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RaISe

Domestic Abuse (Safe Leave) Bill

This Bill Paper has been prepared to inform Assembly scrutiny of the Domestic Abuse (Safe Leave) Bill, including that undertaken by the Committee for the Economy. The Bill was introduced by Rachel Woods, Member of the Legislative Assembly. The Paper provides an overview of the Bill's contents and identifies key potential issues for consideration.

This information is provided in support of Assembly duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it.

Key Points

- Northern Ireland (NI) official statistics for domestic abuse based on police recorded crime data have been published annually since 2004/05;
- Domestic abuse incidents in NI have tended to increase each year since 2004/05;
- In 2020/21, 31,196 domestic abuse incidents were reported in NI;
- There were 19,036 domestic abuse crimes recorded in 2020/21. The highest level recorded since the series began in 2004/05;
- Statistics show a rise in reported domestic abuse figures during Covid-19 lockdown periods;
- Currently, there is no statutory entitlement to paid time off for those suffering domestic violence or abuse in NI or GB;
- In December 2020, Bill sponsor Rachel Woods, Member of Legislative Assembly (MLA), opened a public consultation on the Safe Leave Bill proposals;
- Key findings revealed that 96% of respondents believed paid leave for victims and survivors of domestic abuse should be put on a statutory footing;
- Subsequently, the Domestic Abuse (Safe Leave) Bill was introduced to the Assembly as a Private Member's Bill (PMB) by Rachel Woods, MLA, on 19 October 2021;
- The Safe Leave Bill as introduced creates a statutory entitlement to paid leave for the victims of domestic abuse;
- It empowers the Department for the Economy (DfE), requiring the Department to introduce regulations that are to provide an employee who is a domestic abuse victim to be absent from work due to " Safe Leave";
- Those DfE regulations are to require Assembly approval via the negative resolution procedure under the Assembly's Standing Orders;
- Under the Bill as introduced, Safe leave is paid leave designed to be used by the employee to deal with issues related to domestic abuse including but not limited to:
 - (a) obtaining legal advice and pursuing legal proceedings and remedies;
 - (b) finding alternative accommodation;
 - (c) taking advantage of healthcare (including mental health care);
 - (d) obtaining welfare support; and,
 - (e) protecting family members.
- Safe Leave is to be set at a minimum of 10 days per year;
- The Bill does not prescribe specific elements relating to pay, notice periods or proof of domestic abuse. The detail is to be specified under the regulations that are to be brought forward by the DfE;

- The Bill relies on the definition of “behaviours” provided in section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (DACP Act), to define domestic abuse;
- However, that definition has attracted criticism for not including a single, standalone, definition of domestic abuse; and, failing to capture the essence of the psychological harm synonymous with domestic abuse;
- Provision in the Bill extends Safe Leave entitlements to workers as well as employees. This may prove challenging in the case of workers, particularly where establishing “employment status” under the prevailing law may not be straightforward – for example, those working in the “gig economy”;
- During the Second Stage debate, the Bill sponsor expressed a wish that no requirement should be needed to provide proof of domestic abuse, and the Bill does not explicitly state that proof of abuse is required;
- However, Article 112EE of the Bill empowers DfE to introduce regulations regarding notice procedures. That arguably would empower DfE to specify the notification process;
- Globally, other jurisdictions - such as the Philippines, New Zealand, Australia, Canada and Italy - all offer specific statutory provisions on domestic violence leave;
- However, statutory paid leave is offered only in New Zealand, Canada and Italy;
- Positive human rights duties/obligations are relevant in the context of developing policy and legislation to address domestic abuse victims/survivors. They therefore should be closely considered and factored into DfE’s development and drafting of regulations under the draft Bill, if enacted;
- Consideration also should be given as to how the Bill, if enacted, and the DfE regulations that subsequently are to be introduced, would enhance support services for those impacted by domestic abuse;
- Currently, in Great Britain (GB) there is no statutory leave payment to the victims of domestic abuse. If the Safe leave Bill is enacted as introduced, a statutory payment would be available for victims **only in NI**;
- By offering such enhanced entitlements to employees and workers, not otherwise available in England, Scotland or Wales, NI could be in breach of Her Majesty’s Treasury’s (HM Treasury) “parity principle”;
- If this is the case, and the United Kingdom (UK) Government sought to restore parity in GB, at some future date, following enactment of the Bill, as introduced, the estimated liability for the Executive Budget per annum could be considerable;
- The Safe Leave Bill as introduced also places a duty on the DfE to publish an annual report to monitor compliance;
- In correspondence with RaISe, the DfE estimates that the cost of producing an annual report - from within the existing DfE team with responsibility for family related employment legislation - would be £7,200 per year and £76,000 per year, if a newly established team were set up;

- The DfE also presents costs at various “take-up” levels. Ranging from an annual cost £145,500, if 500 individuals each take 3 days Safe Leave in one year; to £9,700,000 for a take-up of 10,000 individuals taking 10 days leave per year.

Introduction

The Domestic Abuse (Safe Leave) Bill was introduced to the Assembly as a Private Members' Bill (PMB) by Rachel Woods, Members Legislative Assembly (MLA) on 19 October 2021. The Safe Leave Bill contains provisions that create minimum statutory entitlements to leave and pay for working individuals in Northern Ireland (NI), who are the victims of domestic abuse.

This Bill Paper aims to support the Assembly, including the Committee for the Economy (the Committee), when considering the Safe Leave Bill, as introduced. To facilitate, Section 1 of the Paper provides context, outlining a statistical profile of domestic abuse in NI. Section 2 presents background information and an overview of the Safe Leave Bill, as introduced, including a brief summary of its key provisions. Section 3 analyses key provisions in greater detail; followed by Section 4's summary of comparative legislation from other jurisdictions.

Thereafter, Section 5 highlights issues meriting consideration, including those relating to: human rights and equality; potential parity implications with regard to entitlements for working individuals in Great Britain (GB), including cost considerations. Finally, Section 6 concludes, drawing on findings presented in earlier sections.

The Paper's contents are structured as follows:

- Section 1: Domestic Abuse in NI;
- Section 2: Background and Overview of Safe Leave Bill;
- Section 3: Safe Leave Bill: Key Provisions Detailed;
- Section 4: Provision in other Jurisdictions: A Comparative Perspective;
- Section 5: Key Issues for Consideration; and,
- Section 6: Concluding Remarks.

Throughout, potential scrutiny points are noted in blue boxes to support MLAs consideration of the Bill as introduced in their plenary and committee capacities.

1 Domestic Abuse in NI

By way of contextualising subsequent sections, this section provides a statistical profile of domestic abuse in NI.

1.1 Domestic Abuse in NI: Key Statistics

Official statistics for domestic abuse based on police recorded crime data for 2020-21 are published by the Police Service of Northern Ireland (PSNI) in *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland*.¹

Consequently, the information in this sub-section is taken from that dataset, including statistics relating to domestic abuse incidents and crimes reported to the PSNI.

When relying on these data, MLAs, in particular those on the Committee for the Economy, should note that the data provide only an indication of the true extent of domestic abuse in NI, as many abuse incidents and crimes go unreported.

In producing the data, the PSNI has adopted the definition of “domestic violence and abuse” outlined in the 2016 NI Strategy ‘Stopping Domestic and Sexual Violence and Abuse in Northern Ireland, namely:²

...threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member.

The PSNI also provide the following information with regard to its application of this definition:³

(a) ‘Incident’ means an incident anywhere and not confined to the home of one of the partners/family members;

(b) ‘Family members’ include mother, father, son, daughter, brother, sister, grandparents, whether directly or indirectly related, in-laws or stepfamily.

(c) ‘Intimate partners’ means there must have been a relationship with a degree of continuity and stability. The relationship must also have had (or reasonably supposed to have had) a sexual aspect, such as in the

¹ PSNI (2021) *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland*: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2020-21/domestic-abuse-incidents-and-crimes-in-northern-ireland-2004-05-to-2020-21.pdf>

² Department of Justice (2016) *Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year strategy*: Page 18 <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/stopping-domestic-sexual-violence-ni.pdf>

³ PSNI (2021) *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland*: Page 2: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2020-21/domestic-abuse-incidents-and-crimes-in-northern-ireland-2004-05-to-2020-21.pdf>

relationship between husband and wife or between others generally recognised as a couple including same sex couples.

