



Northern Ireland  
Assembly

Committee for the Economy

# OFFICIAL REPORT (Hansard)

Domestic Abuse (Safe Leave) Bill: Miss  
Rachel Woods MLA

24 November 2021



In 2017, a survey of 450 people in New Zealand found that, of the 60% of victims and survivors who were in full-time employment before they entered an abusive relationship, more than half lost their job during the relationship. Research has also been conducted in Northern Ireland. In 2014, a survey by the Irish Congress of Trade Unions (ICTU) that included responses from 1,734 people found that more than 80% of respondents who had experienced domestic violence reported that it affected their work performance, owing to their being distracted, tired or unwell. Roughly a third said that they were late for work. Nearly half said that they were forced to take time off work to deal with it.

ICTU's report also highlights what can happen in the most extreme circumstances. Members will be aware of these high-profile cases. The cases of domestic abuse victims who were murdered in their place of work show just how serious the consequences of domestic violence can be and that the violence can also take place on or outside their work premises. One such case is that of Clare Bernal, who, in 2005, while she was at work, was murdered by her ex-boyfriend, who was also an employee at the workplace. Another case was that of Holly Gazzard, who, in 2014, was murdered by her abusive partner at the hairdressers, which was her place of work.

In Northern Ireland since March 2020, when the first lockdown was introduced, 10 women have been killed or are suspected to have been killed by a man known to them. We all know that we have an epidemic of domestic abuse in this region, as highlighted by Women's Aid and others. The COVID-19 pandemic and the restrictions imposed to deal with it have exacerbated the problem. The PSNI reported over 31,000 incidents of domestic abuse in the last year. That is just the tip of the iceberg, as we know that many crimes and incidents go unreported. Over 19,000 domestic abuse crimes were recorded, which is the highest number since records began and nearly twice the level recorded in 2005, representing one in five of all crimes recorded last year.

The current system and the status quo of support for victims of domestic abuse in the workplace is not sufficient from the perspective of the victim and employer. For victims of domestic abuse, the threat of losing their job or vital income is a significant barrier that victims and survivors face when they attempt to seek help and support. Many do not have holidays that they can take at short notice or do not have holidays left; maybe they have already taken them throughout the year. They may be forced to take unpaid leave, utilise statutory sick pay (SSP) or leave employment altogether. Others may work shifts and be unable to get cover or to swap shifts and then become subject to disciplinary procedures.

From the perspective of employers, difficulties arise from lost output, additional costs and extra resources that are required to cover that. I draw the Committee's attention to the recent Home Office report that showed the cost of domestic abuse to businesses in England and Wales alone to be in the region of £14 billion annually. If we apply those figures very crudely to Northern Ireland, they would suggest that domestic abuse costs our economy over £400 million per year.

That is the context in which I have introduced the Bill. It will coincide with and complement the Department of Justice commencing provisions on the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, which was passed by the Assembly in January. The Domestic Abuse (Safe Leave) Bill adds legal protections and support measures for victims and survivors by giving them the right to paid time off work. Being in employment is a key pathway for people to leave an abusive relationship, and the Bill will help to prevent people losing their jobs unnecessarily. I believe that the Bill has the power to save lives. We should consider that potential in the context of everything that we discuss around it.

What does the Bill do? It creates a legal right or entitlement to safe leave for workers and employees. It inserts a new chapter 4, entitled "Domestic Abuse Safe Leave", into Part 3 of the Employment Rights (Northern Ireland) Order 1996, and that will require the Department for the Economy to make regulations entitling an employee who is a victim of domestic abuse to paid leave. The term "safe leave" is a growing international concept to describe paid time off work that is used to deal with issues relating to domestic abuse. That is why it has been used in the Bill. As the explanatory and financial memorandum (EFM) says, the Bill has a single policy objective:

*"To introduce a statutory provision requiring the Department for the Economy to make regulations specifying at least 10 days paid leave for workers/employees that are victims/survivors of domestic abuse".*

The new legal entitlement is envisaged as a day-1 right; in other words, it will not require a probationary period before the entitlement is granted. That is essential to reflect the fact that a victim or survivor does not decide or choose how and when abuse happens, and they may require support at any time. It may be a matter of life and death. The Bill also provides a non-exhaustive list of what safe

leave can be used for, which includes finding alternative accommodation, seeking healthcare and mental healthcare, obtaining social security support, protecting family members, getting legal advice and attending court. As I said, that is not an exhaustive list, and it can be expanded on.

The minimum allowance of 10 days can also be extended, but the Bill reflects the international standard of what has been implemented in other jurisdictions, such as New Zealand. So, I stress to the Committee that 10 days per year is the statutory minimum, and employers can go beyond that if they wish.

