

DOMESTIC ABUSE (SAFE LEAVE) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by Rachel Woods MLA (“the Member”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where any part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Domestic Abuse (Safe Leave) Bill proposes to introduce a statutory provision of at least 10 days paid leave in each leave year for workers/employees that are victims/survivors of domestic abuse. In recognition of its importance, the Bill makes this a ‘day one’ right, preventing any qualifying period of employment being allowed under the regulations required to be made by the Department for the Economy.
4. Domestic abuse is a workplace issue. The Member notes research continually highlights the impact of abuse on workers/employees, who face a range of practical concerns when attempting to seek help and support. From the perspective of employers, these difficulties then result in lost output, additional costs, and the need for additional resources. Many victims/survivors of domestic abuse do not have any leave from work available to them, or flexible working within their contracts, when they need it. They may also have to contend with working patterns that cannot be altered. The threat of losing their job, or losing vital income, are significant barriers that victims/survivors face when they attempt to seek help and support.
5. Safe Leave is paid leave from work that can be used by a worker/employee who is a victim/survivor of domestic abuse. Providing a statutory entitlement to Safe Leave will address the inequality between workers/employees who have access to a form of special paid leave to help them deal with issues related to domestic abuse, and those who do not. Safe Leave can help mitigate some of the barriers that

- victims/survivors face when attempting to seek help and support. It can also help address some of the costs of domestic abuse for employers.
6. The Member is aware that other jurisdictions around the world, including Italy, Canada and New Zealand, have now introduced statutory provision for Safe Leave. In the UK, some private sector companies, such as Vodafone and Danske Bank, have introduced policies that include paid leave for employees affected by abuse; and two local authorities, South Ayrshire Council in Scotland, and Neath Port Talbot Council in Wales, have introduced Safe Leave. In the Republic of Ireland, the Minister for Children, Equality, Disability, Integration and Youth in a written answer on 6 July 2021 stated ‘The issue of domestic violence leave is currently being studied by officials in my Department, including the examination of domestic violence leave at international level, the identification of best practice and the development of a suitable model for rollout in Ireland’.
 7. The Domestic Abuse (Safe Leave) Bill has a single policy objective:
 - a. 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 in each leave year.

CONSULTATION

8. The Member conducted a consultation exercise over an eight-week period from 1st December 2020 to 29th January 2021. The Member also shared her legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.

OPTIONS CONSIDERED

9. **Option 1:** Do Nothing.
10. **Option 2:** Introduce and enact a Domestic Abuse (Safe Leave) Bill to introduce a statutory provision of at least 10 days paid leave in each leave year for workers/employees that are victims/survivors of domestic abuse.

The Member is aware of a number of positive moves by a range of employers to institute Safe Leave. However, the Member notes that primary legislation is the only mechanism to ensure a comprehensive right to Safe Leave is implemented. This Bill therefore seeks to institute this within the existing framework of the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”) and anticipates the passage of the Parental Bereavement (Leave and Pay) Bill. The objective is to put in place a complementary scheme which will work within established employment law in Northern Ireland.

Following consultation and deliberation, the Member considers that primary legislation is the mechanism by which to achieve the policy objectives of the Bill.

OVERVIEW

11. The Bill amends the 1996 Order to introduce an entitlement to paid “safe leave” for victims of domestic abuse.
12. The Bill has 6 clauses and no schedules. A commentary on each of the clauses follows below:

COMMENTARY ON CLAUSES

Clause 1 Safe leave for victims of domestic abuse: inserts a new Chapter 5 into Part III of the 1996 Order, entitled Domestic Abuse Safe Leave.

New Article 112EG requires the Department for the Economy to make regulations entitling an employee who is a victim of domestic abuse to be absent from work on safe leave in accordance with the provisions of the Order. Safe leave is paid leave designed to be used by the employee to deal with issues related to domestic abuse. Paragraph (4) gives a non-exhaustive list of the things safe leave might be used for. Paragraph (5) ensures that employees will be entitled to at least 10 days of safe leave in each leave year. The regulations will make supplementary provision. The regulations will require approval of the Assembly (**Clause 1(2)**).

New Article 112EH makes provision to protect the rights of employees on safe leave. In essence, 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.

New Article 112EI allows the regulations introducing safe leave to make provision about redundancy and dismissal during a period of safe leave.

New Article 112EJ allows the regulations to make provision for a remedy or means of enforcement for a failure to comply with any provision in the Bill. Provision may, in particular, include recourse to an industrial tribunal.

New Article 112EK extends the provisions of the new Chapter to workers (who are not employees).

New Article 112EL allows the regulations introducing safe leave to make supplementary provision.

Clause 2 Reports: requires the Department for the Economy to publish a report after the first year of commencement, and every three years thereafter, about the operation of the regulations introducing safe leave and lay a copy in the Assembly.

Clause 3 Guidance: allows the Department for the Economy to issue guidance about the implementation or application of the regulations introducing safe leave.

Clause 4 Power to make consequential etc. provision: provides for consequential amendments to other relevant legislation and allows for amending primary provisions. Regulations to amend primary legislation will require Assembly approval.

Clause 5 Commencement: provides for commencement of the Bill, mostly in accordance with provision to be made by the Department for the Economy.

Clause 6 Short title: sets the short title.

FINANCIAL EFFECTS OF THE BILL

13. In relation to the cost implications of the Department for the Economy producing an annual report, the Department estimates costs would be between £7,200 per annum to report on the operation of the Act and £76,000 per annum to establish a section to monitor and report on compliance as envisioned in the Bill. The Member welcomes further discussion with the Department on the scope of their costings and absorbing any potential costs relating to staffing (including recruitment), IT, administration or legal issues.
14. The substantive core of this Bill will be the employers' responsibility to provide paid leave. It is the view of the Member in charge that any financial implications for employers and government will be offset by associated savings, increased productivity and a reduction in other types of leave being taken.

HUMAN RIGHTS ISSUES

15. The Member is satisfied that the Bill is human rights compliant.

EQUALITY IMPACT ASSESSMENT

16. An Equality Impact Assessment has not been undertaken, as communications between the Member and the Equality Commission for Northern Ireland, and legal advice the member has received, did not identify any equality implications for the Bill. Therefore, it is not considered the Bill will have an adverse impact on any of the groups identified in Section 75 of the Northern Ireland Act 1998.

LEGISLATIVE COMPETENCE

17. At Introduction, the sponsor of the Bill, Miss Rachel Woods MLA, had made the following statement under Standing Order 30 of the Northern Ireland Assembly:

“In my view the Domestic Abuse (Safe Leave) Bill would be within the legislative competence of the Northern Ireland Assembly”.

SECRETARY OF STATE CONSENT

18. It is considered the Secretary of State's consent under section 8 of the Northern Ireland Act 1998 is not required for this Bill.