

Irish Congress of Trade Unions

Submission to Justice Committee on the Domestic Abuse and Family Proceedings Bill 2020

1. About the Irish Congress of Trade Unions.

The Irish Congress of Trade Unions is the trade union federation on the island of Ireland representing approximately 750,000 workers, 200,000 of whom live and work in Northern Ireland. Our affiliated union cross public and private sector and a wide range of workplaces. Women are currently over 50% of our membership.

The ICTU is pleased to make this submission to the Justice Committee in relation to the Domestic Abuse and Family Proceedings Bill. ICTU is a member of the Women's Policy Group (WPG) and the Belfast and Area Domestic and Sexual Violence and Abuse Partnership and we would also wish to place on record our endorsement of their submissions.

2. Introduction.

The ICTU broadly welcomes the proposed legislative changes regarding domestic abuse and violence both within the Northern Ireland Assembly and in Westminster Parliament. The trade union movement has campaigned for many years to ensure the introduction of adequate and comprehensive legislation to address the scourge of domestic violence and abuse. Whilst we appreciate the Justice Minister's progress in introducing this much needed legislation, we do believe that there are gaps which need to be addressed.

It is important that such legislation is compliant with international human rights instruments such as the Istanbul Convention and recommendations made by, for example, the Committee on the Elimination of Discrimination Against Women. It is also important that it provides for the same legal remedies and protections as in other jurisdictions. As the Bill stands, there are disparities between the proposed Northern Ireland Bill and the GB Draft Domestic Abuse Bill that must be addressed.

We support the calls made by Women's Aid to address these gaps including in relation to powers to deal with domestic abuse such as the introduction of domestic abuse protection orders and domestic abuse protection notices.

3. The definition of the offence and the definition of abusive behaviour

The ICTU welcomes the definition of the offence and the definition of abusive behaviour. However, we are concerned that unless the legislation is set within a policy context which includes robust strategies and action plans, that it in itself will not bring about the changes required to prevent domestic abuse.

Elsewhere in the UK, domestic abuse legislation is accompanied by strategies to prevent violence against women and girls as well as an LGBT Action Plan which includes provisions for specific support for LGBT+ victims of domestic violence.

We would suggest that the absence of any strategic equality strategies (Gender, LGBT, Race, Disability, Sexual Orientation, anti-poverty) in Northern Ireland means that it is crucial that additional support and resources are given to groups who are particularly vulnerable and marginalised. We are also concerned that addressing the issue of domestic abuse through a gender neutral approach risks missing the clear evidence that women are more likely to be victims and men perpetrators. This is not to deny the fact that men can also be victims and women perpetrators however, not to acknowledge this as a gendered issue which is set within the context of structural inequalities which disadvantage women, risks doing a disservice to both men and women.

We would recommend that:

- (a) The gendered nature of domestic abuse and the fact that it is only one aspect of violence against women and girls is clearly acknowledged within the legislation;
- (b) The legislation acknowledges the additional barriers face by marginalised groups such as black and minority ethnic women, disabled women and LGBT+ people;
- (c) The specific experiences of migrant women, for example, ways in which their immigration status can be used by perpetrators to continue abuse, feeling unsafe to report due to their immigration status, being unable to access support as a result of having 'no recourse to public funds';

This legislation is an opportunity to improve practice across a range of settings and public services. We would therefore recommend that guidance documents are either updated, where they already exist, or developed where they do not. This should include education settings such as schools as well as further and higher educational establishments, local government and health.

There is also an opportunity to improve and update training. Many key public sector workers, including teachers and GPs for example, are still not receiving much, if any, initial vocational training on domestic violence or other forms of violence. The new definition is an opportunity to make it a priority to ensure key professionals, including the police and criminal justice agencies are provided with appropriate training to understand and recognise coercive control, its impact and how dangerous it is.