The stated 2020-21 PSNI statistics reveal the following were reported:

Domestic Abuse Incidents

In 2020/21, 31,196 domestic abuse incidents were reported in NI. This figure is one and a half times higher than the level of 20,959 recorded at the start of the data series in 2004/05. In general, domestic abuse incidents have tended to increase each year since 2004/05; reaching their highest level in 2019/20. Around half of incidents recorded in 2020/21 did not result in a crime being recorded. In terms of population rates, there were 16 domestic abuse incidents per 1,000 population.⁴

Domestic Abuse Crimes

There were 19,036 domestic abuse crimes recorded in 2020/21. This is the highest level recorded since the series began in 2004/05. This figure is nearly twice the level recorded in 2004/05 and represents one in five of all crimes recorded in 2020/21. In 2020/21, 69% of all domestic abuse crime victims were female and 31% were male, compared with 74% female and 25 % male in 2004/05. In terms of population rates, there were 10 domestic abuse crimes per 1,000 population in 2020/21.⁵

1.2 Impact of Covid-19

In July 2020, the PSNI published an “exceptional release” of the official statistics, presenting data on domestic abuse calls received since lockdown measures were introduced on 23 March 2020.⁶ That publication reported a rise in reported domestic abuse figures during that March lockdown. Additionally, an early indication of trends indicates higher levels of calls to the PSNI during April and May 2020, than normally would be expected for that period. The number of calls received in June 2020 also was slightly higher than would have been expected; albeit lower than the previous two months.⁷

Similarly, there were 292 more domestic abuse incidents in April 2020, and 252 more in May 2020, than the same months in 2019.⁸ From 23 March to 30 June 2020, figures from the Public Prosecution Service Case Management System indicate that 1,923

⁴ Ibid, Page 4 and 5.

⁵ Ibid.

⁶ It should be noted that the figures in the police exceptional release bulletin are based on calls made to PSNI that were opened or closed on a code that is used to identify potential domestic abuse. This information has not undergone the rigorous quality assurance checks that would be carried out prior to the publication of official statistics.

⁷ PSNI (2020) Weekly Management information on domestic abuse calls received by PSNI since Covid-19 lockdown measures were introduced on 23 March 2020 (Exceptional Release): <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/covid-19/domestic-abuse-calls-to-30.06.20.pdf>

⁸ Ibid

cases were submitted to the Public Prosecution Service (2,097 suspects) from the PSNI, with a domestic violence motivation.⁹

Housing and Domestic Abuse Figures

The Department of Justice (DoJ) has confirmed an increase in calls to the domestic violence helpline during the Covid-19 lockdown measures. However, the NI Housing Executive has not seen a similar increase in demand for Women's Aid services.¹⁰

In 2019/20, 1,088 households fleeing domestic violence were accepted as statutorily homeless, and therefore were considered to be "full-duty applicants". This status means the NI Housing Executive has a responsibility to house the applicant immediately.¹¹

Between 1 April and 30 September 2020, there was a reduction in people presenting as "homeless" as a result of domestic violence, when compared with the same period last year, i.e. from 905 to 666. Acceptances also were down to 548 from 792.¹²

Between 1 April and 31 August 2020, 59 single males presented as homeless, citing domestic violence; 41 of who have been accepted as homeless.¹³

2 Background and Overview of Safe Leave Bill

This section provides background information on the Safe Leave Bill, including the public consultation to inform the Bill's formulation and a brief summary of key Bill provisions.

2.1 Background Information

Currently, there is no statutory entitlement to paid time off for those suffering domestic violence or abuse in NI or GB. Therefore, it is at the discretion of employers to choose to offer it. In doing so, employers may choose to provide: full pay; a certain level of pay; pay for a specific number of days; or, unpaid leave.

In the private sector, Vodafone became the first global company to introduce domestic violence leave in 2019, implementing a new policy for victims of domestic violence and abuse in 25 of its operating companies. Employees have access to support and counselling, as well as up to 10 days additional paid leave. In addition, specialist training is offered to managers to help them support employees impacted by abuse.

A KPMG study commissioned by Vodafone in November 2019, estimated that £316 million (m) in economic output is lost by UK businesses each year as a result of work

⁹ AQW 6933/17-22

¹⁰ AQO 1018/17-22

¹¹ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020-09-08&docID=306460#AQO%20593/17-22>

¹² Ibid

¹³ Ibid

absences due to domestic abuse.¹⁴ In addition, it found that the potential loss of earnings per woman, as a result of abuse having negative impacts on career progression, is estimated to be £5,800 each year. This is alleged to contribute further to the gender pay gap.

In the public sector, South Ayrshire Council was the first UK local authority offer 10 days' paid 'safe leave' to domestic abuse victims, alongside case-by-case support.¹⁵ The South Ayrshire branch of Women's Aid provided support to human resources managers by providing training on gender based violence. In January 2020, Neath Port Talbot Council became the first Welsh Council to introduce 5 days paid leave for victims of domestic abuse. They have also termed it 'Safe Leave'.¹⁶

Safe Leave Bill: Public Consultation

In December 2020, Bill sponsor Rachel Woods MLA, opened a public consultation on the Safe Leave Bill proposals. The consultation ran for eight weeks and received 450 responses. A majority of them, 440, were responses to an online survey. Key findings revealed that 96% of respondents believed that paid leave for victims and survivors of domestic abuse should be put on a statutory footing.¹⁷

A vast majority of respondents (90%) agreed that victims and survivors of domestic abuse face barriers in accessing support services because of work commitments. 98% reported that they were concerned about how seeking help and attempting to change their circumstances would affect their financial situation.

Furthermore, 94% of respondents agreed that paid leave for victims and survivors of domestic abuse would enable them to seek help and access healthcare services, treatment and therapy to deal with the long-term effects of that abuse. 95% said that it would improve their ability to access emergency and specialist support services.¹⁸

During the Safe Leave Bill's second stage debate in the Assembly, the Bill sponsor reflected on how respondents to the consultation had highlighted the importance of financial support with regard to suffering domestic abuse. She stated:¹⁹

A large number of respondents used the space to reflect, in comments and from personal experience, on how financial support is a huge factor for

¹⁴ <https://newscentre.vodafone.co.uk/press-release/new-research-shows-how-domestic-violence-and-abuse-affects-uk-workplace/>

¹⁵ <https://ww20.south-ayrshire.gov.uk/ext/committee/committeepapers2019/Leadership%20Panel/12%20February%202019/LP12021910i%20SAFE%20Leave.pdf>

¹⁶ <https://www.walesonline.co.uk/news/local-news/victims-domestic-abuse-up-five-17581058>

¹⁷ Rachel Woods MLA. *Summary of Consultation Responses*. Email correspondence received by Raise dated 2 December 2021.

¹⁸ Ibid.

¹⁹ NI Assembly : Domestic Abuse (Safe Leave) Bill Second Stage Debate: (29 November 2021) <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/29&docID=359050#3767315>

those who feel that they cannot leave an abusive relationship. Others explained that many of the things involved in changing circumstances and leaving the abusive relationship are highly demanding and require time during normal working hours. Those are issues like childcare, court and legal appointments, which add to the mental and financial strain of the situation when victims and survivors are already trying to hold down a job. One respondent noted how the lack of support in work led to attempted suicide, and many who identified as victims and survivors of domestic abuse explained that they had to leave their jobs or were unable to access help because of work. The Bill will address the current inequality between those who have access to support and those who do not.

2.2 Overview of Safe Leave Bill

The Safe Leave Bill as introduced, creates a statutory entitlement to paid leave for the victims of domestic abuse by amending Part IX of the Employment Rights (Northern Ireland) Order 1996 (the 1996 Order) and inserting a new Chapter 4, consisting of Articles 112EA to 112EE. A summary of each proposed amending article is outlined below in Table 1:

Table 1: Safe Leave Bill: Key Provisions

Key Provision	Summary/Explanation
Safe Leave for Victims of Domestic Abuse (Article 112EA)	The DfE must make regulations entitling an employee who is a victim of domestic abuse to be absent from work on safe leave. Safe leave is paid leave designed to be used by the employee to deal with issues related to domestic abuse. A non-exhaustive list of the things safe leave might be used for include: <ul style="list-style-type: none"> (a) obtaining legal advice and pursuing legal proceedings and remedies; (b) finding alternative accommodation; (c) taking advantage of healthcare (including mental health care); (d) obtaining welfare support; and, (e) protecting family members. Additionally, this provision ensures that employees will be entitled to at least 10 days of safe leave in each leave year. The regulations may make supplementary provision that may for example require an employee to give notice before taking safe leave. The regulations will require approval of the Assembly <i>via</i> negative resolution (See Article 112EE below).
Rights during and after safe leave (Article 112EB)	This provision protects the employment rights of employees on safe leave. They are entitled to the same rights (including as to pay) while on leave as they would be entitled to while at work, and they are entitled to return to employment.
Special Cases (Article 112EC)	This allows the regulations introducing safe leave to make provision about redundancy and dismissal during a period of safe leave.
Workers (Article 112ED)	Regulations must extend the right to safe leave to workers (as well as employees).
Chapter 4: supplemental (Article 112EE)	The regulations introducing safe leave may make supplementary provision regarding notices to be given to by employees to employers and employers or employees to keep records.

