

Advice to Government: Department for the Economy consultation on the Domestic Abuse (Safe Leave) Act 2022

Introduction


The Office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland (NI). Under Articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people up to 18 years, or 21 years, if the young person is disabled or was in the care of social services. In determining how to carry out his functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY has previously presented to the Committee of Justice and submitted advice to government in relation to domestic abuse and violence, which is a key children and young person's rights issue, and welcomed the passage of the Domestic Abuse and Civil Proceedings (NI) Act 2021 (with caveats). We also welcome the roll out of Operation Encompass to schools and educational setting across NI to ensure that information sharing and relevant safeguarding measures are taken when a child has been an alleged or victim to a domestic abuse incident or crime. NICCY also welcomes the recent launch of the Ending Violence Against Women and Girls Strategy by the Executive Office in September 2024, and sees Safe Leave as an integral part of support available for victims of domestic abuse. We also remain concerned about the rate of femicide in NI, which is one of the highest Europe.

In responding to this consultation, NICCY will be providing answers to relevant individual questions and encourages the Department in commencing the regulations, to also consider them from a children and young people's rights perspective.

Children and young people's rights

There are a number of key UNCRC Articles in the context of domestic abuse, as well as on their employment, and in ensuring that parents and caregivers are supported in ways that benefit the child or young person's wellbeing, as follows:

- Article 3: Best interests of the child;
 - Article 19: Protection from all forms of violence;
 - Article 27: Adequate standard of living;
 - Article 32: Child labour and working conditions;
 - Article 39: Rehabilitation and recovery from abuse.
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The Council of Europe holds that domestic violence violates the human rights of children and has a harmful effect on their development. Domestic violence is a violation of children's rights whether they are victims themselves or witnesses of domestic violence in the family. Exposure to domestic violence denies children of their right to a safe and stable home environment. Domestic violence against children has many different manifestations and can be in the form of sexual violence, physical and/or psychological violence.¹

The Istanbul Convention requires States parties to prevent violence against women and children, protect victims and prosecute the perpetrators. The Convention introduces a number of criminal offences for physical, sexual and psychological violence for which harsher sentences are required when the offence is committed against or in the presence of a child. The Convention also protects witnesses and obliges States to protect and support child witnesses of violence by providing age-appropriate psychosocial counselling and ensuring that all supportive measures are based on the best interests of the child. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) monitors the implementation of the Convention by assessing the different measures taken by States parties. In December 2023, NICCY submitted evidence and recommendations to the GREVIO Committee for their Parallel Report for the Baseline Report in Monitoring the United Kingdom.²

The UN Committee published its Concluding Observations in June 2023. A number of areas relating to domestic abuse and its impact on children and young people were identified. The Committee welcomed the various legislative and policy measures to combat violence against children, including the adoption of the Domestic Abuse Act (NI) 2021, but remains seriously concerned about:

- The high prevalence of domestic abuse, sexual exploitation, gender-based violence and other forms of violence against children, including in alternative care, and insufficient measures to investigate such cases and bring perpetrators to justice;
- Insufficient measures to identify and support children at risk of violence at home; and
- Inadequate resources allocated to related services for child victims.³

The Committee urged the UK State party to ensure that child protection systems take a child rights-based approach to preventing and addressing cases of abuse and neglect,

¹ Council of Europe, 'Domestic Violence' (Available at: [Domestic violence - Children's Rights \(coe.int\)](https://www.coe.int/en/web/domestic-violence), accessed on 2/9/24)

² NICCY, 'Submission to GREVIO Committee' (2023) (Available at: [Submission to the GREVIO Committee - Niccy](https://www.niccy.org.uk/submission-to-grevio-committee), accessed on 2/9/24)

³ UNCRC, 'Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland : Committee on the Rights of the Child' (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](https://www.unhcr.org/refugees-and-asylum-seekers/2023/11/23/concluding-observations-on-the-combined-6th-and-7th-periodic-reports-of-the-united-kingdom-of-great-britain-and-northern-ireland) :, accessed on 5/9/24)

including psychological violence, that social services and other mechanisms for identifying and supporting children at risk of violence and child victims of violence are adequately resourced and that child victims are fully recognized as victims and have access to community-based trauma care and child-sensitive support services. It also made recommendations in relation to investigation and intervening in cases of violence against children including domestic abuse, data collection and resourcing and the provision of adequate support and training.

Domestic Abuse (Safe Leave) Act (NI) 2022 consultation

This consultation seeks to inform the public about the Department's intention to introduce regulations, under and in accordance with provisions of the Domestic Abuse (Safe Leave) Act (NI) 2022, to entitle employees and workers, who are victims of domestic abuse, up to 10 days paid safe leave in each leave year for the purpose of dealing with issues related to that abuse. NICCY is disappointed that no children and young person's version of the consultation has been published and encourages the Department to engage with children and young people as part of this process.

