

Protection from Stalking Bill Submission by Northern Ireland Women's European Platform to the Committee for Justice

April 2021

Introduction

Northern Ireland Women's European Platform (NIWEP) welcomes the Protection from Stalking Bill as an important step in protecting in particular women and girls from this type of 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.

Endorsement

NIWEP endorses the response of Women's Aid Federation Northern Ireland as the leading civil society organisation supporting victims and survivors of domestic abuse in Northern Ireland.

NIWEP also endorses the responses of Victim Support; Raise Your Voice, an initiative focused on tackling sexual violence and harassment, 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.

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

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 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. Stalking also disproportionately affects women and girls; no data is available for Northern Ireland, but data from the Crime Survey for England and Wales indicates that just under five per cent of women aged 16-74 had experienced stalking in 2019-20, compared to 2.5 per cent of men aged 16-74. Young women are particularly vulnerable; prevalence increases to 10 per cent of women in the 16-19 and 20-24 age groups, while the proportion among men is relatively stable across age groups.³ 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 15.⁴

Obligations in international law

The Convention on the Elimination of All Forms of Violence against Women

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 violence against women and girls, which the Convention defines as a barrier to women and girls enjoying their full human rights.⁵ The CEDAW Committee has repeatedly emphasised that protections for women and girls in Northern Ireland must be put on an equal footing with the rest of the UK, most recently in the Concluding Observations from the examination of the UK under CEDAW in 2019.⁶ Stalking legislation is one of the key gaps, as legislation has been in place in Scotland since 2010⁷ and in England and Wales since 2012⁸. This legislation is therefore a critical element for meeting the CEDAW recommendation that protections for domestic abuse in Northern Ireland are put on an equal footing with protections elsewhere in 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 legislation such as the Domestic Abuse Bill currently at Committee stage in Westminster⁹, or with equivalent legislation in Scotland.

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 Office for National Statistics (2020) [Stalking: findings from the Crime Survey for England and Wales](#)

⁴ European Union Agency for Fundamental Rights FRA (2014): [Violence against women – an EU wide survey](#), page 26.

⁵ [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

⁶ [Concluding Observations](#) 2019, 2013, 2008 on examinations of the UK under CEDAW

⁷ [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

⁸ [Protection of Freedoms Act 2012](#)

⁹ [Domestic Abuse Bill 2019-21](#), law as introduced and procedures

CEDAW General Recommendation 35¹⁰ specifically focuses on gender based violence, and provides guidance on interpretation and implementation of CEDAW in this regard. The Recommendation states that ‘violence is a critical obstacle to achieving substantive equality between women and men as well as to women’s enjoyment of human rights and fundamental freedoms enshrined in the Convention’¹¹. The Recommendation requires States Parties to CEDAW to ‘ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological integrity, are criminalized without delay’, and to ensure that women have access to effective judicial remedies.

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.

Istanbul Convention

The UK is also a member of the Council of Europe, which in 2011 adopted the Istanbul Convention of preventing violence against women and combating domestic violence, which sets out the core standards states must meet to progress elimination of violence against women and girls¹². The Convention is built on the four pillars of prevention, protection, prosecution and co-ordinated policies, and explicitly sets out criminalising stalking as a key criterion for compliance¹³. Shortfalls such as a lack of stalking legislation in Northern Ireland are a key reason why the UK still in 2021, a decade after signing the treaty, is yet to ratify the Convention. It is vital that this Bill contributes to ensuring UK compliance and enables ratification; this is more important than ever in light of the intensifying attacks on the rights of women and girls including Turkey withdrawing from the treaty¹⁴.

Capacity building

In addition, NIWEP would welcome strengthened action and in particular capacity building for all stakeholders on the dynamics of gender based violence and the origin of such violence in patriarchal cultural systems and norms, in order to effectively prevent and address future offending, and create confidence for victims to come forward. This was highlighted in NIWEP’s submission to the Domestic Abuse and Family Proceedings Bill, underlining obligations on the UK as a State Party to CEDAW, further clarified in General Recommendation 35 on gender based violence against women.