	This Article also makes the DfE regulations (made under Article 112EA) subject to negative resolution by amending Article 251 (1A) of the 1996 Order.
Annual Report (Article 112EF)	This provision requires the DfE to publish an annual report about the operation of the regulations introducing safe leave. The report must include information about— (a) compliance with the regulations by employers; and, (b) evidence of the effectiveness of the regulations and their impact on victims.
Guidance Article 112EA	Allows the DfE to give guidance about the implementation or application of the regulations introducing safe leave.

Source: Safe Leave Bill and EFM 2021

As shown above in Table 1, the Bill as introduced, does not prescribe specific elements relating to: the level of pay to be offered by employers; and, notice to be given to employers or proof of domestic abuse. The detail of these and other issues are to be introduced *via* regulations brought forward by the DfE.

3 Safe Leave Bill: Key Provisions Detailed

This section presents the key provisions of the Safe Leave Bill in further detail. Specifically, it examines bill provisions with regard to the following issues:

- Defining domestic abuse;
- Employment status;
- Notice of leave and confidentiality; and,
- Future Scrutiny of subsequent DfE regulations.

3.1 Defining “Domestic Abuse”

Clause 1 of the Safe Leave Bill, as introduced, states:²⁰

An employee is a victim of domestic abuse if they are being subjected, or have been subjected, to behaviour of a kind described in section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.

To aid consideration of that Clause, this sub-section examines relevant definitions stated in the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (DACP Act). Those definitions are outlined in the blue box below:²¹

²⁰ <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/non-executive-bills/session-2017-2022/dom-abuse-safe-leave/dom-abuse-safe-leave-bill--as-introduced---full-print-version.pdf>

²¹ *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021: Section 1:* <https://www.legislation.gov.uk/nia/2021/2/section/1>

The domestic abuse offence

1.—(1) A person (“A”) commits an offence if—

(a) A engages in a course of behaviour that is abusive of another person (“B”),

(b) A and B are personally connected to each other at the time, and

(c) both of the further conditions are met.

(2) The further conditions are—

(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and

(b) that A—

(i) intends the course of behaviour to cause B to suffer physical or psychological harm, or

(ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) The references in this section to psychological harm include fear, alarm and distress.

(4) The offence under this section is to be known as the domestic abuse offence.

Section 1 of the DACP Act defines the offence of domestic abuse, specifying the following three elements, which must be met, to constitute such an offence:

1. Abusive behaviour towards another person;
2. A personal connection between the person being abused and the perpetrator;
and,
3. That;
 - a. A reasonable person would consider the behaviour to cause physical or psychological harm; **and,**
 - b. Either the perpetrator intends the behaviour to cause harm, or is reckless as to whether it causes harm.

It is important to note that Section 1 of the DACP Act does not include a single definition of “domestic abuse”. Rather, it does contain provisions that define “abusive behaviour” and “personal connection” (i.e. the relationship between the perpetrator and victim).

Thereafter, Section 2 defines “abusive behaviour” as behaviour having three elements, i.e. the alleged abusive behaviour is: ²²

- Violent;
- Threatening; and,
- Has the intention or effect of:
 - Making the person dependent or subordinate to the perpetrator;
 - Isolating the person from friends, family or other sources of social interaction or support;
 - Controlling, regulating or monitoring day to day activities;
 - Depriving or restricting freedom of action; and,
 - Making the person feel frightened, humiliated, degraded, punished or intimidated.

Moreover, Section 5 of the DACP Act defines a “personal connection” as outlined in the blue box below:²³

Meaning of personal connection

5—(1) This section has effect for the purposes of this Chapter.

(2) Two people (“A” and “B”) are personally connected to each other if any of these applies—

- (a) they are, or have been, married to each other,
- (b) they are, or have been, civil partners of each other,
- (c) they are living together, or have lived together, as if spouses of each other,
- (d) they are, or have been, otherwise in an intimate personal relationship with each other, or
- (e) they are members of the same family.

(3) They are members of the same family—

- (a) if B is A's parent, grandparent, child, grandchild, brother or sister, or
- (b) if—
 - (i) one of them is in a relevant relationship with someone else (“C”), and
 - (ii) the other of them is C's parent, grandparent, child, grandchild, brother or sister.

²² *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021: Section 2:*
<https://www.legislation.gov.uk/nia/2021/2/section/2>

²³ *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021: Section 5:*
<https://www.legislation.gov.uk/nia/2021/2/section/5>

- (4) One person is in a relevant relationship with someone else if—
- (a) they are married to, or are civil partners of, each other, or
 - (b) they are living together as if spouses of each other.
- (5) In determining family membership—
- (a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and
 - (b) a stepchild of a person is to be treated as the person's child.

As stated earlier, the Safe Leave Bill under consideration here provides domestic abuse is to be interpreted in line with relevant provisions in the DACP Act. However, MLAs, in particular those in the Committee for the Economy, should be mindful that the definition specified in the DACP Act was not without criticism. Rather, it was subjected to intense scrutiny during its passage through the Assembly, introduced as the Domestic Abuse and Family Proceedings Bill in 2020. For example, the Committee for Justice (CfJ) Report on the Domestic Abuse and Family Proceedings Bill (which became the DACP Act) - published in October 2020 – contained a number of concerns with regard to the specified domestic abuse definition. Those concerns are highlighted below in Table 2:

Table 2: CfJ Report: Criticisms of Definitions²⁴

Organisation	Summary of Comments
The NI Policing Board	Noted that the Bill does not provide for a single definition of domestic abuse and advised that, while satisfied that abusive behaviour is set out in some detail, the Committee for Justice (CfJ) would welcome the inclusion of a standalone definition of domestic abuse.
The Northern Ireland Catholic Council on Social Affairs (NICCOSA)	Questioned whether there should be a definition of the gravity or length of the effect in relation to the words fear, alarm and distress referring to psychological harm and asked whether the legislation intended that a feeling of fear for a momentary period would lead to an offence being committed.
The Women's Aid Federation	Wanted to see the inclusion of a gendered definition of domestic abuse to include violence against women and girls.
The Education Authority (EA)	Questioned whether abuse on a singular occurrence and other forms of abuse, e.g. modern slavery and exploitation and coercive control related to immigration status fall within the definition in the Bill.
Police Service of Northern Ireland (PSNI)	Raised the fact that the lack of an adequate definition of 'psychological harm' could cause difficulties from an operational perspective.
Bar of NI (the Bar)	Held the view that the inclusion of a clear definition of domestic abuse in the legislation would be helpful.
The South Eastern Health and Social Care Trust	Stated that awareness raising in relation to coercive control has been on-going across NI over the past few years and encapsulates the essence of the

²⁴ Committee for Justice (2020) *Report on the Domestic Abuse and Family Proceedings Bill*: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/justice/reports/dafp-bill/committee-for-justice-report-on-domestic-abuse-and-family-proceedings-bill.pdf>

(SEHSCT) and South Eastern Domestic and Sexual Violence Partnership (SEDSVP)	psychological harm synonymous with domestic abuse but the term is somewhat hidden in the legislation. Both organisations believe that the term should be referenced or highlighted more within the Bill and subsequent guidance. They also believe that the term “gas-lighting” should also be referenced in both as it helps capture the essence of Report on the Domestic Abuse and Family Proceedings Bill 54 domestic abuse where the victim questions their own memory, perception or judgement often evoking in them cognitive dissonance and making them believe that they are going mad thus weakening their self-esteem and resilience.
Nexus NI	Questioned whether the definition made sufficient provision for children who are foster children or children who live in temporary care and also recommended that consideration should be given to including other family relatives with parental or guardian roles e.g. aunts, uncles etc.
Relate NI	Stated its belief that there is scope for further clarity in relation to the application of Clause 5 (personal connection) to fostering, adoption and kinship care arrangements. It also stated that the personal connection did not appear to extend to individuals that are living together or had been living together not as spouses or situations where an individual is or has been a live in carer, either part-time or full-time within a private home

Source: Committee for Justice (2020)

With regard to using the specified DACP definition of “domestic abuse”, potential scrutiny points arise as follows:

1. What is the view of the DfE about relying on the “domestic abuse” definition specified in the DACP, if the Bill is enacted and the Department then is required to introduce relevant regulations to implement the Bill?
2. Does the DfE foresee any unintended consequences if relying on the DACP domestic abuse definition?