The regulations will require the approval of the Assembly. The Bill also requires the Department to provide guidance about safe leave and to report on and monitor the effectiveness of the regulations.

What does the Bill not do? The Bill is not prescriptive about the process and procedures that employees and employers will have to follow when it comes to safe leave. That is important because the picture will look very different depending on the sector and the size of the employer. When the Department brings forward the regulations, the Bill will allow the Department to have the ability to develop further detail around how the leave is taken, including any reasonable conditions, such as giving notice if required.

The Bill provides considerable scope to make supplementary provision around notices, records and procedural requirements in the regulations. However, it would not be appropriate to specify in the Bill what those requirements should be in primary legislation. That detail belongs in the regulation and in secondary legislation.

The Bill does not place any requirement on the worker or employee to provide evidence or proof of domestic abuse. That is crucial, as doing so would not only fuel a culture of disbelief that we as a society must face when it comes to victims but having a requirement of certain evidence from victims and survivors will add another barrier in accessing the leave. That came through strongly in the consultation process. It is not a requirement for employers that already have that kind of leave in place in local government, such as South Ayrshire Council, Neath Port Talbot Council in Wales or, indeed, with private-sector companies in Northern Ireland that offer that kind of leave already.

The Bill is deliberately drafted to be simple, clear and to give the Department an appropriate degree of flexibility to develop the regulations. That is important so that we can ensure that we can introduce this kind of leave as soon as possible.

What about costs? We cannot detach costs of safe leave from the benefits. We need to take both into consideration, in the same way as I spoke about costs to business and the social and human cost to victims and supervisors at the beginning of my remarks, those are all interlinked.

It will be employers' responsibility to provide safe leave, but my view, which is based on the evidence and research into the area, is that any costs associated with it will be offset by benefits. Victims and survivors are desperately trying to manage their circumstances at the moment, and, without that support, through absence, statutory sick pay, unpaid leave and so on, the status quo is costing businesses a huge amount in lost output and reduced productivity. So, whilst there will be a cost to the employer of providing safe leave, there will also be a benefit to the business in supporting that worker and employee.

In 2016, research by the Centre for Future Work at the Australia Institute suggested that only 1.5% of female employees and around 0.3% of male employees are likely to utilise paid domestic leave provisions in any given year. That same study noted:

*"The costs to employers associated with those payouts are likely to be largely or completely offset by benefits to employers associated with the provision of paid domestic violence leave: including reduced turnover and improved productivity."*

It is important to mention here that roughly 1.2 million workers in Australia have access to safe leave through their employer. The private sector has led the way in that jurisdiction, and there are now movements in the Australian Parliament to put that on a statutory footing.

The Department for the Economy has estimated some minor recurring costs, as outlined in the EFM, arising from the requirement to monitor and report on the operation of the regulations. I welcome further discussion with officials to explore whether those costs could be absorbed in existing administrative infrastructure.

Thank you very much. I am happy to take some comments, questions or suggestions from members.

**The Chairperson (Dr Archibald):** Thank you very much for that overview. You may be aware that the Committee is on record in the debates on the Domestic Abuse and Civil Proceedings Bill of being supportive of domestic abuse safe leave. That is something that the Committee will take a view on in respect of this Bill, and, hopefully, we can do that in time for next week's debate. If it passes, which I very much expect that it will, we will scrutinise it in detail at Committee Stage.

It goes without saying, but I am going to say it anyway, that it is hugely depressing that the Bill is required, but it is an actuality that many people face in their lives.

I accept the point around the cost of the Bill being offset by its benefits. There are figures that show that intimate partner violence against women costs EU member states €109 billion a year. That is huge, and we should do anything that we can to support people who are facing abuse.

I do not have many questions for you, Rachel. I assume that the minimum of 10 days' leave in each leave year would be non-consecutive.

**Miss Woods:** I support your comments about why we should not need to have this leave, but, unfortunately, we do. This kind of leave will add another layer of support for victims and survivors. The 10 days is an annual requirement in the Bill. It cannot be rolled over or accrued, and the individual would not need to take it all at once. It would be used as and when the victim or survivor required it.

**The Chairperson (Dr Archibald):** That makes sense. You might be aware that, in the scrutiny of the Parental Bereavement (Leave and Pay) Bill, the Committee made an amendment to make it a day-1 right. That is something that we would continue to support in the scope of this Bill. It is something that an employee or worker should be able to access from their first day of employment.

Have you scoped out the definition of "employee" and "worker", so that the provisions are applicable to workers as well as employees?

