

# Seeking Refuge?

# Domestic violence, immigration law and “no recourse to public funds”

## Introduction

It is estimated that domestic violence affects one in four women. If you are experiencing, or have experienced, domestic violence there are a number of ways that the law can help you. Women who have come to the UK from abroad and who are experiencing domestic violence may want to end the relationship they have with the person who is violent towards them; they may also want to remain in the UK.

This legal guide explains the immigration laws and policies relevant to women from abroad who are experiencing domestic violence. It also explains some of the financial and other support options that may

be available. This legal guide is **not** legal advice. If you are experiencing domestic violence it is very important that you get legal advice.

If you are supporting a woman experiencing violence it is vital that you assist her to get legal advice; you should not give her immigration advice if you are not allowed by law to do so. It is a criminal offence under the **Immigration and Asylum Act 1999** for anyone to give immigration advice or services in the UK unless they are regulated by the Office of the Immigration Services Commissioner (the OISC), a regulated solicitor, barrister or legal executive (or European equivalent) or exempted by Ministerial Order.

You can contact one of our legal advice lines for free, confidential legal advice. Details of our advice lines and their opening times are given at the end of this legal guide.

You can also contact a solicitor or immigration advisor in your area for advice.

Depending on your financial circumstances and the details of your case, you may be entitled to **public funding** (also known as **legal aid**).

Public funding enables some people who cannot afford to pay for legal advice to get legal advice and representation free of charge. However, not all legal representatives do publicly funded work and there are limits on the work that a publicly funded legal representative can do on a case.

You may only receive public funding if your case relates to asylum, trafficking or specific applications based on domestic violence. For further information about victims of trafficking see our legal guide **Trafficking, sexual exploitation and the law**, available on our website [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk). For further information about public funding and getting legal advice contact **Civil Legal Advice on 0843 345 4 345** or search for a Legal Aid provider at [www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice).

If you are not entitled to legal aid you may still be able to get free face to face legal advice by visiting a law centre or Citizen's Advice Bureau (CAB). To find contact details of law centres see [www.lawcentres.org.uk](http://www.lawcentres.org.uk) and for contact details of CABs see [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk).

You should always make sure that the person you see to get immigration law advice is professionally qualified and allowed to help you. You can get immigration advice from a **solicitor** or from an **immigration advisor**.

A **solicitor** is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk).

An **immigration advisor** is someone who is not a lawyer but who has the knowledge and skills necessary to give advice on immigration law. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk).



# Domestic violence

## What is domestic violence?

The Government defines domestic violence as:

“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality.

This can encompass but is not limited to the following types of abuse: psychological; physical; sexual; financial; emotional.

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

This definition, which is not a legal definition, includes so called ‘honour’ based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group”.

Domestic violence is most commonly perpetrated by men against women, but it can and does occur in same-sex relationships and occasionally by women against men. Consequently, although we refer to the perpetrator of domestic violence as ‘he’ throughout this legal guide, we recognise that this is not always the case.

If you are experiencing domestic violence there are a number of ways the law can protect you. You can report incidents of violence to the police. They may be able to help you by arresting the person responsible for the violence. For further information about the police and how they may be able to help you see our legal guide **Reporting an Offence to the Police: a Guide to Criminal Investigations**.

As well as going to the police, or instead of contacting them, you can get an order from the family court that forbids the person responsible for the violence from hurting you, or orders him to leave the family home. For further information about these orders see our legal guide **A Guide to Domestic Violence Injunctions**. These legal guides, as well as information on other legal issues, can be downloaded free of charge from our website at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

### Support for survivors of domestic violence

The **National Domestic Violence Helpline**, which is run by Women’s Aid and Refuge, can give you advice and support as well as signposting you to services in your area.

National Domestic Violence Helpline  
**0808 2000 247**

[www.womensaid.org.uk](http://www.womensaid.org.uk)

[www.refuge.org.uk](http://www.refuge.org.uk)

## The European Economic Area (EEA)

The law and policies described in this legal guide **do not** apply to women who have come to the UK from other European Economic Area countries (EEA) or to women who are the family members of EEA nationals (even if they are not themselves EEA nationals).