4. Any identified issues regarding the investigation and prosecution of the new offence

We welcome the prohibiting of cross examination by the alleged perpetrator. We recognise that many perpetrators try to use family and criminal proceedings to further abuse their victim – often dragging out divorce proceedings, child contact, etc. and are pleased to see this addressed within the bill. However, we would like to see the prohibition extended to direct cross -examination in any family proceeding in which allegations of domestic abuse are being determined, or where domestic abuse has been admitted and/or found.

We would also recommend

- a. Use of the Domestic Violence register showing the number of times police have been called to the house, to build a picture of the frequency and nature of abuse;
- b. Use of PSNI intelligence and evidence gathered from incidents to build a picture of coercive control as a course of conduct;
- a. Use of body worn camera evidence from the scene on each occasion to effectively demonstrate the impact and seriousness of abuse. In parts of England where body worn cameras have been rolled out, there is a marked increase in the severity of sentences for domestic violence related crimes.

We believe that there is a particular need to expand Independent Domestic Violence Advocates (IDVA) services across Northern Ireland, since securing prosecutions will depend heavily on expert IDVA involvement. IDVAs have been shown to be a cost-effective way of supporting high-risk women and children, and improving local police responses to domestic violence.

We recommend that IDVA posts should be made mandatory in police stations across the country, and that Children's IDVAs should also be seriously considered.

5. *Whether the ‘reasonable’ defence included in the legislation is framed appropriately and the intent of when it would apply is clear.*

ICTU joins a range of other organisations and coalitions in having concerns about Clause 12, the defence on grounds of reasonableness.

Whilst we understand that there is a need to safeguard vulnerable adults or to protect family members, we are concerned that the reasonable defence could be used by a perpetrator to imply a victim has a mental illness or be used to justify their actions.

ICTU agrees with the Belfast and Area Domestic and Sexual Violence and Abuse Partnership (of which ICTU is a member) when they say that they ‘feel the wording is not specific enough to prevent this from happening’. We also note and agree with Women’s Aid and their insistence that the framing of this clause be explicit in outlining the circumstances where this is appropriate behaviour so that it cannot be used as a defence by perpetrators for domestic abuse. We would be particularly concerned about how it could be used against women with disabilities, older women and women with mental health conditions.

ICTU also notes concerns which have been raised by the Commissioner for Older People, who has noted the phrasing in clause 12(2)(a) that the evidence: "is enough to raise an issue" could be construed as sufficiently loose as to conceivably allow for victim-blaming as a means of defence.

ICTU believes that the public and relevant professionals must be assisted in their understanding of what constitutes coercive control. This education is vital if the legislation is to have the desired effect – i.e. the protection of victims and prosecution of perpetrators.

6. *Whether the penalties provided for in the Bill are appropriate and adequate*

ICTU welcomes the maximum penalties set out in the Bill and feel they reflect the serious nature of domestic abuse. Sentencing guidelines for domestic abuse cases should be developed to support and encourage consistency across courts. This is important both at the symbolic and practical level of the legislation, to reassure victims that cases are treated on an equitable basis across Northern Ireland and to provide clarity for the judiciary on how provisions in this clause are intended to operate. None of this takes away from the autonomy of an individual judge; rather, sentencing guidelines provide a framework within which autonomous and professional judgement can be most effectively employed.

7. Any other legislative or non-legislative approaches to tackle domestic abuse not currently in place that should be taken forward either in this Bill or in another piece of legislation or by other means

Trade Unions have been campaigning on the issue of domestic violence and abuse and violence against women and girls for many years. There is a considerable body of work which demonstrates that the issue of domestic violence and abuse spills over into the workplace and affects victims and their work colleagues. The results of domestic violence and abuse also impact on the economy in hours of lost productivity.

It is for these reasons that we believe that the government, employers and trade unions have an important role in making the workplace a safe and supportive place for everyone.

In 2014, the Irish Congress of Trade Unions conducted a survey to explore the impact of domestic and sexual violence against women on the workplace¹.

