

Domestic Abuse and Family Proceedings Bill Submission by Northern Ireland Women's European Platform to the Committee for Justice

5 June 2020

Introduction

Northern Ireland Women's European Platform (NIWEP) welcomes the Domestic Abuse and Family Proceedings Bill as an important step in protecting women and girls from intimate partner violence, and welcomes the opportunity to contribute to the scrutiny process.

NIWEP is a membership organisation of women's NGOs in Northern Ireland. Established as the Northern Ireland link to the European Women's Lobby, the EU's expert body on women's rights and gender equality, NIWEP also has special consultative status with the UN. A key role for NIWEP is ensuring women and girls are engaged in policy and decision making, as well as promoting gender responsive policy and decision making at local, regional and national level taking account of the state's international obligations. NIWEP also works to share information and good practice at international level with local members and stakeholders, and highlight local learning and good practice internationally.

NIWEP's core objectives involve raising awareness and promoting implementation of key international human rights treaties and initiatives, including the Convention on the Elimination of All Discrimination against Women (CEDAW). NIWEP views implementing the recommendations of CEDAW as a clear roadmap and mechanism to ensuring women's human rights are fully met and upheld in Northern Ireland. The comments in this submission are made within this context.

NIWEP also endorses the responses of Women's Aid Federation Northern Ireland as the leading civil society organisation supporting victims and survivors of domestic abuse in Northern Ireland and the Women's Policy Group, a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues¹. NIWEP is a member of the Women's Policy Group and has contributed to the submission of the group. NIWEP would be pleased to expand on any of the points made in this submission in an oral evidence session, should that be helpful.

Summary

NIWEP welcomes the Bill as an important step in strengthening protection for women and girls from violence by an intimate partner. NIWEP would emphasise that domestic abuse is

¹ The [Women's Policy Group](#) is hosted by the Women's Resource and Development Agency and coordinated by the Women's Sector Lobbyist

a gendered crime; in 2018-19 around 70% of victims in Northern Ireland were women². Therefore, it is essential that the gendered nature of domestic abuse is recognised in the legislation.

The UK also has obligations in international law to recognise gender based violence against women as a specific human rights issue. As a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UK is required to take action on domestic abuse, which the Convention defines as a barrier to women and girls enjoying their full human rights.³ The overall aim of CEDAW is to strengthen gender equality, and the CEDAW Committee has highlighted the importance of action on domestic abuse in their Concluding Observations to all recent periodic reports submitted by the UK.⁴

The UK is also a member of the Council of Europe, which integrates gender equality as one of its policy goals. The Council has adopted Standards for Gender Equality, which set out a list of measures to be taken across policy areas, including violence against women. The Standards state that 'Violence against women is one of the most serious violations of human rights and fundamental freedoms of women and an obstacle to the enjoyment of those rights and freedoms. Furthermore, violence against women is a waste of capacities and resources for economic and social development; it is also one of the means by which women are forced into a subordinate position compared with men and is, therefore, a decisive impediment to the achievement of gender equality'.⁵ In 2011, the Council adopted the Istanbul Convention of preventing violence against women and combating domestic violence, which sets out clear standards for states to put in place⁶. Compliance with requirements is essential to enable states to ratify the Convention; the UK is yet to ratify the Convention and it is vital that this Bill contributes to ensuring UK compliance and ratification.

In addition, NIWEP would welcome strengthened action and in particular capacity building for all stakeholders on the roots of gender based domestic abuse in patriarchal social norms and systems, in order to effectively prevent and address future offending. This is developed further below, and draws on obligations on the UK as a State Party to CEDAW, further clarified in General Recommendation 35 on gender based violence against women. This would support and encourage victims to come forward and seek justice, and would strengthen efforts and initiatives to prevent domestic abuse.

It should, finally, be noted that on a global level, UN Women reports that 'less than 40% of women experiencing violence seek help of any sort. Among those who do, most look to family and friends. Less than 10% of women seeking help seek help from the police'.⁷ At the European level, the most recent available survey indicates that just less than a third of women experiencing partner violence seek help from any organisation, while the most serious incident of violence is reported in 14% of cases.⁸ Therefore, legislation on offences is only part of the solution; education and public campaigns to address social norms are

² Police Service of Northern Ireland (2019) [Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2018/19](#)

³ [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

⁴ [Concluding Observations](#) 2019, 2013, 2008 on examinations of the UK under CEDAW

⁵ Council of Europe (2007) [Gender equality standards and mechanisms: Recommendation CM/Rec \(2007\) 17 of the Committee of Ministers and Explanatory Memorandum](#), p. 22.r

⁶ [Council of Europe Convention on the prevention and combating violence against women and girls](#)

⁷ UN Women (2020) [COVID-19 and ending violence against women and girls](#) policy brief

⁸ European Union Agency for Fundamental Rights FRA (2014): [Violence against women – an EU wide survey](#), p.22.

required, alongside effective and well resourced services for victims and survivors, including LGBT+ people and women with no recourse to public funds.

General comments

NIWEP would like to highlight a number of specific points in relation to the Bill and relevant related issues.

Obligations of the UK under international law

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) places an obligation on the UK as a State Party to ensure that discrimination against women is prohibited in law and that action to prevent and address discrimination is taken at the policy level.⁹ This includes violence against women and girls, and the CEDAW Committee has raised issues in relation to Northern Ireland, as outlined above.