The **European Economic Area** is the European Union (EU) (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, the Irish Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) and three other countries that while not being members of the EU, are treated in a similar way. These countries are Iceland, Norway and Liechtenstein. Switzerland is not a member of the EU or EEA but it is treated as if it is.

The Regulations<sup>1</sup> that bring EEA law into UK law refers to all of these people as ‘EEA nationals’ and gives them important rights to live and work in the UK.

EEA nationals and their family members are allowed to enter the UK if they can produce a valid passport or identity document. EEA nationals and their family members also have certain important rights in the UK. If you are an EEA national or the family member of an EEA national (even if you are not yourself an EEA national) the information in this legal guide does not apply to you and you should seek legal advice.

<sup>1</sup> The Immigration (European Economic Area) Regulations 2006 (as amended).

# Immigration law

## What is your immigration status?

In order to work out what your rights are, either to remain in the UK or to access housing or other support, you must first find out your immigration status. You can find this out by looking in your passport; if your passport has been taken from you seek legal advice from our advice line, a solicitor or an immigration advisor. You may want to report your passport as stolen to the police.

You may have come to the UK on a spouse visa, as a student or the dependant of someone who is working in the UK. You may be an asylum-seeker or you may have overstayed your visa. In the following sections we discuss different options that might be available to you; some of these will depend on your current immigration status. We will then discuss sources of financial and other support.

## The domestic violence rule

### If you came to the UK as the wife, partner or civil partner of someone who is British or has Indefinite Leave to Remain (ILR).

Women who are in the UK on a spouse or partner visa usually have leave to enter or to remain in the UK for between 24 and 30 months, this is often referred to as the **probationary period**. Depending on when you made your application for a spouse or partner visa, there are two different sets of rules that apply (see below).

If you made your application for a spouse or partner visa **before** 9 July 2012 it is likely that you will have been given a probationary period of **24 months** leave. When the probationary period comes to an end, but before it expires, if everything in the relationship is going well you can apply for Indefinite Leave to Remain (ILR). Indefinite leave to remain is the right to live permanently in the UK.

If you applied for a spouse or partner visa **after** 9 July 2012, then you are likely to have been given **30 months** leave to remain at first. You must apply for a renewal of the probationary period for a further 30 months before making an application after 5 years (the total probationary period) for ILR.

We will refer to the woman who wishes to remain in the UK as the **applicant** (as she will be making an application to live here permanently) and her husband, civil partner or partner as her **sponsor** (because he or she is the person who supported her application to come to the UK).

A spouse is someone's legal husband or wife (see our legal guide **A Guide to Marriage** if you are unsure about whether or not you are legally married). Civil partnership is the legal relationship that same-sex couples can enter into which gives them similar legal rights to those that married couples have (see our legal guides on civil partnerships). Same-sex marriages are not yet available in England and Wales, but when same-sex marriage is legalised the provisions will be similar to marriage. A person who is living with their partner but is not married to them or in a civil partnership with them is an unmarried partner or same-sex partner. Women who are married to, in a civil partnership with, or living with someone who is British or has ILR, can come to or remain in the UK on a **spouse or partner visa**.

If you have come to the UK on a spouse or partner visa and you are experiencing domestic violence you can apply for ILR straight away under the **domestic violence rule**. You can apply at any time during the probationary period (you do not have to wait until it comes to an end) and even if you have overstayed your visa (see below).

The domestic violence rule is one of the **Immigration Rules**; these are the rules that set out who is allowed to enter and remain in the UK and under what conditions. The domestic violence rule states that you will be entitled to ILR if:

1. you have been given permission to remain in the UK as the spouse, civil partner or partner of a person present and settled in the UK (this means that you are currently on, or were on, a spouse visa); and,
2. you were in a continuing relationship with your spouse, civil partner or partner (this means that you lived together when you arrived in the UK or were given your visa); and,
3. you are able to provide evidence that your relationship with your spouse, civil partner or partner was caused to permanently break down **before the end** of the probationary period because of **domestic violence**.

As well as fulfilling these requirements to be granted ILR you will need to be free from unspent criminal convictions (see the below section on criminality for more information).

If you applied for a spouse or partner visa **after** 9 July 2012, then you will have to demonstrate that you meet certain **suitability criteria** (see below) in order to receive immediate ILR. This includes being free from unspent convictions but also includes a range of other behaviour.