**Miss Woods:** Yes, Chair, we have. 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. 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.

Employment status is complicated, and I do not pretend to know all the ins and outs of employment law, but I understand that there is a basic distinction between employees and workers. That is why they have both been referenced in the Bill. It is trying to capture everyone that we can. There are some mutuality-of-obligation factors that are particularly complex. For example, 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 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. Neither am I qualified on viewing a contract to make a call. We still have the advice lines and supports, such as the Law Centre and the Labour Relations Agency, which would have a role in that. I would be fully supportive of any measures that the Committee or Department could utilise to bring this in for the self-employed.

**The Chairperson (Dr Archibald):** If the Bill passes to Committee Stage, those are points of scrutiny that we can pick up with officials, directly, and we will be happy to do that to support it through. I will bring in members for questions.

**Mr Nesbitt:** Rachel, thanks for the briefing. I am supportive. I have a couple of relatively small queries. Tell us about the consultation process.

**Miss Woods:** Thank you, Mike. We ran the consultation for eight weeks, last year. It was an online survey. We got 450 responses on the dot, which was surprising and great to see. A number of them were written submissions, but the majority were on the survey. We asked a number of questions, to which respondents were able to reply anonymously so that they could feel open to giving their personal experiences, which were eye-opening.

I am more than happy to give the Committee more information on the breakdown, if that is the kind of information that you want. On one aspect of it — the evidence and proof example — we asked, in the

consultation, whether respondents thought that victims or survivors of abuse should have to give evidence or proof to their employer. Only 32% of the people who responded felt that that would be appropriate.

Respondents raised a number of issues about communication and workplace policies. A lot of respondents talked about what they wanted to see in the Bill. About 98% of the 450 respondents supported it being made into legislation.

**Mr Nesbitt:** Rachel, my other point is this: you gave us a list of things that people could do while they are taking that paid leave, one of which was seeking social security support. How would that work? What would that be for?

**Miss Woods:** Thanks, Mike. My thinking there was as follows. If, for example, someone had to leave their home and go into the private rented sector or temporary accommodation, they may need to deal with the Housing Executive. They may also need to apply for a personal independence payment, which, as we know, is a very lengthy and difficult process. They may also need to seek advice on social security.

We tried not to be prescriptive about exactly what people can and cannot take the leave for. Domestic abuse is a very personal thing, and people will need different supports. I would more than welcome any views or suggestions from the Committee about whether things need to be added or clarified. However, we make the point that it is a very non-exhaustive list and that it should not just be used for the sorts of things that we put in the EFM.

**Mr Nesbitt:** OK. That is useful. Thanks, Rachel.

**Mr Weir:** Rachel, thank you for the presentation. Obviously, domestic abuse is a very important subject.

I want to probe with a couple of questions. You mentioned that there are a number of worked examples of how this type of legislation has been applied in other jurisdictions. It would be helpful if there were statistics, in those worked examples, of what the uptake has been in different jurisdictions. That is maybe something on which you could provide us with the information rather than responding directly today.

On the cost side of it, there are, I suppose, two aspects. To be fair, you may have provided it, but I have not seen the figures. You mentioned that the Department indicated that there would be a small cost to set up the provision in the Department. Do you have the figures for what those costs would be? I appreciate your point that, potentially, the cost element for employers will be at least be "self-washing", if you like, with whatever the saving will be. You gave us estimates of the annual cost of domestic abuse to employers, and you said that the cost to employers of your Bill would be much less. Do you have any estimates for what the direct costs would be to employers, leaving aside the fact that such costs may, if you like, be overtaken by savings?

**Miss Woods:** Thank you. Peter. I am certainly happy to provide the Committee with further information on the uptake in other jurisdictions once the Bill passes its Second Stage. *[Inaudible owing to poor sound quality.]*

**Mr Weir:** Hello.

**The Chairperson (Dr Archibald):** I think that Rachel's connection has frozen. Oh, she may be back.

**The Committee Clerk:** We have lost her connection.

**The Chairperson (Dr Archibald):** She may have knocked her camera off. Rachel, can you hear us? Can we bring Rachel back into the spotlight? Is she still there?

**The Committee Clerk:** She has reappeared down at the bottom. If you bring her back up, hopefully, that will —. There we go.

**Miss Woods:** Thank you, Chair. I do not know what happened there. Apologies, Peter. I was in mid flow. *[Laughter.]* I am more than happy to provide the Committee with information about the uptake in different jurisdictions, assuming that the Bill passes its Second Stage. That is not a problem at all.