CEDAW General Recommendation 35¹⁰ specifically focuses on gender based violence, and provides guidance on interpretation and implementation of CEDAW in this regard. The CEDAW Committee holds that ‘Women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association’¹¹. The Recommendation explicitly includes psychological, sexual, economic and physical harm as well as threats of such acts, harassment, coercion and arbitrary deprivation of liberty in its scope of gender based violence.

The Recommendation clarifies the CEDAW provisions and states that laws prohibiting gender based violence should include sanctions for perpetrators and reparations for victims.¹² It further notes that ‘all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law’, and that capacity building is required to ensure that women’s right to equality is not affected by the application of preconceived and stereotyped notions of what gender based violence is, how women do and should react and the standard of proof required in proceedings¹³.

Equitable provisions across the UK

NIWEP would also stress that this legislation must ensure that protections for domestic abuse in Northern Ireland are put on an equal footing with protections elsewhere in the UK.

⁹ [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

¹⁰ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#)

¹¹ Ibidem, p. 6

¹² Ibidem, p. 10.

¹³ Ibidem, p.11.

In the examination of the UK under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2019¹⁴, the CEDAW Committee expressed particular concern that protections in Northern Ireland are inadequate and the legislative gap with England and Wales and Scotland is growing. The Concluding Observations from the examination include a recommendation to ensure that protections for women and girls in Northern Ireland are put on an equitable footing with the rest of the UK. NIWEP would urge that it is ensured this Bill contributes to parity across the UK, to ensure Northern Ireland meets its international obligations in ensuring the human rights of women and girls. This does not take away from devolved authority, but rather strengthens the role of Northern Ireland on the international stage. In this regard, it is essential that provisions in this Bill do not create or widen gaps compared to the Domestic Abuse Bill currently at Committee stage in Westminster¹⁵, or with equivalent legislation in Scotland.

There is currently a Domestic Abuse Bill going through Westminster, which is also intended to ensure that the UK can ratify the Istanbul Convention¹⁶. This is another key gap that the women's and domestic violence sectors in the UK as well as international actors including CEDAW have highlighted for several years, and it is essential that this Bill contributes to ensuring that the UK is compliant with provisions in the Istanbul Convention. NIWEP would urge for the current Bill to undergo an assessment against the Istanbul Convention and ensure it is aligned with UK wide requirements, as a vital element of strengthening action to prevent and combat domestic abuse.

The Istanbul Convention sets out criminalising stalking as a key criterion for compliance¹⁷. Northern Ireland currently does not have stalking legislation in place, although NIWEP understands this is to be introduced within 2020. NIWEP would urge for stalking legislation to be urgently put in place to ensure Northern Ireland is compliant with the Istanbul Convention. Stalking legislation is in place elsewhere in the UK, and putting this in place will strengthen protection of women and girls in Northern Ireland while meeting the CEDAW recommendation to ensure protections are on an equal footing across the UK. For context, it can be noted that the European survey on violence against women and girls found that across the then 28 countries in the EU, 18% of women have experienced stalking since age 15.¹⁸ Similarly, there is currently no legislation regarding non fatal strangulation, and introducing this would strengthen protection of women and girls, while ensuring Northern Ireland is in line with provisions across the UK and international obligations.

Domestic Abuse Commissioner

NIWEP is concerned to note that there is no reference to a Domestic Abuse Commissioner in the Bill. A Commissioner for England and Wales has recently taken up post¹⁹ and provision for this is included in the Domestic Abuse Bill for England and Wales, creating a further example of a gap between England and Wales and Northern Ireland. The Commissioner was pivotal in ensuring that staff in domestic violence service providers are considered key workers during the COVID-19 pandemic, which demonstrates the value of

¹⁴ CEDAW Committee (March 2019) [Concluding Observations on the 8th periodic report of the UK](#)

¹⁵ [Domestic Abuse Bill 2019-21](#), law as introduced and procedures

¹⁶ [Council of Europe Convention on the prevention and combating violence against women and girls](#)

¹⁷ [Brief overview](#) of Istanbul Convention requirements on prosecution, from the Council of Europe website on the Convention

¹⁸ European Union Agency for Fundamental Rights FRA (2014): [Violence against women – an EU wide survey](#), page 26.

¹⁹ UK government press release (18 September 2019): [‘UK’s first Domestic Abuse Commissioner announced as government pledges to tackle crime’](#)

such a role. In addition, a Commissioner provides an accountability mechanism and can take on a leading role in monitoring legislation to ensure it operates effectively. The Commissioner could also take on a role in communication and information sharing, acting as a conduit between victims and survivors of domestic abuse and justice agencies.

NIWEP would urge for a Domestic Abuse Commissioner to be appointed for Northern Ireland. It is accepted that there is a cost associated with the role; however, NIWEP believes that such an investment would strengthen not only the ability of the justice system to deal with domestic abuse cases, but also a whole of government, whole of society approach to preventing domestic abuse in the first place through public engagement, education and capacity building. The Commissioner could also take forward action on domestic violence as a workplace issue²⁰. NIWEP would support calls for introducing a stronger duty of care by employers towards employees experiencing domestic abuse, including paid leave to enable the employee to make arrangements for example following a relationship breakdown. Further discussion of this is highlighted in the submission by the Women's Policy Group.

Domestic Abuse Notices and Orders

NIWEP notes that the Bill is silent on domestic abuse notices and orders. The currently available notices in Northern Ireland, the non molestation order and occupancy order, involve a cost to the applicant. Meanwhile, the equivalent Bill for England and Wales states that there will be no cost for applicants; it is understood funding options are being explored.