The Domestic Abuse (Safe Leave) Act (NI) 2022 does not differentiate between those employees who are children or young people. Young people are more likely to be facing insecure employment roles, contracts, and working protections. For example, figures from thinktank the Work Foundation suggest under-25s are five times more likely to be on zero-hours contracts than older workers. Over one in 10 young workers aged 16-24 years old (13%) are on zero-hour contracts, compared with 2.2% of workers across older age groups. According to the research conducted by Lancaster University, the number of working people on zero-hour contracts increased by 136,000 from 2022 to 2023.⁴ Around one in ten people in NI are aged 16-24 (11%) with just over half (112,000) economically active, with around 95% employed.⁵

In the Equality Screening document produced alongside this consultation, the Department has asserted that 'there are no anticipated different needs, experiences and priorities as a result of this policy with regards to this category' within the 'age' category. NICCY advises that this be reconsidered given the differences in employment type that many young people have and how the young people who are working and employed will understand their new right, and how and if they can access it.

NICCY supports the implementation of Safe Leave for victims and survivors of domestic abuse and urges the Department to prioritise the implementation of Safe Leave to protect and promote the well-being of children and young people affected by domestic abuse, directly and indirectly. We note that there has been no children and young

⁴ Martin, A., et al, 'Zero Choices: Swapping zero-hour contracts for secure, flexible working' (2024) (Available at: [Zero Choices: Swapping zero-hour contracts for secure, flexible working \(lancaster.ac.uk\)](https://www.lancaster.ac.uk/research/zero-choices-swapping-zero-hour-contracts-for-secure-flexible-working/), accessed on 2/9/24)

⁵ Department for the Economy, 'Young People Inequalities in the Northern Ireland skills system' (Available at: [Young People Inequalities in the Northern Ireland skills system - accessible text version | Department for the Economy \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/young-people-inequalities-in-the-northern-ireland-skills-system-accessible-text-version/), accessed on 2/9/24)

people's version of the consultation produced, and no Children's Rights Impact Assessment undertaken, which we urge the Department to conduct. NICCY is happy to engage further with the Department in relation to any further information required.

Appendix 1

Consultation questions

NICCY has provided detailed answers to the Consultation survey, as follows:

Question 1

The Department proposes to include all of the abusive behaviours outlined below in its definition of abusive behaviour. Do you agree that the behaviours below should be included? Are there any other behaviours relevant?

NICCY agrees with all of the abusive behaviours outlined in the table by the Department, and wishes the Department to consider the behaviours also outlined in the Domestic Abuse and Civil Proceedings Act (NI) 2021, under 2(2(c)) and Section 9 specifically where there is a child involved. The Department should ensure that the abusive behaviour directed at another, as described, is covered sufficiently as a reason for taking Safe Leave.

Question 2

In terms of ‘connected to’, which of the following relationships should be included within the regulations?

NICCY agreed with all of the relationships listed but would urge the Department to consider those relationships that are not based on family relationships only, and to include carer relationships, aunts/uncles and those that would fall under the definition of personal connections within the Domestic Abuse and Civil Proceedings Act (NI) 2021 under Chapter 1, 5 ‘Meaning of personal connection’.

Question 3

Do you agree that the right to safe leave should arise following a single incident of domestic abuse?

NICCY agrees that the right to Safe Leave must arise following a single incident of domestic abuse.

Question 4

The purpose of Safe Leave is to deal with ‘issues related to domestic abuse’. Do you think in addition to those already referred to in the Act there are any other issues related to domestic abuse which should be specified in regulations?

Question 5: Do you think identification of other ‘issues related to domestic abuse’ would be more appropriately dealt with via Departmental guidance?

NICCY will answer questions 4 and 5 together. The list provided for by the Domestic Abuse (Safe Leave) (NI) Act 2022 is a non-exhaustive list of reasons why a person may take time off work under Safe Leave entitlements.

The original policy intent of providing a list of reasons was not to be prescriptive, as victims of domestic abuse may face differing needs and challenges depending on their individual circumstances. NICCY does not consider the need for the regulations to specify any others, and in doing so may be unhelpful, but that the regulations and guidance must ensure that Safe Leave can be accessed for whatever reasons a person needs it and is therefore flexible. Identification of other issues relating to domestic abuse, should therefore, be dealt with in guidance, and such guidance should be subject to review.

Question 6

Do you agree that the definition of leave year for the purposes of safe leave should align with the existing definition of leave year for annual leave purposes, set out in the Working Time Regulations (NI) 2016?

NICCY has no particular comment in relation to the specifics of question 6 bar that employers and employees would be able to use the same arrangements which they use in their particular organisation for annual leave purposes, for safe leave purposes. We

would encourage those employers who hire ‘workers’ and those on zero-hour contracts can also avail of this leave.