The cost to the Department and the Executive is in the explanatory notes. The Department's estimate for producing a report on the operation of the Act is £7,200 per annum, and the cost of establishing a section to monitor compliance would be £76,000 per annum. As I said, I would welcome further discussions with the Department to see whether those costs could be absorbed by the existing administrative infrastructure and anything that the Department is reporting on already.

As you said, there will be costs to employers and businesses. As I said, they will vary considerably, depending on the size, the staff numbers and the sector, but we have to consider it alongside the benefits; it cannot be looked at in isolation. It will depend on staff size and uptake. However, it is very difficult to quantify direct costs because there are already costs there. It cannot be drawn directly from estimates or the prevalence of domestic abuse across society because not all victims will take that leave. We have seen in other jurisdictions, such as Australia and New Zealand, that, although the prevalence is very high, the number of people taking the leave is quite low. We have to look at that in terms of uptake. We know that 100% of employees in the Civil Service, for instance, will not take that leave. That is not going to happen. Based on evidence elsewhere, it is something that only employees who really need it take. I gave the Australian example earlier: in 2016, out of a study of 1.5 million people who had access to the leave, only 1.5% of female employees and 0.3% of male employees took it.

When the councils that we spoke to in Wales and Scotland that have this in operation were discussing a policy for approval, they anticipated no additional cost for introducing that leave as it would just be managed from other budgets and other types of leave. The costs to employers associated with paid leave and introducing that are likely to be completely offset by the benefits, including less sick absence, improved productivity, less reliance on agency workers and so on. The costs, as we know, of domestic abuse to the economy and society are significant. Even a single reduction in prevalence or incidence resulting from statutory provision would outweigh any direct and immediate costs to employers. As I said, it is very difficult to quantify, but we have seen from the countries and jurisdictions that have this in law already that there have been no additional costs to employers.

**Mr Weir:** There is another point that I want to probe. I appreciate the broadly sensible approach of establishing a range of principles. Quite often, departmental Bills and private Members' Bills, essentially, put a marker down — it is, to some extent, paving legislation — and some of the detail will be put forward in regulations. That is not unusual.

I appreciate that there are good arguments about having a qualifying mechanism for it, and that there are downsides to and problems with having to provide proof in that regard. Do any of the bodies or organisations etc in the worked examples have a qualifying mechanism? To play devil's advocate, although it is important that support is given to those who are suffering domestic abuse, there would be a slight worry about some individuals in the system. If it is simply a question of saying, "I want this leave", and absolutely nothing is required to qualify for it, might individuals abuse the system and try to take advantage of the provision, as happens in many aspects of life, or is there a mechanism by which to say, "Here is the thing needed to qualify for this entitlement"? Are there any examples from elsewhere of qualification being required, even if that is not particularly proof? How would you stop an individual from simply trying to take advantage of this and abusing the system, as, unfortunately, we sometimes see on different points of employment law? A few people will always try to exploit any situation. The danger is that that would create problems for the vast majority who are genuine victims.

**Miss Woods:** Thank you, Peter. We discussed that with the two councils in the UK that have introduced this. Without saying that it is a very simple tick-box exercise, line managers and HR have a big amount of discretion when an employee comes to them to ask for leave. As you noted, we have not put that in the Bill. We have not put it in primary legislation, but it will come in regulations. It is important that the regulations are clear for employers and employees. On the level of detail, as you said, it would not be appropriate to be prescriptive about exactly how it works for each business, because it will work differently for an SME with 10 employees than it will for a business with two employees or for the likes of the Civil Service.

The regulations in the Bill may require the employee to give notice, if it is appropriate or applicable to do so. A victim of domestic abuse does not choose when or if this happens: it could happen on the morning of work or the night before. If it happens on the morning of work, you will not be able to give a

week's notice to take that kind of leave. There are flexibilities in there. It is to be a reasonable request that respects the rights of employers. A minimum standard needs to be set.

In the likes of Danske Bank, which has this, there is no requirement for proof or evidence. In New Zealand, there is no requirement for proof or evidence to be given. In the consultation, on the culture of disbelief, it came through very strongly that a requirement for victims to give a certain level of evidence or proof to managers or to an HR department would put them off. We have absolutely no evidence of anybody abusing this system since it has been introduced in other jurisdictions. There was not one discussion or piece of evidence about that.

We discussed, within the team and with other people, whether it could be done with a simple self-certification form, like we use for SSP. I encourage the Department to look at that sort of thing in consultation with victims and survivors, employers and the Labour Relations Agency. Like any other leave, this falls under employment law. Anybody who abuses any form of leave or anything like that is subject to tribunal. All those processes are in place, but we have absolutely no evidence of any of this being abused since it has been introduced elsewhere.