NIWEP would urge for this opportunity to be used to consider how the system of orders and notices could be made as effective as possible, while exploring how costs for applicants can be minimised, as the cost is a major deterrent for many victims and puts seeking help beyond the means of some. Cuts to legal aid – following cuts at the UK level – have already constrained opportunities for women to seek justice, and it is essential that personal income does not determine which victims and survivors of domestic violence can seek redress. It should be noted that CEDAW General Recommendation 35 highlights protection of women as a priority issue, including provisions from low cost or free legal assistance and affordable housing to health care, training and employment services.²¹

It is also essential that orders are enforced. This is a key issue highlighted in the Istanbul Convention²², which emphasises protection for victims and survivors. Anecdotal evidence from survivors indicates that this does not always happen, which reduces confidence in the justice system, while directly putting women and their families at risk. At the European level, the most recent available survey indicates that 16% of women who had been in an abusive relationship had experienced violence after the relationship broke up.²³ Capacity building and monitoring of the justice system is essential in effectively addressing this.

Additional issues – housing and funding for services

The Bill includes no mention of housing and/or funding for services. However, NIWEP would like to highlight both these issues as critical to preventing and addressing domestic abuse more widely. These are also highlighted in CEDAW General Recommendation 35.

²⁰ See an overview of issues in eg. ICTU (2014) [Domestic Violence and the Workplace](#)

²¹ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.15

²² [Brief information](#) on the requirements for protection for victims in the Istanbul Convention, from the Council of Europe website

²³ European Union Agency for Fundamental Rights FRA (2014): [Violence against women – an EU wide survey](#), page 21.

Domestic abuse is a major cause of homelessness for women and their children; across Europe, it has been noted that it significantly increases the risk of women becoming rough sleepers (this is often coupled with other harm including substance use)²⁴. At present, this does not lead to any additional points in the housing need assessment, and therefore families are faced with long waits for housing, or alternatively may face significant cost for accessing private rented housing. NIWEP would support calls for domestic abuse to be prioritised in any future review of housing allocation systems, in particular to protect women and children who otherwise may face lengthy stays in inappropriate accommodation that does not support healthy child development and healing from trauma.

NIWEP would also support calls for women being placed in private rented accommodation to be given secure, non time limited tenancies, to provide a degree of security and certainty that allows women to make longer term plans for themselves and their families. It is important to note that provision for this is made in the Domestic Abuse Bill for England and Wales²⁵, while longer term tenancies are provided for in Scotland.

With regard to funding, NIWEP would urge for a wider review of funding for services for domestic abuse victims and survivors as a timely complement to the legislation. It is particularly important to ensure that funding for refuge services is retained and increased in line with cost of living increases, to safeguard and where possible strengthen existing provision as a basic minimum. It is particularly important that both policy and funding decisions are inclusive of LGBT+ people, who are currently underserved and have very limited access to refuge and support services. Domestic abuse does occur also in same sex, trans and non binary relationships, and has specific elements and impacts on victims, including using their sexual orientation and gender identity against them.²⁶ It is important that this is highlighted to enable action to be taken to combat all domestic abuse and support all victims and survivors equitably.

Support for women with no recourse to public funds

In light of a ruling given by the Divisional Court of the Queen's Bench Division in May 2020²⁷, it is also essential to ensure support for women with no recourse to public funds is available. The ruling holds that the 'no recourse to public funds' (NRPF) is unlawful. Specifically, it states that the NRPF condition must be lifted if an individual is at imminent risk of becoming destitute. It also requires the Home Office to develop a new instruction to case workers within seven days.

Women with no recourse to public funds are among the most vulnerable in relation to domestic violence. The vast majority of women with no recourse to public funds are BAMER women and women with insecure immigration status, who without access to emergency support have no choice but to remain in abusive relationships or face destitution. It is important to note that CEDAW General Recommendation 35 specifically states that access to "all legal proceedings, protective and support measures and services concerning victims/survivors respect and strengthen their autonomy" should be available 'irrespective of residency status'.²⁸

²⁴ European Federation of National Organisations Working with the Homeless FEANTSA (2019) [Women experiencing violence and homelessness: interlinked and unaddressed gender specific needs](#)

²⁵ [Domestic Abuse Bill 2019-21](#), law as introduced and procedures

²⁶ KSS CRC. 2020. [Research: Domestic Abuse In LGBT Communities - KSS CRC](#).

²⁷ R (W , a child) v Secretary of State for the Home Department, [EWHC 1299/2020](#)

²⁸ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.16

Specific comments relating to Bill as introduced

PART 1: Domestic Abuse: Offence and Aggravation

CHAPTER 1: Offence of Domestic Abuse

Clause 1: The domestic abuse offence

NIWEP welcomes and agrees with the domestic abuse offence as introduced. The inclusion of psychological harm is particularly welcome, as it widens the offence to include abuse and abusive behaviour which previously has gone unchallenged, but which constitutes significant harm and distress to victims. Evidence from research and key organisations, including Women's Aid, highlights that many women find psychological abuse and coercive control more damaging and traumatic than physical abuse. The inclusion of sexual violence is critical, as this is a significant issue and threat for many women. The most recent available survey at European level (2014) indicates that 22% of respondents had experienced sexual violence by a partner since the age of 15, while a third of women who said they have experienced marital rape, state they have experienced this on six or more occasions.²⁹ Some victims also experience no physical abuse, and this provision ensures that there is no hierarchy of abuse with psychological abuse found in some way acceptable or lesser than physical abuse. The European survey cited above highlights that 43% of respondents state they have experienced some form of psychological violence by a current or ex partner.³⁰

Recommendation: Create clarity for victims and build capacity of justice agencies

Domestic abuse is a difficult crime to prosecute due to multiple factors, including the complex dynamics that characterise offending, the long time periods of abuse that often precede reporting as well as systemic issues such as lengthy preparation periods, the nature of evidence sought and the capacity of professionals in dealing with victims. Many victims disengage from the process for these reasons, which for some victims include revictimisation during the process and trauma from repeating their story.

