drafted, places a statutory obligation on the Department to make regulations. As this is a Private Members Bill, the Department has not conducted the normal policy development work nor any assessments of regulatory and other impacts that are usually carried out in advance of any new legislation being introduced to the Assembly. The Bill, as drafted, is intentionally wide in order to permit the Department to undertake that detailed scrutiny work. However, there remains the risk that, in the course of the Department's consultation and policy development work, unforeseen operational issues with the Bill could arise, or that aspects of the primary powers are not sufficient to fully implement the provision for Safe Leave.

Should this result in a need to make further technical or operational fixes to the primary provisions within the Bill after this policy work has been conducted, it would be for the Assembly to decide upon the appropriate course of action, including new primary legislation, if appropriate. Imposing a timeframe in the Bill could, therefore, limit the Assembly's discretion to make those fixes, if necessary. Where a statutory deadline did not provide sufficient time to properly address any operability issues arising, there would be an obligation to work within the existing legislation to introduce regulations that may not operate in line with the policy intent of the Bill. Given the sensitive nature of the issue at the heart of this Bill, it would be important to avoid introducing regulations which were not fully fit for purpose. Alternatively, if operability issues and concerns about outworkings meant that section 1 was not able

to be commenced, this would leave the Department at risk of being in breach of a statutory obligation.

## **Conclusion**

Employment law is complex and no employment right can be considered in isolation from the rest of the employment law framework. Sympathy for the objectives of the Domestic Abuse (Safe Leave) Bill has been universally expressed across the Assembly, as has the excellent work undertaken by the sponsor both in bringing attention to this important matter and in progressing her Bill to this stage. Given the complexities of this issue, however, and the need to ensure there are no unintended consequences, especially for victims and survivors, it is necessary to fully scrutinise these proposals to ensure any new legislation is fully operable. It is recognised that the primary powers are intended to be deliberately broad so as to allow the Department to develop the detail in regulations, after conducting consultation with a wide range of stakeholders. However, the limited time within the remaining mandate does curtail the time available to fully scrutinise this legislation and to ensure that the primary powers are sufficient for the Department to make any necessary regulations in future. If there is not sufficient time to fully consider these issues within the remainder of this mandate, it remains an option for the issue to be brought forward by the Department in the next mandate, as part of a wider package of employment measures – subject to the approval of the Executive and the Assembly.

Yours sincerely

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Departmental Assembly Liaison Officer

Department for the Economy