**Mr Weir:** OK. Finally, on how prescriptive the legislation is, there is a need to tease out some of the detail, which is where regulations will come into play. There is a balance to be struck between the employee who is potentially a victim of abuse and the employer. The more certainty that we can give to both sides, at the soonest possible opportunity, the better. Employees and employers like certainty. That is more of a comment than a question.

**Mr O'Toole:** Thank you. I do not know whether you are willing to confirm this, Rachel. My understanding is that, if I wanted to claim paternity leave as opposed to shared parental leave, for example, I would not need to bring in demonstrable proof that my partner is expecting a child, such as scans or forms from the hospital. There are other social thresholds that limit the likelihood of someone fabricating information to their employer about certain situations, such as having a child or being subjected to domestic abuse.

My question is connected to that. Did you find in your consultation that how this works will always partly depend on the level of information that is given to employees but also to employers. If you are Danske Bank, Sainsbury's or the Civil Service, for example, and have a big HR function, information will be internalised. I am supportive of the principles of the Bill. However, if it became law, what would be best practice for socialising or spreading the information, particularly among small employers and employees generally?

**Miss Woods:** Thank you, Matthew. Are you asking whether I see there being an awareness-raising campaign and things like that?

**Mr O'Toole:** Yes, exactly.

**Miss Woods:** Absolutely; without a doubt. I have worked at length on domestic abuse legislation, the Protection from Stalking Bill and so on. There will have to be public information on the new offences that they create and so on. In this Bill, there is a requirement for the Department to publish guidance for all employers and business, regardless of size, and have engagement with the unions, which I have done throughout the process. Discussions are already taking place, and the Civil Service has just introduced new policies. Those are the sorts of things on which information would have to be put out. That is where the guidance comes in. I would be very open to, and definitely supportive of, public information campaigns for employees and employers on their rights.

**Mr O'Toole:** Great. You mentioned the Australian example and the relatively small take-up there. Is the information detailed enough to suggest that that small take-up shows that the provision is working because it applies only to a tiny number of employees — albeit not a small enough number given that we know that there is an epidemic of abuse happening — or is lack of awareness a factor in the low take-up? I do not know whether the information that you have answers that question.

**Miss Woods:** Thanks, Matthew. In Italy, an employee can take off up to three months, basically for any reason that they require it. The take-up in Italy is extremely low because there is a lack of awareness of it. They do not call it "safe leave", but it looks extremely generous in comparison with the provision in the Bill. It can be taken for a variety of reasons. I do not have the level of detail to tell you whether the take-up is low due only to a lack of awareness. I am more than happy to go back and look at the research to see whether that is in there; I do not have that information. In New Zealand, as I

said, not every employee has suddenly rushed to take time off. People are aware of it in New Zealand due to a huge public-awareness campaign there, but it took a long time to get through.

Lack of data is a problem. I would be willing to work with the Committee to ensure that that data is collected. That is why I have included a reporting requirement on the effectiveness and, if possible, the uptake of the leave. I appreciate that, sometimes, reporting on uptake can be problematic, especially if numbers are so low that we might be able to identify people. There are a lot of information and GDPR issues there, which is why we put the reporting requirement in the Bill. We have seen that implemented elsewhere. In Italy, uptake is low because awareness is low.

**Mr O'Toole:** OK. Thanks, Rachel.

**Mr Dickson:** Thank you for your presentation, Rachel. We met the other day, but I will just confirm that we are very supportive of the Bill and its objectives. I have a number of questions on it. As you have clearly explained, the Bill sets out the principles of domestic abuse safe leave. It is not prescriptive as to how that is interpreted on the ground by employers, which is the right approach. From my perspective, having worked in the Labour Relations Agency for 30-odd years, it is right to come at a Bill from that direction. However, on the assumption that the Bill passes, it will move to the next step, presumably in the next mandate, and the Department will have to implement it. That will be done by regulation and codes of practice.

Some of the conversations that you have had with members this morning have been about what may be described as large employers and employers in the public sector. For many years, I have been concerned about lots of employment law. By and large, it is well implemented across the UK by the types of employers that we have been talking about; the difficulties are with small employers. Many of them want to get things right, but, equally, there are many for whom employment law is a nuisance and something that they have little interest in and, in fact, try to avoid on as many occasions as they can. I want to tease out a little more information on that.