Introducing coercive control as a specific offence will add further complexity, due to the complex nature of this type of abuse, which also has a profound impact on victims and their ability to engage with court proceedings. It is critical that agencies across the criminal justice system have a clear understanding of the dynamics of domestic abuse and its impact on victims as a basis for implementing the legislation. This is particularly important to avoid unintentionally creating a hierarchy of offences, where certain types of domestic abuse are treated less severely than others (eg. verbal abuse is seen as less harmful than physical violence). It is, in addition, vital to prosecute rape by an intimate partner in the same way as rape by another type of defendant.³¹

NIWEP would emphasise the importance of capacity building for professionals across the justice system to ensure all stakeholders have the knowledge and skills to deal sensitively and effectively with victims and the expertise to assess evidence in this specific area. This includes enforcement agencies, including PSNI officers dealing with domestic incident reports and reports of breaches of non molestation orders, as well as CPS case handlers, barristers and the judiciary hearing domestic abuse cases. For effective implementation of

²⁹ European Union Agency for Fundamental Rights FRA (2014): [Violence against women – an EU wide survey](#)

³⁰ Ibidem, p.11.

³¹ Ibidem, p. 10.

the new legislation, it is essential that a clear understanding of the dynamics of domestic abuse, how it presents and how it impacts on victims underpins the proceedings, while victims must feel believed and supported, with access to relevant support throughout proceedings.

Existing organisations in the domestic abuse sector, including voluntary sector organisations providing support to victims and survivors of domestic abuse, would be well placed to either provide capacity building or at the least contribute to the development of capacity building programmes and materials.

An approach including these elements is also in line with the Istanbul Convention and General Recommendation 35 of CEDAW. The latter states that State Parties should provide 'mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators and health-care professionals... all education, social and welfare personnel, including those working with women in institutions, such as residential care homes, asylum centres and prisons' to enable professionals to deal effectively with gender based violence against women. General Recommendation 35 further clarifies that "capacity building should include:

- (i) How gender stereotypes and bias lead to gender-based violence against women and inadequate responses to it
- (ii) (ii) Trauma and its effects, the power dynamics that characterize intimate partner violence and the varying situations of women experiencing diverse forms of gender-based violence, which should include the intersecting forms of discrimination affecting specific groups of women and adequate ways of interacting with women in the context of their work and eliminating factors that lead to their revictimization and weaken their confidence in State institutions and agents;⁶⁰
- (iii) (iii) National legal provisions and national institutions on gender-based violence against women, the legal rights of victims/survivors, international standards and associated mechanisms and their responsibilities in that context, which should include due coordination and referrals among diverse bodies and the adequate documentation of such violence, giving due respect for women's privacy and right to confidentiality and with the free and informed consent of the victims/survivors;"³²

Recommendation 2: Ensure robust data collection and publish annual data

Robust, high quality data is essential both for monitoring how legislation is being implemented, and for developing appropriate policy responses and services. NIWEP would urge that the legislation is accompanied by a focus on strengthened data collection regarding domestic abuse reports made to the PSNI, applications for protection orders, cases brought and convictions, along with monitoring the length of processes and the effectiveness of case handling procedures and protocols.

³² CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.14

Development of robust data and potentially a domestic abuse register is entirely in line with CEDAW General Recommendation 35³³, which sets out clear requirements for a robust data collection and monitoring system. It would also significantly strengthen the ability of legislators and policy makers to monitor the effectiveness of legislation, while also reassuring victims and survivors that support is available. It is critical, however, that data are broken down by gender and if possible, age to enable monitoring of how women of all ages are protected. A gender neutral approach to data collection is unhelpful and masks the core dynamics of domestic abuse, which contributes to reinforcing a culture where violence against women and girls is normalised and the harms viewed as unimportant or minimal.

For example in Sweden, an indicator set relating to violence against women and girls has been agreed at national level, against which activity is reported annually. Indicators include the reported number of attacks on a woman's integrity, number of assaults and number of rapes and the number of persons with legal proceedings taken against them. Sweden also collects survey based data on the number of persons exposed to sexual offences and assaults, by relation to perpetrator and age.³⁴

Denmark operates a system of national data registries, which include a register for criminal statistics and a register for victims. These collect data both on incidents reported to police as well as hospital visits due to exposure to violence.³⁵ Such registries offer official data sources that support effective policy development and analysis. However, it is important that indicators are developed for psychological harm and coercive control, to avoid creating a hierarchy of offences.

NIWEP also recommends that consideration is given to how the legislation will be reviewed and monitored, in order to ensure effective implementation in keeping with the spirit of the legislation.