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’.¹⁵ At the European level, the most recent available survey indicates that just less than a third of

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

¹¹ Ibidem, p. 6

¹² [Council of Europe Convention on the prevention and combating violence against women and girls](#)

¹³ [Brief overview](#) of Istanbul Convention requirements on prosecution, from the Council of Europe website on the Convention

¹⁴ See eg. CNN news piece 20 March 2021 ‘[Turkey withdraws from Istanbul convention to combat violence against women](#)’

¹⁵ UN Women (2020) [COVID-19 and ending violence against women and girls](#) policy brief

women experiencing partner violence seek help from any organisation, while the most serious incident of violence is reported in 14% of cases.¹⁶ Therefore, legislation on offences is only part of the solution; education and public campaigns to address social norms are 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 eliminated.¹⁷ This includes violence against women and girls, and the CEDAW Committee has raised issues in relation to Northern Ireland, as outlined above.

Additional issues – preventative initiatives and funding for services

The Bill includes no mention of preventative work and/or funding for services to support victims, address offending behaviour and ensure public information on the legislation is available when enacted. However, NIWEP would like to highlight all of these issues as critical to fully protect women, by addressing social norms, structures and behaviours that are associated with and shape stalking as form of violence. These are also highlighted in CEDAW General Recommendation 35.

CEDAW General Recommendation 36 on education emphasises the role of education, in all its forms, on creating the conditions for gender equality in society, addressing social norms that normalise violence against women.¹⁸ The CEDAW Committee, with the Inter Parliamentary Union, has also issued a call for gender parity in public life, to mark International Women’s Day 2021. This call emphasises setting clear targets for gender parity as a driver for action, and outlines core measures, such as fighting stereotypes, mobilising media platforms, ensuring access to information campaigns, and providing human rights education in national curricula to change social norms.¹⁹ In other words, as State Party to CEDAW, the UK including Northern Ireland has a strong obligation to address all forms of violence against women, and to emphasise prevention through education.

NIWEP would call for preventative work and funding for services to be integrated in the strategy to end violence against women and girls, committed to by the Northern Ireland Executive in March. This would help ensure that stalking is addressed in its appropriate form, as violence that is disproportionately targeted at women and girls, while enabling the creation of a comprehensive support system, with relevant specialist services provided in

¹⁶ European Union Agency for Fundamental Rights FRA (2014): [Violence against women – an EU wide survey](#), p.22.

¹⁷ [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

¹⁸ CEDAW Committee (2017) [General Recommendation No 36](#)

¹⁹ CEDAW Committee and Inter Parliamentary Union statement 8 March 2021 ‘[Joint Call by the United Nations Committee on the Elimination of Discrimination against Women and the Inter-Parliamentary Union for National Action Plans to achieve gender parity by 2030](#)’

an effective and sustainably resourced way. Integrating this in a strategy to end violence against women and girls will also ensure that expert civil society organisations, such as Women’s Aid, can effectively contribute evidence and expertise to the development of comprehensive services. NIWEP would urge for a high profile public information campaign to accompany this legislation when enacted.

NIWEP would also call for capacity building and appropriate screening procedures to be put in place as part of key frontline services, to enable women can approach these services with confidence that service providers have an understanding of stalking as an offence. For example, housing providers and NIHE could integrate a question on this into protocols for people seeking housing transfers and/or registering as homeless. Similarly, health care services and helplines including Lifeline could integrate signposting to support and legal help, as well as acting as key points for public information campaigns. It is important to note that provision for this is made elsewhere in the UK; in England and Wales, a bespoke service for high risk stalking victims is available.²⁰

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 2020²¹, it is also essential to ensure support for women with no recourse to public funds is available to seek support through this legislation.. 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.

Women with no recourse to public funds are among the most vulnerable in relation to all types of 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’.²²

Specific comments relating to Bill as introduced

Offences

Clause 1: Offence of stalking

Subsections 1-2

NIWEP welcomes and agrees with the offence of stalking as introduced. The comparatively wide definition is welcome, as it recognises that stalking is an intentional pattern of behaviour

²⁰ See information on the [National Stalking Helpline](#) operated by the Suzy Lamplugh Trust, last accessed 29 March 2021.

²¹ R (W , a child) v Secretary of State for the Home Department, [EWHC 1299/2020](#)

²² CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.16

designed to cause distress, and also recognises the wide range of forms stalking can take in modern society. However, it would be essential to amend the definition in subsection (4) to include reference to ‘any dwelling in which B resides’, to ensure clarity and ensure victims renting a property have the same level of protection as those owning their home. Similarly, it would be helpful to clarify in the definition that relevant premises include bars (including LGBTQ+ bars), gyms, semi private spaces and private spaces such as businesses, to ensure victims can have confidence the legislation fully encompasses the wide forms in which stalking manifests. In addition, it would be helpful to explicitly refer to online stalking and abuse in the definition, as this is an increasingly prevalent form of stalking, particularly in the youngest age groups who are most at risk.