We have just gone through the Parental Bereavement (Leave and Pay) Bill. Some areas of that involve confidentiality; for example, we hope to include a right to confidentiality around miscarriage. Some people will not be comfortable if they know that lots of people are aware of their personal circumstances. However, in this case, being aware of the personal circumstances of somebody who is in an abusive relationship is not just about embarrassment and personal upset, as those circumstances are potentially life-threatening. Therefore, I hope that some reference will be made to having a higher standard of confidentiality and, indeed, penalties for breach of confidentiality. You do not want water-cooler conversations like, "Did you know about so-and-so and why they are off?".

I would like to hear your reaction to some of that.

**Miss Woods:** Thank you, Stewart. I appreciate that; absolutely. This draws us into a wider conversation that everybody needs to have about what are, and what are not, appropriate conversations in the workplace. Confidentiality is extremely important. I encourage the Department to be mindful of that in developing the regulations. The Committee might like to look at having something on that in the Bill. I have no issue whatsoever with exploring that further. Under new article 112EE, in "Chapter 4: supplemental", the Bill's current provisions state that the regulations may:

*"(a) make provision about ... procedures ...*

*(b) make provision requiring employers ... to keep records;*

*(c) make provision for the consequences of failure to give notices, to keep records or to comply with other procedural requirements".*

In my view, the Bill gives the Department considerable scope to ensure that regulations include a provision for keeping all employee records confidential and to set out minimum standards or procedural requirements. However, again, if the Committee wants to see specific wording in the Bill to try to reflect or encompass the need for confidentiality and to prevent the water-cooler conversations that you referred to, I am more than happy to look at it.

In the research that we have done and in looking at where safe leave has been introduced in other jurisdictions, councils and companies, I have not come across, nor am I aware of, any example of breaches of confidentiality or leaked personal information. I fully appreciate the differences between a

large-scale business, which has an HR department, different line managers and so on, and, say, a cafe or a small corner shop down the road. We have a bigger job of work to do to ensure that all businesses of any size have domestic abuse workplace policies and that they understand domestic abuse and how it affects the workplace. We discussed that in Committee when we were looking at the Domestic Abuse and Civil Proceedings Bill. I know that the Economy Minister is to introduce changes in employment, employee and industrial relations, and I assume that that will be done in the next mandate. These issues are all interlinked.

To answer your question on confidentiality, I am very much open to having that in the Bill should the Committee feel that it is not covered in the supplementary legislation. We did look at whether we could put workplace policies in primary legislation; we cannot. However, we would encourage every business, every employer and every employee to make themselves familiar with domestic abuse and how it affects staff.

**Mr Dickson:** Thank you, Rachel.

**Ms Sugden:** Thank you, Rachel. You will not be surprised to hear that you have my full support in what you are trying to do. I applaud you for the work that you are doing. This is another step in not only protecting victims of domestic abuse but sending out the message that this is one of the most prevalent issues in our society. We need to look at it in all its aspects and how it impacts not just in the home but throughout our lives, including in the workplace.

Some of my comments and questions follow on from what other members have said. I come back to the comments on a form of certification. From my perspective, that is not necessarily about proving that it is happening but about keeping a paper trail that might, in itself, protect the employee as well as the employer. I am thinking about other similar legislation. I did not know that Stewart had worked for the Labour Relations Agency. That is very useful to know, and he might be able to advise. If someone works in a workplace for less than a year, their rights are limited up to that one-year mark, except in the case of, I think, flexible working. Where an employee asked for flexible working and was denied that and, before that year was up, they had their contract terminated, the decision not to allow them to have flexible working could equip them to take an unfair dismissal case at a tribunal. In this case, I am concerned that, if there is no paper trail, the request for safe leave could bring about an unfair dismissal. I am trying to understand it from the point of view of employment law and to ensure that there is a paper trail to protect the employee against bad employer practices. Even from an employer's perspective, because this is limited to 10 days, there will need to be some sort of record to ensure that they are giving the right type of leave.

You said that this will go hand in hand with other types of absences from the workplace. Domestic abuse can cause sickness-related absences. At what point is it sick leave and at what point is it safe leave? That also gets muddled with statutory leave and contractual leave. As an employer, I am trying to think through all the different issues and about how we can ensure that we are doing this right and that it will not give rise to any complications.

Practically, what does this look like on the ground? Maybe you have already answered that insofar as you said that it will be up to each workplace to develop its own workplace policy or regulations. Will it just be a matter of an employee saying that they need safe leave, or will they somehow have to explain what that means, verbally if not in the form of a written self-certification? You already mentioned that there is no qualifying period, so the person does not have to be in employment for six months to a year before they are eligible for that type of leave.

The other issue is data. The data on how many people request this type of leave, and how many do not, could be of wider use on domestic abuse and its prevalence in Northern Ireland, because, as we know, non-reporting is as much a part of the picture as anything else is.