3.2 Employment Status

Proposed article 112ED extends Safe Leave provisions to workers as well as employees. It states:

Regulations under Article 112EA must extend the right to safe leave to workers (as well as employees); and for that purpose the regulations—

- (a) may modify provisions in their application to workers; and*
- (b) may make provision similar to a provision of or under Article 67K.*

The distinction between employees and workers under NI employment law is defined by Article 3 of the 1996 NI Order and related case law, as highlighted in the below blue box:

Part I Chapter II Article 3 of the 1996 Order states:

3.(1) In this Order “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Order “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Order “worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

Moreover, in 2014, the then NI Department for Employment and Learning (DEL) explained the distinction between the two, stating:²⁵

A ‘worker’ generally means an individual who has a contract or other arrangement to do work or services personally for a reward. This category is often perceived as a hybrid of employee and self-employed status. ‘Workers’ have fewer protections than ‘employees’ in domestic employment law. All employees are workers. However not all workers are employees.

In evidence to the Assembly’s Committee for the Economy on 24 November 2021, the Bill sponsor made the following comment about the Bill extending the scope of its coverage to both employees and workers, stating:²⁶

Proposed article 112ED extends the provisions to workers as well as employees. That means that, in practice, even those without a formal written contract would be able to take the safe leave.

The Bill sponsor explained further about the issue of extending the provisions to self-employed individuals and those on Zero Hours Contracts, stating:²⁷

The only thing that we have not been able to nail down, and which I hope that the Committee will look at, should the Bill pass Second Stage, is the extension of the right to those who are self-employed.

And:

Some people have asked me whether the Bill would cover workers who are on zero-hours contracts, which, obviously, we hope to ban through another

²⁵ Department for Employment and Learning (2014) *Zero Hours Contracts: A Public Consultation*: <https://www.economy-ni.gov.uk/sites/default/files/consultations/del/zero-hours-contracts-public-consultation.pdf>

²⁶ Committee for the Economy Minutes of Evidence 24 November 2021: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=29275&evidID=14926>

²⁷ Ibid.

private Member's Bill, but, unfortunately, I am not able to give a clear answer on that. It would depend on the nature of the contract.

With regard to extending employees' and workers' rights in this area, potential scrutiny arise as follows:

- (1) What is the DfE's view on the application of this provision, if the Bill is enacted as introduced, and subsequent related regulations enacted? This is perhaps relevant, for example, in the context of the "gig economy", where establishing employment status sometimes may not be a straightforward matter? This was demonstrated in recent court cases, including those concerning Uber workers.
- (2) What are the views of the NI Law Society, the NI Labour Relations Agency and the trade unions regarding the above?
- (3) When engaging with any of the above named parties, what are their views on any other potential issues that could arise in this context, i.e. in the context of the Bill if enacted as proposed, and subsequent related regulations, if enacted, and prevailing employment law in NI, including that relating to employment status?

3.3 Notice of Leave and Confidentiality

Article 112EE of the Bill provides that subsequent regulations introducing safe leave are to make supplementary provision with regard to notice periods and record keeping, as outlined in the blue box below:²⁸

Chapter 4: supplemental

112EE. Regulations under Article 112EA may—

- (a) make provision about notices to be given and other procedures to be followed by employees and employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
- (e) make provision about the calculation of leave years;

²⁸ *Domestic Abuse (Safe Leave) Bill (2021)* as introduced :

<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/non-executive-bills/session-2017-2022/dom-abuse-safe-leave/dom-abuse-safe-leave-bill---as-introduced---full-print-version.pdf>

- (f) make special provision for cases where an employee has a right that corresponds to a right under Article 112EA and that arises under the person's contract of employment or otherwise;
- (g) make provision modifying the effect of Chapter 4 of Part 1 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under Article 112EA;
- (h) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under Article 112EA;
- (i) make consequential provision (including amendments of enactments)."

In evidence to the Committee for the Economy on 24 November 2021, the Bill sponsor stated:²⁹

Proposed new article 112EE of the Employment Rights (Northern Ireland) Order 1996 would give the Department considerable scope to develop regulations on "notices", "records" and "procedural requirements", including on the consequences of failing to comply with such requirements. However, there is no requirement in the Bill for workers or employees to provide proof that they are victims.

During the same debate, the Bill sponsor argued that providing proof of domestic abuse may prove a barrier to accessing safe leave. In particular, she stated:

Another respondent [from the Safe Leave Public Consultation] provided an example of how mental health issues arising from domestic abuse caused "enormous stress and upset" when they had to disclose treatment and request a "fit for work" letter from their doctor in order to start a new job later in life.

The Bill as introduced, does not explicitly state whether proof of domestic abuse is required for victims to take safe leave. Similarly, it does not state how or when notice to take this leave is to be given to the employer. However, it should be noted that the proposed Article 112 EE empowers the DfE to bring forward regulations in this regard. That raises a question as to whether that provision provides authority to shape this notification process. This point also was highlighted during the Bill's second stage debate by a MLA who stated:

Ultimately the format or level of notification that is required for triggering the process may be in the regulations so that there is certainty for the employee and the employer.

²⁹ Domestic Abuse (Safe Leave) Bill: Second Stage Debate: 24 November 2021:
<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/29&docID=359050#3767315>

With regard to the draft Bill's notice periods and confidentiality, potential scrutiny points arise for the following:

- (1) If the Bill was to be enacted as introduced, does the DfE foresee a situation whereby the DfE introduce regulations that require proof of abuse in order to take safe leave? That could frustrate the Bill sponsor's intent, i.e. a desire that no proof of abuse should be required.
- (2) If the DfE determines that proof of domestic abuse is required, what measures does it envision that could be put in place, to ensure the relevant levels confidentiality are maintained to protect the victim?
- (3) What would be the DfE's preliminary views regarding the evidential requirements to establish domestic abuse, for example will medical certificates be required?
- (4) Would the DfE consult with medical and mental health stakeholders when developing these regulations? What other parties would it believe to be important to engage with?
- (5) If so, will it share the outcome of these consultations with the Committee?

3.4 Future Scrutiny of subsequent DfE regulations

As mentioned above, the Bill places a duty on the DfE to introduce regulations that provide a right for domestic abuse victims to take leave from work. Consequently, the detail to implement the proposed leave entitlements are to be specified in those regulations (in the form of secondary legislation, also known statutory rules³⁰), if the introduced Bill is enacted.

This view was echoed during the Bill's second stage debate, when a MLA made the following contribution:³¹

The Bill, as it stands, does not provide substantive detail on implementation of the measures. The details of the Bill's outworkings would fall to the Department for the Economy, and, as a consequence, significant public consultation would be required for the associated regulations.

Under Article 112EE of the Bill, if enacted, the DfE regulations would be subject to the Assembly's negative resolution procedure *via* subsequent amendment of Article 251 (1A) of the 1996 Order.

For ease of reference, Table 3 below lays out key features of the negative resolution procedure:

³⁰ <http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#what-are-SRs>

³¹ Domestic Abuse (Safe Leave) Bill: Second Stage Debate: 24 November 2021:
<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/29&docID=359050#3767315>

Table 3: Negative Resolution Procedure in the NI Assembly³²

When	Activity	Outcome
After the Assembly Committee and the Examiner of Statutory Rules have reported	<p>A statutory rule that is subject to the negative resolution procedure is made by the rule making body, usually a Department, and laid before the Assembly. It is law when its 'comes into force' date is reached.</p> <p>It can be annulled by resolution of the Assembly within the 'statutory period'. It is then void from the date of that annulment.</p> <p>The statutory period is set out in section 41 of the Interpretation Act (Northern Ireland) 1954. It is 30 calendar days or ten days on which the Assembly has sat after the date on which the statutory rule was laid before the Assembly, whichever is the longer.</p> <p>To strike down the Statutory Rule a Member of the Assembly may bring a motion to the Assembly for debate, seeking to 'annul' or strike down the statutory rule.</p> <p>This type of motion is called a Prayer of Annulment.</p>	<p>If the Assembly votes in favour of the motion to annul the statutory rule, the rule is struck down and, from that date, it is no longer part of the law.</p> <p>If the Assembly votes against the motion to annul the statutory rule, it remains part of the law.</p>

Source: NI Assembly Statutory Rules FAQ 2021

In that regard, an appropriate level of Assembly scrutiny will need to be applied to the subsequent regulations that would be proposed by the DfE, if the Bill is enacted as proposed. The proposed regulatory entitlements would need to be "fit for purpose" for NI workplace and societal purposes.

4 Provisions in Other Jurisdictions: A Comparative Perspective

This section provides a comparative perspective of statutory safe leave arrangements in other jurisdictions. It outlines legislation from other jurisdictions that provide safe leave arrangements for working individuals who have suffered domestic abuse.