The results were striking and proved that although this type of violence most often takes place behind closed doors, that the impact is felt throughout society, including in work. Of the nearly 1800 respondents, almost a third had experienced domestic violence with over 40% of those reporting that it affected their ability to get into work for reasons including financial control, threats, physical injury and restraint. Respondents also reported that the abuse continued at their workplace including being harassed through phone calls and emails, many people said that their partner physically turned up to their workplace. Disturbingly, fewer than one in three of those experiencing domestic violence discussed the violence with anyone at work. The main reasons for not disclosing were “shame” and “privacy”.

Building on this work and as part of the action plan under the Stopping Domestic and Sexual Violence and Abuse strategy, a task and finish group involving trade unions, employers and NGOs was established to draw up revised Guidelines for Employers² on developing workplace policies on domestic and sexual violence. This was published in 2018.

Whilst this work is encouraging and some employers are proactive at working with unions to ensure that victims of violence and abuse are supported in work, ICTU believes that additional measures are now necessary. Other areas of the UK have introduced legislation which places a duty on Government and Local Government to develop and implement strategies and action plans.

In 2015, the Welsh Government introduced the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015³. This was a ground-breaking piece of

¹ https://www.ictuni.org/download/pdf/final_ictu_domestic_violencesurveyresults.pdf

² <https://www.nibusinessinfo.co.uk/sites/default/files/Developing-a-Workplace-Policy-on-Domestic-and-Sexual-Violence.pdf>

³ <http://www.legislation.gov.uk/anaw/2015/3/contents/enacted>

legislation, which built on the progress made since the publication in 2010 of The Right to be Safe strategy and places a strategic public sector duty and statutory focus on the key issues as well as proactive powers.

Internationally, there is also much to learn. Unions in Australia have successfully campaigned on domestic violence as a workplace issue and have negotiated between 15-20 days of paid leave in cases of domestic violence across the whole of the public sector⁴. The ability to take time off work without facing disciplinary action or losing out on pay is crucial for survivors of domestic violence who are trying to flee an abusive relationship. Finding a new home, getting a place at a refuge, securing school places for kids, seeking legal advice, opening a new bank account and seeking medical help and counselling all take time. Good workplace policies on domestic violence often offer advances on pay to help survivors of domestic violence get through a period when they may have no access to cash or their own money is being withheld by an abusive partner.

In June 2019, at the Centenary Conference of the International Labour Organization (ILO), ⁵the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No. 206) were adopted. The global community has made it clear that violence and harassment in the world of work will not be tolerated and must end.

These landmark instruments were developed by the key world of work actors (representatives of governments, employers and workers), and set out a common framework to prevent and address violence and harassment, based on an inclusive, integrated and gender-responsive approach. The Convention and the Recommendation also refer to domestic violence and its impact in the world of work.

The Preamble to the Convention notes that “domestic violence can affect employment, productivity and health and safety, and that governments, employers’ and workers’ organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of domestic violence”. As such, the Convention requires Members to “take appropriate measures to ... recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work” (Art. 10(f)), and the Recommendation provides further guidance.

The inclusion of provisions regarding domestic violence in Convention No. 190 and Recommendation No. 206 reflects a fundamental change: historically, domestic violence was relegated as a “private” issue, with no connection to work, and it is now being acknowledged as having real consequences for workers, enterprises and the society at large.

⁴ <https://publicsector.sa.gov.au/wp-content/uploads/20171120-Determination-3.1-Employment-Conditions-Hours-of-Work-Overtime-and-Leave.pdf>

⁵ <https://www.ilo.org/global/topics/violence-harassment/lang--en/index.htm>

The new instruments finally recognize the negative spillover effects that domestic violence can have on the world of work and the positive contribution that work can make towards improving the well-being of victims of domestic violence.

ICTU recognises the wide ranging effects of domestic and sexual violence and abuse and the impact on victims as workers and on the workplace. We would therefore urge the Department to consider additional measures such as:

Developing an Act, similar to that in Wales, which places a strategic public sector duty requiring the Northern Ireland Executive to prepare, publish and review a strategy and which:

- Places a duty on public sector bodies, including NDPBs, health trusts and local authorities, to prepare and implement local strategies;
- Requires the development of a National Training Framework;
- Places a duty to publish National indicators that may be applied for the purpose of measuring progress towards the achievement of the Act;
- Gives the power to issue statutory guidance including in relation to workplace policies to promote the well-being of employees of relevant authorities who may be affected by gender-based violence, domestic abuse and sexual violence; training for the members and staff of a relevant authority; the sharing of information between relevant authorities or by a relevant authority with another person; co-operation between relevant authorities or between a relevant authority and other persons.