Question 7

Should the Department set out how notice to take safe leave should be given by an employee in guidance or regulations?

Question 8

If the notice requirements to take safe leave are set out in regulations would it be appropriate to make it a requirement to inform the employer as soon as reasonably practicable?

NICCY will answer questions 7 and 8 together. NICCY considers that the notice required to take Safe Leave will depend on the specific circumstances facing the individual and it would not be appropriate to have this within regulation. Some victims of domestic abuse may not be able to give ‘sufficient’ notice, for example, if an incident occurs within a short time frame before a shift is due to begin, or if they are unable to inform their workplace of an incident. A person availing of safe leave would have to inform their employer as soon as is practicable and possible. NICCY therefore supports notice processes to be set out by guidance. An employee should not be penalised for not availing of notice periods given the circumstances surrounding the leave.

Question 9

Should an employer have the option of seeking notification of the purpose of safe leave (e.g. obtaining legal advice, finding alternative accommodation etc) as part of any notice procedures?

NICCY does not agree that the employer should have the option of seeking notification of the purpose of Safe Leave. In doing so, the employee may be ‘put off’ from requesting the legally entitled leave, and having this option would not encourage an environment of trust. NICCY would also have concerns about safeguarding, access to information about children and young people and how and where information such as this would be stored/shared.

Question 10

Should safe leave be able to be taken in periods shorter than one day?

NICCY agrees that Safe Leave should be able to be taken in periods shorter than one day. Safe Leave is designed to be flexible and as noted, safe leave days do not need to be taken in a single block and can be taken at different times.

The flexibility to take safe leave in this way is aimed at ensuring that the employee who needs the leave can avail of it at the time when it is most needed and in the way that suits them best. For example, should a person require two hours of Safe Leave in order to attend a legal meeting, they should not be forced in to taking an entire day when it is

not required. Consideration could be given to existing internal organisational and employer policies on existing leave.

Question 11

The intention is that employees should receive their full pay when on a period of safe leave. Should this rate of pay reflect an employee's normal pay and include components such as regular overtime, regular commission and regular bonuses or an employee's basic pay?

There should be no detriment to an employee's terms and conditions, pay structure, entitlements in taking Safe Leave. NICCY considers that the rate of pay should reflect an employee's normal pay and include components such as regular overtime, commission and bonuses.

Question 12

Do you have any comments on the matters which should be contained in any Department for the Economy guidance on the operation of safe leave?

Question 13

Is there any other support that might be useful for employers and employees?

NICCY will answer question 12 and 13 together. NICCY urges the Department to undertake a Child Rights Impact Assessment in the commencement of the Domestic Abuse (Safe Leave) (NI) Act 2022 regulations. NICCY also encourages the Department to consider those young people who are employees, who also may be victims of domestic abuse, or have experience of domestic abuse, or are witnesses to it.

NICCY encourages the Department, in conjunction with relevant authorities, to ensure that there is up to date and sufficient guidance on the impact of domestic abuse on staff and employees available, including access to support services. NICCY would encourage the Department to provide and promote guidance and information relevant to young people within the workforce and who are employees/workers. This should include information that is accessible, and NICCY encourages the Department to engage with young people in the creation of such information and guidance.

Question 14

Please provide any comments you might have about the role of Early Conciliation and the Tribunal processes in claims related to Domestic Abuse – Safe Leave.

NICCY agrees with the process outlined by the Department and encourages ongoing training to be made available on Safe Leave and employment rights by the relevant authorities, Trade Unions and the Department. Information should be made available for employees and employers that is accessible on the new rights and what this means for each party. This should be in addition to the publication of Guidance. It is advisable

that all workplaces have a policy in place on domestic abuse to support employees and colleagues.

Question 15

Do you have any additional comments about any aspect of this consultation and/or the implementation of Domestic Abuse – Safe Leave?

Question 16

Do you have any comments or feedback on any of the associated impact assessments?

NICCY will answer questions 15 and 16 together. NICCY supports the implementation of Safe Leave for victims and survivors of domestic abuse and urges the Department to prioritise the implementation of Safe Leave to protect and promote the well-being of children and young people affected by domestic abuse, directly and indirectly. We note that there has been no children and young people’s version of the consultation produced, and no Children’s Rights Impact Assessment undertaken, which we urge the Department to conduct, particularly with regard to how this leave entitlement will be communicated to young employees. The Department has however conducted Equality Screening, Regulatory Screening and Screening in relation to the impact on Small and Micro Businesses.

In the Equality Screening document, the Department has not considered any potential impact of this Act and new leave entitlement on young people who are employees. Indeed, children are only mentioned under the section on ‘dependents’ and young people are not considered as employees with leave entitlement. We do however, agree with the Department that the impact of this legislation will be positive on all Section 75 categories.