RoI

In December 2019, a Private Member's Bill was introduced to Dáil Eireann (the lower house of the Oireachtas), to amend the existing *Organisation of Working Time Act 1997*³³. That Bill sought to create a statutory entitlement to paid leave for employees as a result of domestic violence. It proposed a maximum entitlement of 10 days in any leave year. However, the Bill lapsed with the dissolution of the Dáil and Seanad on 14 January 2020.³⁴

Introducing that Bill, a Teachta Dála (TD) explained the impact of the new provisions proposed at Section 5 of the Bill:

An employee does not have to provide proof of abuse or documentary evidence for the leave needed, as to do so would potentially act as a barrier to victims seeking the support they often desperately need. As with existing leave entitlements, the legislation

³² NI Assembly (2021) *Statutory Rules FAQ*: <http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#Neg-Res>

³³ Organisation of Working Time Act 1997: [Organisation of Working Time Act, 1997 \(irishstatutebook.ie\)](http://www.irishstatutebook.ie)

³⁴ <https://www.oireachtas.ie/en/bills/bill/2019/96/?tab=debates>

enables an employer to refuse or terminate leave where he or she believes the employee is not using the leave for the specified purpose. In turn, the employee has recourse to the Workplace Relations Commission in such circumstances where the leave has been taken for the specified purpose but has been terminated or refused by the employer.³⁵

In 2020, Sinn Fein introduced a Bill in Dáil Eireann to make similar provision for domestic abuse safe leave. It passed Second Stage December 2020 and has been delayed in progressing, despite cross-party support, due to some technical issues between Ministers and Departments.³⁶

Philippines

The Philippines was the first country in the world to introduce legislation providing for **paid** leave entitlements for the victims of domestic abuse. Under the Anti-Violence Against Women and Their Children Act of 2004 (the Anti-VAWC Act), women in employment became entitled up to 10 days paid leave.³⁷

A number of implementation issues have been encountered with this legislation, which “still crave[s its] full implementation in practice”.³⁸ For example the legislation is gender-specific; applicable only to female victims. In order to be entitled to the leave benefit, females in employment must present their employer with certification that an action relative to the Anti-VAWC Act is pending.

Another issue is that the legislation does not provide the availability of sufficient resources when victims seek to avail of this legislative protection, e.g. making available free legal aid, temporary shelter and services for their children. According to a paper published by the United Nations in 2008:

The legislators who sponsored the Anti-VAWC Act believed that the law would be passed without serious obstacles if there was no specific amount of funds made available for its implementation. They merely provided in Section 45 of the law that an amount shall be included in the annual General Appropriations Act, and the Gender and Development (GAD) budget of the mandated agencies and local governments shall be used to implement services for victims. This proved to be a crucial gap, because although the national agencies have their GAD budget (five per cent of their total budget), the elimination of violence against women and training of government personnel and support services for victims of violence against women may not be the agency’s priority.³⁹

³⁵ <https://www.oireachtas.ie/en/debates/debate/dail/2019-12-03/11/>

³⁶ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/29&docID=359050#3767315>

³⁷ <https://www.officialgazette.gov.ph/2004/03/08/republic-act-no-9262-s-2004/>

³⁸ <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2018/09/Employment-Standard-Provision.pdf>

³⁹ United Nations. (Guanzon, Rowena) (2008) Laws on Violence against Women in the Philippines : [EGMGPLVAW Paper Rowena Guanzon updated .doc \(harvard.edu\)](#)

Consequently, specific funding to train police and social workers in relation to the breaches of the Anti-VAWC Act have been limited.

In addition, the 2015 International Trade Union Confederation Asia-Pacific (ITUC-AP) survey found respondents' awareness of the domestic violence leave entitlements low (39%), and take up of the leave was even lower, at only 23% of affected women in employment.⁴⁰ Moreover, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee in its 2016 *Conclusions on the Philippines* report stated that:⁴¹

[it was] concerned about...(b) The limited scope of the [Anti VAWC Act], which is focused mainly on domestic violence by intimate partners.

As noted earlier in this Paper, the impact of domestic abuse can be mental as well as physical. Given this, critics of the Anti-VAWC Act feel the legislation does not adequately provide for such mental abuse.

New Zealand

In April 2019, New Zealand became the second country in the world to introduce statutory paid domestic violence leave, after the Philippines. The Domestic Violence – Victims' Protection Act 2018⁴² (the 2018 Act) allows those affected by domestic violence up to 10 days leave per year. Opponents of the legislation argued that the extra leave would be too expensive for employers, and the cost to small and medium-size businesses would be too great. In turn, this may dissuade employers from hiring people suspected to be domestic violence victims.⁴³

The 2018 Act defines “someone affected by domestic violence” as either a person against whom any other person is inflicting or has inflicted domestic violence, or a person living with a child against whom another person is inflicting or has inflicted domestic violence. Employees who have been affected by domestic violence can take up to 10 days paid domestic violence leave, if:

- They have six months' current continuous employment with the same employer, or;
- They have worked for the employer for six months for:
 - an average of 10 hours per week, and,
 - at least one hour in every week or 40 hours in every month.

⁴⁰ ITUC-AP (2015) Key Findings of National Survey on the Impact of Domestic Violence on Workers and in Workplaces in the Philippines: [Philippine Domestic Violence survey key findings September 2015 0.pdf \(dvatworknet.org\)](#)

⁴¹ CEDAW (2016) *Concluding observations on the combined seventh and eighth periodic reports of the Philippines*: CEDAW /C/PHL/CO/7-8: [CEDAW C PHL CO 7-8-EN.pdf](#)

⁴² <http://www.legislation.govt.nz/act/public/2018/0021/latest/DLM7054315.html>

⁴³ Guardian 26 July 2018 A huge win: New Zealand brings in paid domestic violence leave: ['A huge win': New Zealand brings in paid domestic violence leave | New Zealand | The Guardian](#)

It does not matter when the domestic violence took place. The individual in employment is entitled to the leave even if they experienced the domestic violence before they began working for their current employer or before the law changed on 1 April 2019.

The Act also gives employees affected by domestic violence, the right to:

- ask for short-term flexible working arrangements. This can be for up to 2 months; and,
- not be treated adversely in the workplace because they might have experienced domestic violence.

If employees take domestic violence leave or ask for short-term flexible working arrangements, their employers can ask for proof. Employees can go to Employment New Zealand or the Human Rights Commission, if they have problems getting their domestic violence rights recognised.

Australia

In Australia, victims of domestic abuse are allowed five days' unpaid leave. On 12 December 2018, the Fair Work Amendment (Family and Domestic Violence Leave) Act 2018 (Act) came into effect. It provides entitlement for employees covered by the Fair Work Act to receive 5 days of unpaid family and domestic violence leave within a 12-month period.

Australia's Labour Party leader has promised 10 days paid leave for victims, if his party wins the next election.⁴⁴

Canada

In Canada, a number of states have introduced their own statutory provision, e.g.:

- In **Manitoba**, employees experiencing domestic violence are entitled to five paid days of leave and a further five days of unpaid leave.⁴⁵
- **Ontario** offers employees up to 10 days of domestic or sexual violence leave every calendar year, whether they are employed on a full or part-time basis.⁴⁶ The first five days are paid.
- In summer 2020, **British Columbia** passed legislative amendments that provide up to five days of paid leave, and five more days of unpaid leave, for

⁴⁴ <https://www.bbc.co.uk/news/world-asia-pacific-44951237>

⁴⁵ Legislative Assembly of Manitoba (2020) The Employment Standards Code Act: <https://web2.gov.mb.ca/bills/40-5/b008e.php>

⁴⁶ Government of Ontario (2020) Domestic or Sexual Violence Leave: <https://www.ontario.ca/document/your-guide-employment-standards-act-0/domestic-or-sexual-violence-leave#section-1>

people after facing domestic or sexual violence. This builds on the unpaid, job-protected leave introduced in spring 2019.⁴⁷

Italy

In Italy, the 2016 Jobs Act provides for a maximum of three months special paid leave, which can be taken flexibly over a three year period.⁴⁸ Employers, in their income statements, can deduct the amount paid from the social security contributions that they have to pay to the relevant social security institution. Workers also have the right to change from full-time to part-time work, or to take the leave on a flexible basis, for example, on a daily or hourly basis, over a period of up to three years. These requests must be negotiated in collective agreements and discussed with employers and social partners.⁴⁹

This protection applies to all employees, both in the private and public sector, and is also extended to self-employed and autonomous workers included in specific protection programs. The law does not only cover employees hired with an open-ended and full-time employment contract, but also part-time employees and employees hired with fixed-term employment contracts. Therefore, the paid leave extends also to people in more precarious employment relationships.⁵⁰

However, data collected by the relevant Italian authorities indicates that very few women benefit from special paid leave (fewer than 100 per year). Reasons for these low figures appear to relate to the lack of awareness, among employers and employees regarding the existence of this provision, and victims' reluctance to disclose the violence in their working environment.⁵¹

Summary

The Philippines, New Zealand, Australia, Canada and Italy all offer specific statutory provisions on domestic violence leave. However, statutory paid leave is only offered in New Zealand, Canada and Italy. Provisions on the duration of leave vary considerably. The Italian provisions are the most generous, i.e. employees can take up to three months special paid leave over a period of three years. The Australian provisions are more restrictive, i.e. up to five days, although employers can agree to an extended period in individual cases. There are also variations in the required duration of employment before the employee is entitled to leave. Whilst there is no minimum period in Australia, the relevant period is 13 weeks in Ontario and six months in New Zealand.