We would also suggest that the Northern Ireland Executive ensure that the UK Government ratifies ILO Convention 190 and that the Executive considers measures which can ensure it is brought into effect.

Demonstrating leadership on this issue is of vital importance and that the appointment of a Domestic Abuse Commissioner, similar to England and Wales, with the appropriate resources, to both advise and challenge Government would be of extreme importance.

A Domestic Abuse Commissioner is essential to act as a mechanism of accountability for this legislation. A Commissioner's role is to scrutinise policy and practice, funding allocation and the provision of key services. To effectively implement the Domestic Abuse and Family Proceedings Bill will require huge amounts of training across the criminal justice system, a Commissioner can oversee this process and bridge any potential information gaps and inform on learning and best practice from other countries that have introduced similar legislation.

The Commissioner would be able to oversee a number of key ongoing developments in domestic abuse service provision in Northern Ireland including the introductions of Domestic Homicide Reviews and the specialist domestic violence courts pilot proposed for Belfast. More so, the Commissioner could direct research and data collection on the application of the offence of coercive control to ensure that it is being applied to cases and is justiciable

We also believe that a period of paid leave should be introduced for all workers who have been victims of domestic or sexual violence and abuse.

The Northern Ireland Executive has a responsibility to ensure that victims of domestic abuse are given the time and space to address impacts of domestic abuse without having to worry about being able to pay their bills. Workers may need time off to access legal or financial advice, to arrange childcare or alternative accommodation and to seek medical advice.

Another significant gap in the Bill is the failure to include Domestic Abuse Protection Notices (DAPN) and Domestic Abuse Protection Orders (DBPO).

The purpose of introducing DAPNs and DAPOs is to provide the police with a mechanism to protect victims of domestic abuse for a short period in order to provide the victim with 'breathing space' and to allow referrals to support services without interference from the perpetrator. They are designed to address the problem of persistent offenders where the victim is sometimes unwilling to support a prosecution making it unlikely that they would largely be used in cases where a charge was not possible.

ICTU would support the introduction of the use of DAPNs and DAPOs for this stated purpose. In doing so it must be made clear in all guidance and training that they are not an alternative to prosecution. If the charging standard is met, then perpetrators should be charged with a criminal offence.

Wrap around support for the survivor is crucial in the immediate aftermath of a DAPN being issued. This should come from specialist domestic violence support services.

The court fees the police pay to apply for a DAPO should be abolished. We are aware by both survivors and evidence from a pilot scheme conducted in England that the cost of making an application to the magistrates' court is a factor prohibiting their use. Superintendents should not have their budgets at the back of their minds when considering whether a case is suitable for a DAPO to be issued.

It should be a criminal offence to breach a DAPO.

ICTU believes that the issue of fatal and non-fatal strangulation should be addressed within the Bill. Strangulation is a high risk indicator and extremely common within domestic abuse relationships. Studies have shown if a victim is strangled by their partner they are seven times more likely to be killed at a later stage. Yet our current laws make prosecution for strangulation offences very difficult. Countries such as New Zealand have specific offences relating to non-fatal strangulation, highlighting the seriousness of it. ICTU would want to see similar legislation adopted in Northern Ireland. It is also important that appropriate training for the criminal justice agencies, health professionals, etc around how to spot signs of strangulation and respond appropriately is conducted.

ICTU recommends the establishment and resourcing of specialist support services for vulnerable groups including for LGBT+ groups, BME people and people with disabilities.

A comprehensive public awareness campaign will be vital to ensure that the public and statutory agencies are aware of the new definitions and offence. This will be particularly important for vulnerable or hard to reach groups including communities where English is not a first language.

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