Clause 2: What is abusive behaviour

NIWEP also welcomes the definition of abusive behaviour as set out in this clause. NIWEP particularly welcomes the inclusion of coercive control behaviours in the definition, as this begins to bridge the gap to England, Scotland and Wales, where coercive control has been criminalised for several years. Coercive control is a fundamental element of domestic abuse, and is experienced in some form by the vast majority of victims. Evidence from organisations supporting victims also emphasise that coercive control causes significant harm for victims, who in many cases begin to doubt themselves and their self worth to the point that this harms their mental wellbeing. It is imperative, however, that coercive control is criminalised as a specific offence as urgently as possible.

NIWEP also welcomes the inclusion of a child in the offence, as this can be used to strengthen protection of children from abuse, which may include both witnessing and being subjected to physical, psychological or sexual violence. It also strengthens protection for young women under 18 who experience violence by an intimate partner.

³³ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.18

³⁴ [Information](#) drawn from the European Institute for Gender Equality, accessed 1 June 2020

³⁵ [Information](#) drawn from the European Institute for Gender Equality, accessed 1 June 2020

Recommendation: Gendered nature of domestic abuse to be included

Taking into account the gendered nature of domestic abuse, NIWEP would recommend that a gendered element is included in the definition. It is also important to recognise that domestic abuse affects same sex couples as well as heterosexual couples, and this should be made explicit in the legislation. As noted above, a gender neutral approach to domestic abuse masks the dynamics of domestic abuse, and does not adequately protect women and girls, including lesbian and bisexual women, trans and non binary people.

Incorporating a gender element in the definition would embody an important signal that the gendered element of domestic abuse is recognised in Northern Ireland. However, it is essential to ensure the language is inclusive of LGBT+ people, and therefore gender neutral language regarding victims and abusers is appropriate to underline this is not necessarily a heterosexual couple.

This would not only strengthen the Bill, but ensure that it is in line with requirements in both CEDAW and the Istanbul Convention³⁶ on preventing and combating violence against women and domestic violence, which includes a gendered definition of domestic abuse as a key requirement. The UK has failed to ratify the Istanbul Convention to date, and addressing gaps preventing ratification is essential in order to ensure the UK and all its devolved administrations meet their international obligations with regard to protecting and upholding the human rights of women and girls. In addition, it should be noted that specific strategies on addressing violence against women and girls are in place elsewhere in the UK. Northern Ireland currently has a gender neutral domestic violence strategy, which increases challenges in addressing the gendered nature of domestic abuse effectively.

Clause 3: Impact of behaviour

NIWEP welcomes and agrees with the definition of the impact of behaviour as set out in the Bill. It is essential that the legislation includes these clear provisions highlighting the inherent harm of abuse and abusive behaviour, as this strengthens the ability of justice agencies to effectively prosecute domestic abuse, and also provides a basis for strengthening understanding of the dynamics of domestic abuse. In addition, it effectively removes the defence that no harm was caused, which is frequently raised and acts as a deterrent for victims to engage with cases.

Recommendation: Ensure effective use of victim impact statements

NIWEP welcomes the provision that evidence of harm can be brought in proceedings. However, there are concerns regarding the use of victim impact statements; in particular, victims can by subpoena be required to attend court for questioning if the victim statement and subsequent evidence raised in court differ. In light of the often lengthy process, divergences are common and NIWEP understands that the Public Prosecution Service is reluctant to use victim impact statements for this reason.

NIWEP believes there is now a timely opportunity to review the full process and proceedings, and ensure that victim impact statements are used effectively and in ways that cannot be used to intimidate, harass or harm victims further. While NIWEP appreciates the importance of consistency in facts and evidence brought to court, NIWEP believes it would be

³⁶ [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), signed in Istanbul 2011

appropriate to introduce a level of flexibility in this regard, in particular to take account of the passage of time and the fact that victims may be both traumatised and under significant stress when giving their original victim impact statement. It is relevant to note that CEDAW General Recommendation 35 states that court proceedings and measures should be gender sensitive³⁷, and based on a clear understanding of how gender based violence operates³⁸.

Clause 4: Meaning of behaviour

NIWEP welcomes the provisions in this clause. In particular, NIWEP welcomes the widened definition of abusive behaviour to include threatening behaviour, financial control and behaviour that in other ways controls or psychologically has an impact on the victim. NIWEP also welcomes that the definition understands domestic abuse as an ongoing event and reduces the focus on specific incidents. This will go a significant way towards strengthening the ability of justice agencies to prosecute domestic abuse cases and also provides a basis to strengthen understanding of justice agencies of the dynamics and nature of domestic abuse as an ongoing event, with specific incidents that highlight often different types of abusive behaviour.

Recommendation: Explicitly and urgently criminalise coercive control

NIWEP is concerned that coercive control is not specifically criminalised in this Bill, and would recommend that such provision is urgently made as the delay further widens the gap with provisions in England and Wales and in Scotland. Coercive control has been criminalised in England and Wales since 2015³⁹. In Scotland, the Domestic Abuse (Scotland) Act came into force in early 2019, as the first law in the UK that criminalises psychological harm as well as coercive control, and provides an aggravation for the harm caused to children living in an environment of domestic abuse.⁴⁰

The 2019 Concluding Observations of the examination of the UK under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) raised concern about this widening gap and specifically includes a recommendation that women and girls in Northern Ireland have protections on an equal footing with women and girls elsewhere in the UK. Therefore, criminalising coercive control is essential to ensure Northern Ireland and the UK as a whole meet its obligations under international law. This is also important to ensure the UK can ratify the Istanbul Convention.