My last question is this: did anything come out of the consultation that we could potentially work towards but which you did not put in the Bill, because you felt that it would not get support? Thank you.

**Miss Woods:** Thanks, Claire, for your comments. I will go in reverse order. On what came out of the consultation and what we have not looked at, I mentioned the need to make sure that flexible working is provided for. We cannot do that through the Bill. We also cannot legislate through primary legislation to ensure that every business or employer has a workplace policy. That is policy rather than legislation. Those are two aspects that came through from the consultation responses. I have no issue

whatsoever with the Committee looking at those. We tried to put forward a Bill that we feel is balanced with the article 1 rights from employer to employee and one that we can progress.

Another thing that came through from the consultation was that a lot of people — I cannot remember the percentage off the top of my head — thought that it would be much better to make provision for more than 10 days. That is why we have put it in the Bill that 10 days is the minimum rather than the maximum. The Department must produce regulations that provide for a minimum of 10 days. One example given to me during the week was, "What if someone has taken 10 days and needs one more?". Whether they can take another day is at the employer's discretion. It is not saying to the employer that it is 10 days only; that is the statutory minimum.

**Ms Sugden:** Rachel, would that be pro rata, based on working hours or anything like that?

**Miss Woods:** No.

**Ms Sugden:** OK.

**Miss Woods:** On reporting and monitoring, we put in a provision that the Department has a role to report on and monitor the take-up of the leave. That would necessitate data collection. You will be aware of, and I have been talking for the guts of a year about, how important data collection and reporting are in addressing domestic abuse. If we do not know what we are dealing with, how can we respond appropriately to it? I completely agree with your comments. That is why it is in the Bill that the Department must report on and monitor it. The costs for the Department in the EFM are for those two things.

On what it will look like on the ground, we have not been specific, because, again, it will differ from a corner shop to the Civil Service. One of the councils that we spoke to about how it works said that an employee or worker will give notice or speak to their line manager. There is a lot of discretion in that council, because it has a very robust workplace policy on domestic abuse, and a lot of training has been done with line managers. For example, during the pandemic, a member of staff did not feel safe at home. That is understandable, because we know that home is not always a safe place and that a lot of domestic abuse happens in the home. The council was able to implement a policy for that member of staff to work in the council offices. Yes, it was during the pandemic, but, for them to be safe in the workplace, that meant their going to the office. There was a lot of discretion. No records were kept to say, "This person said this and this person said that". Again, the line managers and the HR department used their discretion. It was taken as domestic abuse safe leave but recorded differently. We have to remember that a lot of perpetrators control victims of abuse financially and economically. They may look at payslips, and we do not want them to see "domestic abuse safe leave" written there. That is the kind of flexibility that the Bill, by not being prescriptive, allows. I actively encourage the Department and Committee members to look at that. We do not have to have this written down on payslips as "safe leave". It could just say "leave" — or not; whatever way it can be recorded.

In answer to your question about a paper trail, under chapter 4, there must be records. It is subject to the usual and standard employment processes on leave and employers. As employers and as MLAs, we all know that we have to keep records. Those are the kinds of things that we have to keep confidential and secure, and, if there are any issues there, they are subject to contractual agreements. I am sure that Mr Dickson will be able to give me much more information — his background was news to me, and it is very useful to have — about how that works and the processes by which employees and workers can seek advice. All of that still stands, because the Bill is inserting new provisions into the Employment Rights Order rather than being a stand-alone Bill. It is already subject to all those processes.

I hope that that answers your questions.

**Ms Sugden:** Yes. I want to come back to flexible working. Why can that not be put into the Bill? I would not want this to be used against someone to get rid of them after a year because they have taken quite a lot of time off. An employer might say, "This is just not working out" and give another reason as to why that is the case. The individual might say, "I asked for this form of flexible working", or "I asked for this to happen, and I feel like I have now been victimised in respect of my ongoing employment".

**Miss Woods:** Again, because this is amending the Employment Rights Order, those [*Inaudible owing to poor sound quality*] tribunals, all those complaints processes and that kind of thing.

You asked about flexible working. Claire, I will get you some more information on this, but flexible working comes under umbrella employment legislation. I do not think that, under the scope of the Bill, we can introduce flexible working just for this rather than amending the entire Employment Rights Order to introduce flexible working. Flexible working is obviously an umbrella right for all employees to access after certain times. It has been quite a while since I looked at it, but I do not think that we could introduce flexible working just for this specific issue without addressing the whole matter of industrial relations or employment relations. I will come back to you on that.