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 offence also enables recognition that stalking in many cases is part of a pattern of domestic abuse, that may continue after a relationship has ended. 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.²³

Subsection 3

NIWEP particularly welcomes provisions in Clause (3) regarding extraterritorial jurisdiction. This is critical for ensuring compliance with the Istanbul Convention, which has been delayed by the lack of this specific legislation, as well as extraterritorial jurisdiction issues in general. This provision will also go some way towards protecting in particular BAMER women and girls, who to date have had limited protection in legislation, while ensuring that all Northern Ireland residents can be confident that they are protected regardless of where the offence occurs. This provision will also prevent offenders from engaging in stalking from another jurisdiction, which is critical at the symbolic level of the legislation and particularly important in the context of the island of Ireland.

Subsections 4-6

NIWEP accepts the provisions in Clauses (4) –(5), and welcomes the stringent sentences proposed in Clause (6). It is important, however, that sentencing guidelines are provided, alongside capacity building for the judiciary system, to ensure that the threshold for prosecution is set at a realistic level, and the legislation is effective in that reporting more often leads to prosecution.

It is critical to note that custodial sentences in themselves do not lead to rehabilitation; evidence from England indicates that in particular short sentences often result merely in ‘respite’ for the victim, as offenders continue the pattern immediately on release.²⁴ 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, which are important in order to effectively address the high rates of reoffending associated with stalking and other types of violence against women. NIWEP would therefore urge for strengthened measures to be developed, and would recommend that rehabilitation is a key part of all sentences. Ultimately, as noted above, the aim should be on prevention, through tackling

²³ Ibidem, p.11.

²⁴ Suzy Lamplugh Trust (2016) [Response to increased sentences in England](#)

harmful social norms and human rights education that strengthens equality for all population groups, including gender equality.

Subsections 7-9

NIWEP welcomes the provisions in these clauses. It is important that the option of an alternative offence is included, as it strengthens options available to the courts and can act as an incentive to the PPS to bring prosecutions. At a symbolic level, this also emphasises that all stalking behaviour is criminalised and therefore unacceptable. However, the comments above regarding sentencing and addressing offending behaviour also apply in this regard.

Recommendation 1: Create clarity for victims and build capacity of justice agencies

Stalking is a specific type of psychological violence, and the patterned nature of the offence makes it stand out for reporting, investigation and prosecution purposes. In this regard, it is more straightforward than many other types of abuse and violence, which are difficult 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. However, as noted by victims in the preparatory work undertaken by the Department, victims continue to be met by the judicial system in varying ways.

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 stalking reports, as well as CPS case handlers, barristers and the judiciary hearing stalking cases. For effective implementation of the new legislation, it is essential that a clear understanding of the dynamics of stalking, 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) 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;²⁵

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 stalking reports made to the PSNI, along with monitoring the length of processes and the effectiveness of case handling procedures and protocols. It is particularly important that disaggregations by sex and other S75 categories is available, to enable effective enforcement and prevention work to be developed.

Development of robust data and potentially a domestic abuse register is entirely in line with CEDAW General Recommendation 35²⁶, which sets out clear requirements for a robust data collection and monitoring system.

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.

Recommendation 3: Develop sentencing guidelines

NIWEP would recommend that sentencing guidelines for stalking 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.

Clause 2: Offence of threatening or abusive behaviour

NIWEP also welcomes the definition of abusive behaviour as set out in this clause. NIWEP particularly welcomes this as it effectively enables inclusion of coercive control behaviours

²⁵ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.14

²⁶ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.18

in the definition, which goes some way towards strengthening provisions in the Domestic Abuse and Family Proceedings Bill and 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 gender based violence, 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 age inclusive approach of the legislation, as this can be used to strengthen protection of children from abuse, which may include stalking as well as witnessing stalking behaviours and their impact on victims. It also strengthens protection for young women, who as noted above are among the most likely to experience stalking.

The recommendations outlined under Clause 1 also apply to this section. In particular, the comments regarding clarity of the definition are highly relevant, to ensure all types of stalking behaviour are effectively included.

Recommendation 1: Gendered nature of stalking to be included

Taking into account the disproportionate prevalence of women among stalking victims, NIWEP would recommend that a gendered element is included in the definition.