NIWEP would urge for this opportunity to be used to review protocols and procedures around evidence. The issue of victim statements has already been highlighted; it is also critical that evidence from complainants is treated as serious and credible throughout proceedings. In addition, NIWEP would welcome clarification with regard to the use of evidence collected through body worn cameras used by PSNI officers. Evidence from cameras recorded at domestic incidents attended by police is currently used in England and Wales, and has proven helpful as well as workable. NIWEP would support the use of camera evidence in proceedings in Northern Ireland, as a way of providing concrete and non subjective evidence of the specific incident attended.

³⁷ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.15

³⁸ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.14

³⁹ [Serious Crime Act 2015](#)

⁴⁰ [Domestic Abuse \(Scotland\) Act 2018](#)

Capacity building as outlined in the Recommendation under clause 1 is also critical to effective implementation of this clause.

Clause 5: Meaning of personal connection

NIWEP agrees with the provisions in this clause. NIWEP strongly welcomes the inclusion of children in the definition, as this strengthens protection for children witnessing or experiencing abuse in the home. The provision could also be utilised to strengthen the ability of the justice system to deal with elder abuse, which is in many cases perpetrated by children of the older person. This is to be welcomed, as elder abuse especially by family members has been difficult to report and prosecute under existing legislation and has had the impact of leaving older people vulnerable and unprotected.

Clause 6: Establishing connection by notice

NIWEP agrees with the provisions in this clause.

Clause 7: How notice should be served

NIWEP agrees with the provisions in this clause. With regard to notice by electronic means, NIWEP would suggest recording evidence of delivery and/or requiring confirmation of receipt to reduce administrative burden and delay due to non delivery or contested delivery.

Clause 8: Aggravation where victim is under 18

NIWEP agrees with the provisions in this clause and strongly welcomes the inclusion of provisions for victims under 18.

Under existing legislation, it has been difficult to prosecute domestic abuse cases for victims under 18, which has served to leave children and young people vulnerable and unprotected in legislation. It has had a particular impact on young women, who have experienced abuse in an intimate relationship and have been unable to seek protection and justice. This has served to make domestic abuse especially in relationships between two young people a largely hidden crime, which has further served to create a culture where it is difficult for young people to determine what is abusive and what is healthy behaviour. However, NIWEP agrees with concerns by youth organisations that care must be taken to ensure young people are not punished unduly harshly; under this clause, the aggravation could be applied to someone aged 18 in a relationship with someone aged 17, and consideration must be given to whether and how the aggravation applies in these circumstances.

Further action beyond legislation is required to address this issue in full. In particular, high quality, age appropriate relationships education is essential to challenge stereotypes and enable all young people to have a clear understanding of healthy relationships. Additional action is also required to ensure young people are aware of their rights and feel they can seek help and justice if necessary.

Clause 9: Aggravation where relevant child is involved

NIWEP agrees with the provisions in this clause and strongly welcomes the inclusion of the aggravation as described. Children are commonly involved by perpetrators in abuse in a range of ways, with deep trauma and harm involved for each child. This provision will provide both a deterrent to this type of behaviour and a means for taking it into account in proceedings.

Recommendation: Ensure support and protection for children

While child protection and child wellbeing is not NIWEP's area of expertise, NIWEP believes that it is critical that support is provided for children who have witnessed and/or become involved in domestic violence. Such an experience is deeply traumatic for children with potential lifelong impacts; however, with appropriate support children can overcome trauma and rebuild their lives. Funding for child support services should be considered a vital element of a funding package for wider support services for victims and survivors, and ringfenced as part of funding for children's services overall. This is also essential to ensure women who have experienced domestic abuse are appropriately supported, as women will prioritise their children's wellbeing.

Clause 10: Behaviour occurring outside the UK

NIWEP agrees with the provisions in this clause. NIWEP welcomes inclusion of the provisions, which go some way towards ensuring compliance with the Istanbul Convention regarding extraterritorial jurisdiction. It will also go some way towards protecting in particular BAMER women and girls, who to date have had limited protection. However, NIWEP would welcome clarification of how 'habitually resident in Northern Ireland' is defined, for clarity.

Clause 11: Exception where responsibility for children

NIWEP would welcome clarification of the rationale for this clause. It is unclear why children for whom the perpetrator is responsible should be unprotected in domestic abuse legislation, particularly as children typically experience abuse by a parent or guardian. NIWEP accepts that child protection legislation covers some of this ground, but it would appear prudent and relevant to ensure an appropriate overlap between these pieces of legislation. This would serve, for example, to ensure that the nature of domestic abuse and its impact on victims is appropriately understood in cases where children are directly victims or abuse or victims through witnessing abuse of another person.

Clause 12: Defence on grounds of reasonableness

NIWEP would urge for this clause to be removed, supporting the position of other women's sector and children's sector organisations. NIWEP believes this is essential to ensure appropriate protection for all victims and avoid use of the defence in ways that contradict the spirit of the legislation. NIWEP would also refer to a longer analysis of the issues in the submission by the Women's Policy Group.

Recommendation: Remove clause

NIWEP accepts that this defence may be appropriate in a very specific and limited set of circumstances, such as where a victim is suffering from a specified condition (eg. dementia) or is causing harm or direct risk of harm to themselves or another person. However, NIWEP believes it is not sufficient for the law to provide an outline of circumstances where this defence applies. NIWEP is concerned that even with such clarification, this defence will be utilised routinely to respond to charges and allegations, which further adds complexity to already complex domestic abuse cases by creating an added onus for victims to prove their account. NIWEP would also note that CEDAW General Recommendation 35 requires States Parties to repeal provisions including 'discriminatory evidentiary rules and procedures, including procedures allowing for the deprivation of women's liberty to protect them from violence'.⁴¹ Therefore, if used at all, grounds of reasonableness must be very specific and limited to specified exceptions to ensure the provision does not amount to such a practice.