⁴⁷ <https://engage.gov.bc.ca/domesticandsexualviolenceleave/>

⁴⁸ Law Decree No.80/2015

⁴⁹ ETUC (2017) *Safe at Home, Safe at Work: Italy: Country Case Study*.

https://www.etuc.org/sites/default/files/document/files/italy_etuc_safe_at_home_safe_at_work_final_2017_0.pdf

⁵⁰ Led by Her et al (2020) *Comparative Research on Workplace Laws to Combat Domestic Violence*

<http://www.trust.org/contentAsset/raw-data/1028cd92-5e5a-4509-8f93-3afef30756bd/file>

⁵¹ <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e> pg49

Where the legal mechanisms described above exist, they generally extend only to employees, who are people hired by the employer, and do not apply to contractors, consultants or volunteers.

The exceptions to the above are:

- Canada, where the Ontario Occupational Health and Safety Act 1990 (OHSA) requires employers to take reasonable precautions to protect workers, which extends to contractors and consultants.
- Italy and New Zealand, where the protections extend to domestic or homeworkers. In New Zealand, a homemaker obtains protections by virtue of the fact that a person is an employer if they employ a homemaker.⁵²

Autonomous and domestic workers in Italy are entitled to abstain from work where they are included in protection programs relating to domestic violence. These protections are unavailable to similar workers in other jurisdictions.⁵³ The Committee may wish to consider this going forward, particularly in light of NI employment status and rights presented earlier in section 2.3 above.

5 Key Issues for Consideration

This section highlights key issues arising from the introduced Bill that merit consideration in relation to:

- Human Rights and Equality;
- Introduced Bill and the Parity Principle; and,
- Anticipated Implementation Costs.

Each are explored in turn below.

5.1 Human Rights and Equality

Regarding the potential impact of the Bill as introduced in terms of human rights and equality, key areas for consideration include: positive obligations for the state in the protection of those suffering domestic abuse; expansion of protections and supports that could enhance human rights; and, equality protections of the introduced Bill going forward.

Domestic Abuse and Human Rights Protections

While domestic abuse is often treated as a private concern for criminal and civil proceedings, there are a number of human rights that are impacted, which invoke a

⁵² Employment Relationships Act 2000 (New Zealand), section 5: [Employment Relations Act 2000 No 24 \(as at 06 November 2020\), Public Act 5 Interpretation – New Zealand Legislation](#)

⁵³ Led by Her et al (2020) *Comparative Research on Workplace Laws to Combat Domestic Violence* <http://www.trust.org/contentAsset/raw-data/1028cd92-5e5a-4509-8f93-3afef30756bd/file>

positive obligation on states to mitigate harm to victims. Positive obligations occur when states must guarantee human rights in circumstances where state agents do not directly interfere.⁵⁴

Two examples of positive duties in the realm of domestic abuse concern the Right to life and the Right not to be tortured or to inhuman or degrading treatment or punishment.

The Right to Life imposes three types of obligations on the state:⁵⁵

1. A duty not to take away anyone's life (apart from in certain limited circumstances);
2. A positive duty to take reasonable steps to protect life; and,
3. A procedural duty to investigate deaths where the state may be implicated/involved.

The positive duty to protect life means that the state should intervene when someone's life is at risk from another person and where the authorities know, or should know, about this risk. This includes protecting a person from domestic abuse.

As demonstrated in the case of *Opuz v Turkey*⁵⁶, the European Court of Human Rights (ECtHR) found that Turkey had violated Article 2 as authorities had remained passive. That was despite persistent information that should have compelled them to act against a man who had been violent towards his wife and her mother.⁵⁷

International standards on the right to life are enshrined in: Article 3 of the Universal Declaration of Human Rights⁵⁸; Article 6 of the International Covenant on Civil and Political Rights⁵⁹; and, Article 2 of the European Convention on Human Rights⁶⁰. The right is domestically protected by the Human Rights Act 1998.⁶¹

Additionally, domestic abuse victims are protected by the right not to be tortured or treated in a manner that is cruel or degrading. In particular, Article 3 of the Human Rights Act 1998 imposes a positive obligation on public authorities to protect citizens from serious ill-treatment by other individuals.⁶²

Under Article 3, states have the following duties⁶³:

⁵⁴ <https://psychologyanswers.com/library/lecture/read/34073-what-is-a-positive-obligation-for-states-under-the-european-convention-on-human-rights#0>

⁵⁵ <https://www.bihhr.org.uk/vaw>

⁵⁶ <https://rm.coe.int/168069454d>

⁵⁷ <https://www.equalrightstrust.org/ertdocumentbank/opuz%20v%20turkey%20case%20summary%20erl%20edit.pdf>

⁵⁸ <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

⁵⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁶⁰ https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁶¹ <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

⁶² <https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/what-rights-are-protected-under-the-human-rights-act/your-right-not-to-be-tortured-or-treated-in-an-inhuman-way/>

⁶³ <https://www.bihhr.org.uk/vaw>

1. A duty not to torture or treat someone in an inhuman and degrading way.
2. A positive duty to take reasonable steps to protect people known to be at risk of such treatment.
3. A procedural duty to investigate where torture, inhuman or degrading treatment has occurred.

In relation to domestic abuse, the positive duty included in this right means that public bodies, such as the police, have an obligation to protect at-risk individuals from Article 3 violations by private citizens.⁶⁴

United Nations human rights bodies have made a wide range of statements on the issue of domestic violence and have placed a broad range of obligations on states as regards this area.⁶⁵ These obligations not only relate to the protection from harm, but to the support mechanisms required to aid domestic abuse victims. As noted by Rights NI, these duties include: improving the responses of states' criminal justice systems; ensuring that civil law measures are effective; implementing public awareness campaigns; and, crucially, providing social support measures such as housing, refuge accommodation and childcare facilities to victims.⁶⁶

The introduction of this Bill introduced into the Assembly is a step towards meeting positive obligations in relation to supporting victims/survivors of domestic abuse, thereby enhancing human rights protections. The ability for those affected to access paid leave, means that they are economically protected to seek support and guidance in a time of crisis.

With regard to international, regional and domestic human rights obligations in the prevention of domestic abuse, the following scrutiny point arises:

- Should the Committee engage with stakeholders, to more fully consider how positive human rights duties should be factored into the DfE's development of regulations and policy that would implement the Bill, if enacted as introduced?

5.1.2 Enhancing Human Rights Protections

When reflecting upon the impact of increasing leave entitlements for those suffering domestic abuse, it is important to consider the wider context of support mechanisms for victims. While the introduced Bill grants eligibility to take time off work from the first day of employment; a number of concerns have been raised recently about the accessibility

⁶⁴ <https://www.bihar.org.uk/vaw>

⁶⁵ <http://rightsni.org/2011/09/human-rights-law-and-domestic-violence/>

⁶⁶ <http://rightsni.org/2011/09/human-rights-law-and-domestic-violence/>

to support services in NI. If victims/survivors can access leave entitlement, but not access relevant supports, this could dilute the attainment of the Bill sponsor's intended objective.

Of late, Human Rights Watch have highlighted there are insufficient measures to ensure critical support and services for survivors of violence, especially those least likely to get help.⁶⁷ That organisation notes that pre-pandemic, the erosion of support for specialist domestic abuse services was at national crisis; and this situation has been exacerbated by the ongoing health catastrophe.

There are also concerns regarding gendered violence that potentially impact Section 75 (NI Act 1998) protections. Human Rights Watch note that the Covid-19 crisis has exacerbated a lack of access to services for migrant and Black, Asian, and Minority Ethnic (BAME) women.⁶⁸ Representatives of organisations serving these communities say that persistent inequality leads to additional difficulties in providing services remotely. They estimate that twenty-five percent of the women they support don't have a phone. Additionally, language barriers can exclude women in these communities from getting information about services; with migrant women facing particular barriers to getting critical services. Their immigration status can be used to control them or prevent them from seeking help, and they may fear approaching authorities due to risk of detention, deportation, or separation from their children.⁶⁹ Therefore, this group require additional and specialised support systems.