Incorporating a gender element in the definition would embody an important signal that the gendered nature of stalking is recognised in Northern Ireland. However, it is essential to ensure the language is inclusive of LGBTQ+ people, and therefore gender inclusive language regarding victims and offenders is important to underline stalking affects people of all backgrounds.

This would not only strengthen the Bill, but ensure that it is in line with requirements in both CEDAW and the Istanbul Convention²⁷ on preventing and combating violence against women.

Recommendation 2: Ensure effective use of victim impact statements

NIWEP would recommend that evidence of harm can be brought in proceedings. However, there are concerns regarding the current 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 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

²⁷ [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), signed in Istanbul 2011

General Recommendation 35 states that court proceedings and measures should be gender sensitive²⁸, and based on a clear understanding of how gender based violence operates²⁹.

Recommendation 3: Build capacity of justice agencies to ensure consistent sentencing

NIWEP would like to highlight that the conviction rate for domestic abuse cases, as a closely associated category of offences, 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 abuse, including stalking, remains a significant issue. NIWEP would repeat and reinforce the recommendation regarding capacity building made and rehabilitation, as critical elements necessary to ensure provisions in the legislation are used appropriately and to their full capacity.

Clause 3: Special measures

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.

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 35.³⁰ 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.

²⁸ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.15

²⁹ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.14

³⁰ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.15

Clause 4: Alternative to conviction of the domestic abuse offence

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.³¹

Clause 5: No right to claim trial by jury

NIWEP agrees with the provisions in this clause. As has been stated throughout this submission, stalking forms part of a complex pattern of abuse, 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 cases³² apply to all cases involving violence against women.

Stalking protection orders

NIWEP welcomes the proposal to introduce stalking protection orders, as part of measures to protect victims. As noted above, custodial sentences in themselves are rarely an effective solution to stalking, and protection orders can provide a tool for protecting victims at all stages of a judicial process. However, it is essential that the system operates effectively, that orders can be issued in a timely manner and that police and the courts are trained in both applying for orders and supporting victims during the process. Therefore, comments made above regarding capacity building for the judiciary system are critical, in order to ensure that the judiciary system is able to effectively respond to applications for orders. In addition, an effective public information campaign is needed to ensure people across Northern Ireland are aware of the new support available.

Clause 6: Meaning of act associated with stalking and risk associated with stalking

The comments made above in relation to the definition of stalking apply to this section, as do comments regarding capacity building for the judicial system.

³¹ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.17

³² Gillen Review (2019) [Report into the law and procedures in serious sexual offences in Northern Ireland](#)

Clauses 7-12: Applications for orders; power to make orders; duration of orders; variations, discharges and renewals; interim orders; content of and procedure for orders

NIWEP broadly agrees with the provisions in these Clauses. In particular, NIWEP welcomes the inclusion of powers to issue protection orders for third persons; this is vital in order to prevent offenders from easily switching targets and/or expanding their range of victims. It is also crucial that protection orders can require perpetrators to undertake a specific action, as this offers an opportunity to break the cycle of behaviour or identify other relevant interventions. In this regard, investment in perpetrator rehabilitation initiatives is critical in order to ensure the provision is meaningful.

However, NIWEP would welcome clarification as to why power to make applications resides in the Chief Constable, and whether delegated authority is in place. Considering that stalking occurs relatively commonly, it appears that vesting this authority in the Chief Constable requires careful consideration of how the provision is implemented, in order to ensure that all victims requiring a protection order can avail of it, and that no bottlenecks causing delay are introduced into the system. In particular, it is essential to ensure appropriate resources are available to support preparation of applications.

Clause 13: Offence of breaching order

NIWEP agrees with the provisions in this clause. However, comments made above regarding limitations of a custodial sentence and the importance of other interventions apply also to this section.

In relation to this offence, it is particularly important that the police has appropriate capacity and understanding of stalking to deal with reports of breaches effectively, and also to respond sensitively to victims. Breaching a protection order creates significant risk and extreme vulnerability to victims, and it is vital that victims are taken seriously and supported when reporting a breach. Failing to do so not only leaves the victim at concrete risk of harm from the perpetrator, but also creates severe additional harm by reducing the victim's trust in the ability and willingness of the justice system to support and protect them.

Clauses 14-16: Notification requirements; method of notification and related matters; offences relating to notification

NIWEP agrees with the provisions in these clauses.

Clause 17: Guidance

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.

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 35³³.

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.

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.

Interpretation, commencement and short title

Clauses 18-20

NIWEP agrees with the provisions in these clauses.

³³ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.14.