NIWEP is particularly concerned that this defence could be used against women with disabilities, older women and women with mental health conditions, which would serve to compound the vulnerability and disadvantage they already experience both as victims and as survivors seeking justice. These groups of women and girls are often extremely dependent on their carer, and where the main carer is the perpetrator of domestic abuse, many women and girls have very limited opportunities to control their own lives, with even fewer opportunities to seek help and effectively express their experiences. It is particularly important that these groups of women are supported throughout proceedings and that reasonable adjustment for their needs is made.

There is also very specific concern that this defence could be used against LGBT+ complainants through references to being distraught by the complainants' sexuality. While such provisions are archaic and no longer routinely in use, they have not been explicitly banned⁴². However, formal bans have been introduced in countries including New Zealand and a growing number of states in the United States.⁴³

It is also important to note that domestic abuse in itself has an impact on victims' health, including their mental health. Therefore, it can be argued that the abuse experienced by victims has directly affected their mental health, and as such, the defence of reasonableness has limited applicability. This dynamic must be accurately understood and reflected.

Clause 13: Alternative available for conviction

NIWEP agrees with the provisions in this clause. However, NIWEP would recommend that where this is used, the reasons why it was deemed that the domestic abuse offence was not proven should be recorded in the conviction. This is important to create clarity for the victim in the specific case, and also to support monitoring and analysis of how the legislation is implemented. It is also critical that the alternative is not used too readily, in order to ensure both effective implementation of the legislation and reassure victims and survivors at the symbolic function level. This is included in the recommendations of CEDAW General Recommendation 35 on gender based violence against women.⁴⁴

⁴¹ CEDAW Committee (2017) [General Recommendation 35 on gender based violence against women](#), p. 12.

⁴² A [petition](#) on this issue to the UK government closed early because of the 2019 General Election.

⁴³ '[U.S. states move to ban LGBT+ 'panic defence' for crimes](#)', article by Thomson Reuters Foundation 28 February 2020.

⁴⁴ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.17

Recommendation: Develop offender rehabilitation and appropriate restorative justice

NIWEP would emphasise that the aim of sentences is to enable rehabilitation as well as act as punishment. There is a lack of offender rehabilitation services in Northern Ireland, and currently a lack of restorative justice approaches, which may be appropriate in specific circumstances and could address the high rates of reoffending associated with domestic violence.

NIWEP would like to reiterate the position taken on this in relation to the Review of hate crime legislation in Northern Ireland, in which NIWEP support the inclusion of restorative justice as part of the criminal justice process, but not as a separate system. Clear criteria should be established on when and where restorative justice may be considered, potentially with a hierarchy of steps to be taken and considered, including steps to be taken if an acceptable outcome is not reached in this manner. Above all, it is critical that restorative justice does not become an ‘automatic’ means to escape prosecution, or lead to a situation where it is viewed as ‘the easy way out’ for ‘insignificant offences’. The approach must also be victim led, and ensure victims are able to make the decision whether restorative justice is appropriate in their case. This is essential to avoid victims being pressurised into accepting the approach by perpetrators or their representatives who are seeking to avoid prosecution in open court. An example of guidance in this regard is provided by the Restorative Justice Council operating in England⁴⁵; organisations in Northern Ireland in the domestic violence sector could also advise further on relevant approaches to restorative justice that respect and safeguard victims.

NIWEP would also welcome inclusion of a criterion that the perpetrator is capable of learning and benefitting from restorative justice, more profoundly than in terms of escaping prosecution and potentially conviction. This would ideally include a test of some kind, and monitoring over time to assess the effectiveness of the approach.

Clause 14: Penalty for the offence

NIWEP agrees with the provisions in this clause. Higher sentences are appropriate in light of the harm caused by domestic abuse, and also act as a deterrent. Domestic abuse has high recidivism and it is vital that there is clarity on penalties to both deter perpetrators and provide reassurance for victims that the offence is taken seriously at societal level.

Recommendation 1: Build capacity of justice agencies to ensure consistent sentencing

NIWEP would like to highlight that the conviction rate for domestic abuse cases under current legislation is low, and convictions made often result in a suspended sentence or a sentence at the lower end of the scale. There are many reasons for this, but lack of understanding of the dynamics and impact of domestic abuse remains a significant issue. NIWEP would repeat and reinforce the recommendation regarding capacity building made in relation to clause 4, as a critical element necessary to ensure provisions in the legislation are used appropriately and to their full capacity.

⁴⁵ Restorative Justice Council (2017) [Restorative justice and domestic violence – getting it right](#). Blog post, accessed 4 June 2020.

Recommendation 2: Develop sentencing guidelines

NIWEP would recommend that sentencing guidelines for domestic abuse cases are 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.

CHAPTER 2

Aggravation as to domestic abuse

Clause 15: Aggravation as to domestic abuse

NIWEP agrees with the provisions in this clause. NIWEP welcomes the inclusion of the aggravation, as this reflects the nature of domestic abuse and the frequent use of tactics and behaviours that are not aimed directly at the victim, but serve the function of creating fear, alarm or distress. The inclusion of the aggravation will enable justice agencies to effectively prosecute domestic abuse cases.