**Ms Sugden:** That is really helpful, Rachel. I am not even entirely sure if it is prescriptive on what flexible working is and whether it includes other types of arrangements, or even this one specifically, or whether it is wide or general enough to do it anyway. I appreciate that. Thank you.

**Mr K Buchanan:** Thanks, Rachel, for your answers so far. Members have covered a lot, and you have covered a lot in your responses. I have one question about the definition of a victim in the Bill. How far does that definition go? In a dwelling, you could have five victims — indirect or direct victims — so what is your interpretation, in the Bill, of the definition of a victim? Your mother or father could be the victim, technically, but the son or daughter who lives in the same house could also be a victim. How far does that go in the Bill?

**Miss Woods:** In the Bill, the victim and survivor is the employee or worker. To determine eligibility for safe leave, the Bill defines a victim of domestic abuse as someone who is subjected to abusive behaviour as described in the Domestic Abuse and Civil Proceedings Act 2021, which contains the definition on what amounts to domestic abuse. Safe leave is a protective measure for employees and workers. What can it be used for? With some victims of domestic abuse, children are involved, and that is also covered in the Domestic Abuse and Civil Proceedings Act. You could use your 10 days for child contact orders, for going to court and so on. It is basically whatever the employee and a worker requires this leave for in relation to domestic abuse. It is not related to the domestic abuse offence, as defined by the Act, because that must consist of abusive behaviour on two or more occasions. It is a protective measure. It might be used after a single incident: "I need to get out of here; my life is at risk", or, "Something has happened to my child", or, "Something has happened, and I need to go to court", or, "I need to speak to Women's Aid or the Men's Advisory Project", or something along those lines. It is not for the Bill to determine what kind of incident falls under the ambit of what can be described as abusive behaviour. That is set out in the recently passed Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.

**Mr K Buchanan:** I will follow on from that. If a lady or gentleman was the direct victim — we will use that terminology, Rachel — of domestic abuse, there could still be children in the house who are workers. The Bill is angled towards the direct victim rather than the indirect victim. They are all victims.

**Miss Woods:** They are, yes. The purpose of the Bill is to cover leave entitlement for the employee or worker.

**Mr K Buchanan:** Technically, that would be the direct victim.

**Miss Woods:** Yes, as long as they are the employee or worker. For example, if there has been domestic abuse in a household, and there is a 17-year-old there who is also working, they are counted as a child and can also avail themselves of the leave. The Bill covers the employee or worker. You would not have a situation in which the children avail themselves of the leave, unless they were an employee or worker.

**Mr K Buchanan:** Let us say that they are not children and that they are aged 20 or 21. Could they still avail themselves of this? They are in the workforce. Their mother has been abused. The mother is the direct victim. Can the children — they are not children; we will call them young adults — avail themselves of the provisions of the Bill?

**Miss Woods:** Yes.

**Mr K Buchanan:** You could call them a direct victim or indirect victim, if you want to use that terminology. It is probably the wrong terminology, but we will use it. A direct victim and an indirect victim of domestic abuse who live in the same dwelling can avail themselves of the provisions of the Bill, as long as they are employed.

**Miss Woods:** Yes. The Bill is not prescriptive about where one lives. It is about a victim of domestic abuse who is subjected to the abusive behaviour described in the Domestic Abuse Act. That covers a wide range of relationships and breakdowns. A 21-year-old, living in the same house as their abusive parent or an older sibling who was abusing another sibling or their mother or father or both, would be covered, should they need to go and get mental healthcare or to take time for any of the other issues that we have covered in discussing why safe leave would need to be taken by an employee or worker.

**Mr K Buchanan:** I appreciate that. Thank you, Rachel.

**The Chairperson (Dr Archibald):** Thanks, Keith. You made an interesting point that we might want to explore a wee bit more with officials in order to understand the definition and how it applies to people, while, obviously, accepting what you have said about that, Rachel. Is there scope for that to be made a bit more explicit?

**Miss Woods:** Should the Bill pass Second Stage, I will be more than happy to explore anything that the Committee feels needs to be made explicit in it.

**The Chairperson (Dr Archibald):** That is useful. Rachel, thanks for the briefing. It has been informative. As you have noticed, I am sure, there is broad support from the Committee for the aims of the Bill. I will, hopefully, make a contribution on behalf of the Committee to the Second Stage debate, reflecting the discussion that we have had this morning. Members will speak on their own behalf too.

**Miss Woods:** Thank you, Chair, and, once again, I thank the Committee for its time today and for all members' comments, questions and suggestions. If you feel that I could provide anything else for you, please do not hesitate to write to me.

**The Chairperson (Dr Archibald):** Thank you.