In relation to NI, Amnesty International has recently urged the NI Executive to provide emergency funding to groups helping victims of domestic violence (May 2020). The organisation claimed that significant additional funding has been made available to women's refuges and other groups in every other part of UK except NI.⁷⁰

As demonstrated in sub-section 5.1.1. above, there are a number of positive obligations placed upon states to ensure the protection of their citizens from the detrimental impact of domestic abuse, including the obligation to ensure effective support mechanisms. While the introduced Bill enhances the protection of employees and workers within the workplace, it is vital to ensure that valuable supports are also in place.

In September 2020 the Chartered Institute of Personnel and Development (CIPD) and Equality and Human Rights Commission (GB) published, 'Managing and Supporting Employees Experiencing Domestic Abuse: A guide for employers'. In that report, there were 10 key recommendations for employers, which included:⁷¹

⁶⁷ <https://www.hrw.org/news/2020/06/08/uk-failing-domestic-abuse-victims-pandemic>

⁶⁸ <https://www.hrw.org/news/2020/06/08/uk-failing-domestic-abuse-victims-pandemic>

⁶⁹ <https://www.hrw.org/news/2020/06/08/uk-failing-domestic-abuse-victims-pandemic>

⁷⁰ <https://www.amnesty.org.uk/press-releases/northern-ireland-domestic-violence-all-time-high-funding-urgently-needed-frontline>

⁷¹ <https://www.cipd.co.uk/knowledge/culture/well-being/supporting-employees-experiencing-domestic-abuse>

- *Development of a domestic abuse policy and creation of an effective framework around domestic abuse support.*
- *Where an organisation has a recognised trade union, policies should be reviewed and agreed with union representatives.*
- *Employers have a duty of care for the health, safety and wellbeing of their staff and are in a strong position to create a safe and supportive workplace environment.*
- *Think about the safety/security measures that may be required.*
- *Treat everyone as an individual as everyone's situation will be different. It's important not to make assumptions about what someone is experiencing or what they need, or the gender of the perpetrator.*
- *Create open work cultures that help to break the silence around this important issue and ensure people know that the organisation will support people experiencing domestic abuse to seek help.*
- *Offer flexibility to enable people to attend counselling, legal and finance appointments, get support from professional organisations and make arrangements, for example concerning childcare and housing.*
- *Outline people's different roles and responsibilities when it comes to supporting employees experiencing domestic abuse.
For example: – HR should take central responsibility for developing a policy and procedures on domestic abuse and facilitating awareness-raising training. – Line managers should receive appropriate training on how to effectively support someone experiencing domestic abuse. They need to be clear on the practical steps outlined in this guidance to encourage and appropriately respond to the disclosure of abuse and signpost people to professional support. They also have an obligation to prioritise confidentiality wherever possible. – Supportive and empathetic employees and co-workers can assist an affected colleague in gaining confidence to seek support.*
- *Make it clear that abusive behaviour is the responsibility of the perpetrator and misconduct inside and outside of work is viewed seriously – and can lead to disciplinary action.*
- *Signpost to supportive services, charities and organisations and outline the types of support that someone might need, such as: legal support, housing support, support with childcare, support in dealing with financial abuse, specialist counselling.*

This guidance provides a wider consideration of support for domestic abuse victims within the workplace, and would enhance the effectiveness of the Bill sponsor's intended purpose for this Bill.

With regard to enhancing protections, the following potential scrutiny points arise:

If the introduced Bill is enacted, and subsequent regulations developed for introduction, what would be the preliminary view of the DfE regarding inclusion of the above-mentioned in sub-section 5.1.2, to:

- Enhance support services for those impacted by domestic abuse?
- Enhance support for migrant and BAME women in light of Section 75 protections?
and,
- Integrate key recommendations of the CIPD and Human Rights Commission (GB)?

5.2 Introduced Bill and the “Parity Principle”

The “parity principle” in relation to social security, child support and pensions, is set out in Section 87 of the Northern Ireland Act 1998. Section 87 requires the Minister [for Communities] and the Secretary of State for Work and Pensions to consult with one another in order to ensure that relevant legislation achieves, as far as possible, a single system of social security, child support and pensions across the UK. Underpinning the principle of parity is the argument that people in NI pay the same rate of income tax and national insurance contributions as those in GB, and are therefore entitled to the same benefits and rights.⁷²

However, Section 87 does not explicitly place a statutory requirement on the Minister [for Communities] to always maintain parity with GB. Rather, it places a requirement on the Minister to “consult” with the Secretary of State for Work and Pensions, in order to maintain single systems of social security, child maintenance and pensions. In more recent years, NI has deviated from parity in response to many of the UK Government’s welfare reforms. Those deviations have included, for example, the provision of Welfare Supplementary payments (to mitigate against the “bedroom tax” and the benefit cap); the funding of which is derived from the NI block grant.^{73 74}

Currently, in GB, there is no statutory leave payment offered specially to the victims of domestic abuse. If the Bill, as introduced, is enacted, a statutory payment would be available for the victims of individuals only in NI. In effect, it seems that would mean NI may have broken the “parity principle” by offering enhanced entitlements to employees and workers, not otherwise available in England, Scotland or Wales.

In addition, it seems that there would remain a risk that if the UK Government is required to restore parity in future by introducing equivalent statutory (Safe Leave)

⁷² Explanatory Memorandum to the Northern Ireland Act (1998) (Modification) Order 2009.

⁷³ Further information on Welfare Supplementary Payments is available from the NI Direct website www.nidirect.gov.uk/articles/support-for-those-affected

⁷⁴ Northern Ireland Audit Office. Welfare Reforms in Northern Ireland. January 2019. www.niauditoffice.gov.uk/sites/niao/files/media-files/Welfare%20Reform%20Report%202019.pdf

payments in GB, HM Treasury could seek to recoup the cost of doing so from the Executive's Departmental Expenditure Limit (DEL) budget. This is explained in HM Treasury's Statement of funding policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive, which states:⁷⁵

...where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the UK Government or, alternatively, decisions of UK Government departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs (e.g. if the Barnett formula doesn't apply), the body whose decision leads to the additional cost will meet that cost.

If the UK Government sought to restore parity in GB at some future date, following enactment of the Bill as introduced, it seems that the estimated liability for the NI Executive Budget per annum would be considerable. In that regard, it is noteworthy that in response to a query from RalSe regarding the potential cost to the public purse of implementing the provisions in the introduced Bill, the DfE stated the following:⁷⁶

It should be noted that, in the absence of the introduction of similar legislation in GB, the full cost of payment, without mitigation, would be borne by the NI Executive.

With regard to Safe Leave and the Parity Principle, the following potential scrutiny points arise:

It is ultimately for the Assembly to decide whether to enact the introduced Bill, which may provide a basis for the Executive to deviate from parity. When considering that matter, a number of scrutiny points should be asked, such as:

- a) What would the potential impact be on the Executive Budget if the Bill was enacted as introduced, given the number of domestic abuse incidents and crimes involving workers in NI each year?
- b) What logistical issues would arise for government departments, employers and pay roll providers, if the Executive was to depart from parity? and,
- c) What would be the in the detail of the DfE regulations, particularly in relation to the amount payable to victims and the liability to make payments?

⁷⁵ HM Treasury (2021) *Statement of funding policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive*. Page 7:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030043/Statement_of_Funding_Policy_2021_-_FINAL.pdf

⁷⁶ Email correspondence from DfE to RalSe received 3 August 2021.

5.4 Anticipated Implementation Costs

This sub-section discusses areas in which key potential financial implications could arise for the “public purse” when implementing the Bill as introduced. It does not address those costs for businesses in the private sector.

Nonetheless, it important to note at the outset; the introduction of a new statutory entitlement to paid leave for the victims of domestic violence would present financial implications for all employers, whether they are in the private or the public sector.

When relying on this sub-section, the Committee should note that the potential financial implications noted herein are not intended to provide an exhaustive list. Rather, they seek to start identifying potential implications arising from the Bill, as introduced. The Committee should also be aware that any cost estimates provided in this Paper must not be treated as actual predictions or expenditure forecasts, for reasons explained throughout the sub-section.

5.4.1 Potential financial implications: annual report

The Safe Leave Bill as introduced places a duty on the DfE to publish an annual report, if enacted. Accordingly, RalSe asked the DfE:

What potential associated costs (including budget, salary, expenses, office costs including other staff) could the Department foresee following such change to the existing legislation?