NIWEP also strongly welcomes the requirement to record the aggravation in the conviction. This is important for the monitoring and evaluation of how the legislation is implemented, and will also serve to reassure complainants.

Building capacity of the justice system and ***developing robust data, monitoring and evaluation***, as outlined in the Recommendations under clause 1, will be essential to ensure this provision is utilised and implemented effectively.

Clauses 16-20: Comments made above in relation to Part 1, Chapter 1 apply to these clauses as well.

CHAPTER 3

Amendments and guidance

Clause 21: No right to claim trial by jury

NIWEP agrees with the provisions in this clause. As has been stated throughout this submission, domestic abuse cases are complex and it is critical that cases are both handled and heard by professionals with an understanding of the dynamics and issues.

NIWEP would also note that recommendations regarding trial by jury made in the Gillen Review of serious sexual offence cases⁴⁶ apply to domestic abuse as well.

⁴⁶ Gillen Review (2019) [Report into the law and procedures in serious sexual offences in Northern Ireland](#)

Clause 22: Special measures

NIWEP agrees with the provisions in this clause.

Recommendation: Ensure special measures are in place and information is available to complainants

Special measures are essential to enable many complainants to engage with court proceedings, as the fear, alarm and distress experienced continues to manifest as trauma long after the abuse has ceased. Currently there is evidence that not all complainants are aware of special measures, and it is essential to strengthen communication so that all complainants are aware of their options. It is also essential to ensure that special measures requested or agreed are put in place, so that complainants arriving at court can be sure their needs have been accommodated.

Ensuring appropriate support for victims and survivors, including gender sensitive court procedures and measures is encapsulated in a range of recommendations in CEDAW General Recommendation 35.⁴⁷ NIWEP would recommend that responsibility for information, communication and is assigned to a specific agency within the criminal justice system, to ensure that effective procedures, programmes and campaigns can be put in place. Alternatively, responsibility for communication regarding all procedures and services relating to criminal proceedings in domestic abuse cases should lie with the Department of Justice as part of its role in providing guidance on this legislation. This responsible stakeholder should also be in ongoing communication with organisations supporting survivors to ensure that information is shared as widely and effectively as possible.

Clause 23: Prohibition of cross examination in person

NIWEP agrees with the provisions in this clause. Cross examination of the complainant by the defendant is a major concern of complainants, and a key reason why many complainants disengage from court proceedings. Ensuring that this does not take place routinely is a significant measure that will serve to reassure complainants and therefore will enable justice agencies to more effectively prosecute domestic abuse cases.

Clause 24: Meaning of offence involving domestic abuse etc

NIWEP agrees with the provisions in this clause.

Clause 25: Guidance about domestic abuse

NIWEP agrees with the provisions in this clause.

Recommendation: Develop guidance with stakeholder agencies

As noted above in relation to clauses 1, 4, 14 and 15, it is critical that all justice agencies and professionals working with domestic abuse cases have a strong and clear understanding of both the legislation and, more widely, of domestic abuse and its dynamics, how it presents, operates and impacts on victims. The Department of Justice will play a critical role in ensuring that capacity and skills are developed across the system and applied effectively and consistently, and guidance will be vital in this regard.

⁴⁷ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.15

NIWEP would recommend development of clear guidance on this legislation and as noted under, sentencing guidelines to ensure consistency. In addition, NIWEP would recommend development of mandatory capacity building programmes for professionals across justice agencies on the dynamics of domestic abuse, to ensure strengthened understanding and capacity to deal effectively and sensitively with cases in general and complainants in particular. This is, as noted previously, in line with CEDAW General Recommendation 35⁴⁸.

NIWEP would also recommend that stakeholder agencies in the voluntary sector, including in particular organisations working with victims and survivors, should be involved in the development of guidance and capacity building materials. This would ensure the strongest understanding of the impact of domestic abuse on victims, as well as of the root causes of domestic violence and how it manifests.

PART 2

Family proceedings: cross-examination

Clause 26: Prohibition of cross-examination in person

NIWEP agrees with the provisions in this clause and the amendments to the proposed. Comments made above in relation to clause 23 also apply to this Part.

Recommendation: Review family court proceedings more widely

NIWEP is aware and would like to underline concerns by the domestic violence sector that the family court system in Northern Ireland has gaps in relation to domestic abuse cases. These concerns centre around unsupervised child contact in cases where a parent is on bail or there is ongoing criminal proceedings, which can put both the other parent and the child/children at risk. NIWEP supports proposals for a wider review of the family court system to ensure it takes full account of the specific issues relevant in domestic abuse cases, and believes that it is timely to undertake this in relation to this legislation. A review into child protection in family courts was announced in England in May⁴⁹, following a cross party call supported by 120 MPs for a review of how the family courts deal with domestic violence. This call drew on evidence from domestic violence organisations on the consequences parents and children face as a result of gaps in the system that allow unsupervised child contact during criminal proceedings.⁵⁰

NIWEP would also emphasise that **capacity building is essential** for professionals within the family court system, including solicitors and barristers, as outlined in ***Recommendation 1*** under ***Clause 1***.

PART 3

Commencement and Short Title

NIWEP agrees with the provisions under clauses 27 and 28 included in this Part.

⁴⁸ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.14.

⁴⁹ UK government press release 21 May 2020. '[Spotlight on child protection in family courts](#)'

⁵⁰ See an [overview](#) of the call by Louise Haigh MP