The DfE replied with two potential associated cost scenarios that could arise from the Bill, if enacted as introduced. Table 4 below outlines each:

Table 4: Summary of the DfE Response⁷⁷

Scenario	DfE Response
Scenario (a) Duty on the Department for the Economy to publish an annual report on the operation of the proposed Act.	Under scenario (a) an annual report could be produced from within the existing DfE team with responsibility for family related employment legislation. An estimated budget allocation of approximately £7,200 per year would be required.
Scenario (b) Duty to establish a section to monitor and report on compliance.	Under scenario (b) a newly established team would be given responsibility for monitoring and compliance reporting along with the publishing of an annual report. An estimated budget allocation of approximately £76,000 per year would be required.

Source DfE (2021)

Put simply, the DfE’s Scenario(a) sets out a position in which the DfE could publish an annual report on the operation of the new Act by an already established team within its existing staff complement. The additional annual budget required for this scenario, if

⁷⁷ Email correspondence from DfE to RalSe received 3 August 2021.

adopted, would be estimated at £7,200 per year. The DfE response does not provide any further breakdown for that figure. It therefore remains unclear as to whether the figure includes, for example, potential requirements relating to IT equipment or software, or publishing.

Under the DfE's Scenario (b), responsibility for monitoring and compliance reporting that could be undertaken by a newly established team could be estimated at £76,000 per year. Similar to above, the DfE response does not provide any further breakdown for this figure. It therefore remains unclear as to whether the figure includes, for example, potential requirements relating to staffing (including recruitment), IT, administration or legal.

As with all the estimations provided by the DfE in relation to the introduced Bill, there would need to be greater engagement with the DfE to clarify the assumptions and calculations supporting such estimations.

5.4.2 Potential financial implications for take-up'

The DfE also identified key potential 'take-up' related costs arising from the proposed legislative change. In response to the RaISe generic public purse query above, the DfE advised:

The potential ongoing costs for the public purse would be determined by uptake of the new entitlement and the actual earnings of those that avail of the payment. There are no available figures with which confidently to estimate uptake. Accordingly, estimated costings in the table below have been calculated using a range of uptake figures against the NI average daily rate of pay, which for 2020 is £97.

Table 5 below presents the DfE costings as various take levels.:

Table 5: DfE Estimation of Costs at 2020 figures⁷⁸

Costs at various uptake levels		
Uptake (employees)	Number of days entitlement taken	Raw cost of payments using NI average daily rate of pay 2020 - £97
500	3	£145,500.00
	5	£242,500.00
	10	£485,000.00
1,000	3	£291,000.00
	5	£485,000.00
	10	£970,000.00
5,000	3	£1,455,000.00
	5	£2,425,000.00
	10	£4,850,000.00
10,000	3	£2,910,000.00
	5	£4,850,000.00
	10	£9,700,000.00

Source: DfE 2021

The DfE response presents costs at various take-up levels. The minimum proposed annual cost is £145,500. This figure is estimated using a take-up of 500 individuals; each taking 3 days domestic abuse leave in one year. The maximum, £9,700,000 is calculated for a take-up of 10,000 individuals taking 10 days leave per year.

It is worth noting here that the DfE estimations highlighted in Table 5 are purely illustrative. This is due to uncertainty regarding future potential take-up of such leave and pay entitlements. However, to contextualise the DfE estimates in that regard, RalSe looked at official statistics for domestic abuse in NI, using published Police Service of NI (PSNI) recorded crime data for 2019-20, which reported 32,015 domestic abuse incidents in NI. That is an increase of 128 (0.4 %) on the previous 12 months; and the sixth highest 12-month period recorded since the start of the data series in 2004/05. (See section 1.1 above for 2020/21 statistics)

It also should be noted that the figures would be subject to future revision if the Bill is enacted, as introduced. This is the case with all provisional costings. For example, the DfE relies on the NI average daily rate of pay in 2020, i.e. £97 to calculate the costs in Table 5. Subsequent average daily rates of pay may be revised either up or down, as the NI labour market dictates.

⁷⁸ Email correspondence from DfE to RalSe received 3 August 2021.

5.4.3 Potential financial implications for ‘one-offs’

The DfE also provided RaiSe with information on ‘one-off’ costs to the public purse, if the Bill is enacted, as introduced. In this regard, the DfE stated:

A further cost consideration concerns the HMRC G-form platform, which is used by employers to complete statutory payments. Changes may be required to a number of online forms following the introduction of domestic abuse paid leave. On a comparable project, one-off costs were approximately £180,000.

It is unclear from the DfE’s response as to what the “comparable project” relates to. However, that amount does appear a significant one-off cost. Again, more engagement with the DfE would be required to clarify the assumptions and methodologies used in arriving at this figure.

6 Concluding Remarks

Official statistics show that domestic abuse in NI is a growing problem in NI. Domestic abuse incidents and crimes have increased each year since statistics began in 2004/05. Statistics also show an increase in domestic abuse incidents during periods of lockdown, enforced by government to curb the spread of Covid-19.

Currently, there is no statutory entitlement to paid time off for those suffering domestic violence or abuse in NI or GB. In December 2020, the Bill sponsor opened a public consultation on proposals to formulate the introduced Bill. Key findings revealed that 96% of those who replied believe that paid leave for victims and survivors of domestic abuse should be put on a statutory footing.

The introduced Bill contains provisions that empower the DfE to introduce regulations creating a right for employed individuals who are the victims of domestic abuse to be absent from work for a prescribed period (at least 10 to be set as the minimum entitlement). Entitlements are to be made available to both employees and workers. The Bill also states that this “safe” leave must be paid. Additionally, the Bill states that behaviours described in the DACP Act are to be used to define domestic abuse.

The subsequent DfE regulations, if the Bill is enacted as introduced, will require approval of the Assembly via the negative resolution procedure. In that regard, an appropriate level of Assembly scrutiny will need to be applied to those regulations, to ensure they are “fit for purpose” given NI workplace and societal needs.

The introduced Bill extends Safe leave entitlements to workers as well as employees. Employment status has been described as a gateway to various worker rights and protections.⁷⁹ And classifying correctly the status of workers and tackling misclassification are essential to ensure that individuals have access to entitlements and social protection. Therefor a smooth interaction between employment status under NI employment law and the proposed regulations to be brought forward by the DfE is essential. However, this may prove challenging particularly in cases where establishing employment status may not be straightforward, such as in the “gig economy”.

Globally, other jurisdictions such as the Philippines, New Zealand, Australia, Canada and Italy; they all offer specific statutory provisions on domestic violence leave. However, statutory paid leave is offered only in New Zealand, Canada and Italy.

In the context of this Bill, as introduced, consideration should be given to how positive human rights duties impact the development of legislation and policy for domestic abuse victims/survivors. Furthermore, consideration should be given to how the Bill enhances support services for those impacted by domestic abuse.

⁷⁹ OECD (2019) *Policy responses to new forms of work*: <https://www.oecd.org/g20/summits/osaka/g20-policy-responses-to-new-forms-of-work-OECD-2ndEWG%20meeting.pdf>

As mentioned above, currently in GB there is no statutory leave payment to the victims of domestic abuse. If the Bill as introduced, is enacted, a statutory payment would be available for victims **only in NI**. This may mean that; by offering enhanced entitlements to employees and workers, not otherwise available in England, Scotland or Wales; NI could be in breach of HM Treasury's "parity principle".

If this is the case and the UK Government sought to restore parity in GB, at some future date, (following enactment of the Safe Leave Bill), the estimated impact on the NI Executive budget could be considerable. However, ultimately it will be for the NI Executive and HM Treasury to decide if parity has been broken and what sanctions, if any, are to be deployed against NI.

The introduced Bill places a duty on the DfE to publish an annual report. The DfE estimate that the cost of producing an annual report from within the existing DfE team with responsibility for family related employment legislation, would be £7,200 per year and £76,000 per year if a newly established team were set up.

The DfE also presented annual costs for the public purse at various potential take-up levels of domestic abuse leave, assuming the Bill is enacted, as introduced. These range from £145,500 if 500 individuals each take 3 days safe leave in one year to £9,700,000 for a take-up of 10,000 individuals taking 10 days leave per year.

As mentioned earlier in this Paper, the Bill sponsor has chosen to put much of detail of the Bill into subsequent regulations that would be brought forward via secondary legislation by the DfE. On one hand, this would give DfE the freedom to devise a system that is wide ranging and forward looking, bearing in mind the human rights implications mentioned in Section 5 of this Paper. On the other hand, it places a large amount of responsibility on an unelected body to interpret the wishes of the Bill sponsor, when seeking to transpose her legislative intent via proposed regulations, and thereafter when interpreting and implementing those regulations, if enacted.