You must make sure that you look at the right rules for the spouse or partner visa you have. From 9 July 2012, the rules for women on spouse or partner visas can be found in in Appendix FM of the Immigration Rules. The domestic violence rule is called DVILR. You can find this rule here:

<https://www.gov.uk/government/publications/immigration-rules-appendix-fm>

If you made your application for a visa before 9 July 2012, then the domestic violence rule is at rule 289A of the Immigration Rules. You can read this domestic violence rule here:

<https://www.gov.uk/government/publications/immigration-rules-part-8>

## Do I have to have experienced physical violence in order to be able to apply under the domestic violence rule?

No, any behaviour that fits within the definition of domestic violence set out above is domestic violence. If you have experienced sexual, psychological, emotional or financial abuse and this has caused your relationship with your sponsor to permanently break down during the probationary period you are entitled to ILR under the domestic violence rule.

## What happens if the violence was perpetrated by someone other than my husband, civil partner or partner?

The domestic violence rule does not say anything about who the perpetrator of violence is or must be. What is needed to make a successful application is evidence that the relationship between you and your sponsor has broken down permanently **because of domestic violence**.

It may be that the violence is not perpetrated by your sponsor but by other members of his family, for example, your parents-in-law. If this is the case and the sponsor does not protect you from violence or support you and, as a consequence, your relationship with him breaks down permanently you can apply for ILR under the domestic violence rule.

## When did my relationship break down?

In your application for ILR you will have to explain when it was that your relationship with your sponsor broke down and why. Only women whose relationship breaks down **during the probationary period because of domestic violence** are eligible for ILR under the domestic violence rule.

Your relationship with your sponsor may have broken down at the point you physically left the home you shared with your sponsor. However, your relationship might have broken down before you were able to leave because you were unable to get safe accommodation or support. You may still be living with your sponsor now. Whenever you physically left or leave the home you share with your sponsor, you need to decide when, in your mind, your relationship broke down permanently and why this was. You will then need to explain this in your supporting letter (see below).

## Applying for ILR as a victim of domestic violence

If you are thinking of applying for ILR under the domestic violence rule it is important that you try and get legal advice. You can look for a solicitor or immigration representative in your area using Civil Legal Advice (see above). A legal representative will be able to collect evidence for you and help make your application.

If you are not able to find a legal aid lawyer you can make your own application under the domestic violence rule. This section will explain the application process. However, we would advise you to seek advice from our legal advice line or a law centre or Citizen's Advice Bureau if you are completing the application yourself.

## What form do I use?

Applications for ILR under the domestic violence rule should be made on form **SET(DV)**. It is very important that you use the correct form. The forms change regularly so it is important that you check that the form you are using is the correct one and is still the current one to use.

For information about the domestic violence rule from the Home Office website, you can read the guidance available here:

<https://www.gov.uk/government/publications/victims-of-domestic-violence>

## Who receives my application?

A **caseworker** in the **Home Office UK Visas and Immigration department** will decide whether you should be given ILR when they receive your form. The UK Visas and Immigration department receives and processes your application on behalf of the Secretary of State for the Home Department (the SSHD) - also referred to as the **Home Office**. The Home Office UK Visas and Immigration department was formerly known as the UK Borders Agency (UKBA), and some people may still use this name. At the time of writing there is still a UKBA website where information and application forms can be found.

## Guidance

Caseworkers are given instructions to help them decide whether or not a particular case meets the criteria in the Immigration Rules. These are known as the **Modernised Guidance**, or in some cases the **Immigration Directorate Instructions or IDIs**.

They are not law but they can be useful in explaining the law and how applications should be dealt with. The section relevant to the domestic violence rule is found in the Modernised Guidance, family of people settled or coming to settle in the UK, victims of domestic violence.

You can download Modernised Guidance, family of people settled or coming to settle in the UK, victims of domestic violence here: :  
<https://www.gov.uk/government/publications/victims-of-domestic-violence>

## Completing the application form

All the relevant sections of SET(DV) must be completed in black pen and you must sign it. Before sending the form off check that you have filled it in correctly and that you have enclosed all the required photographs and documents. An incorrect application form will be considered to be invalid and will be rejected. This could have serious consequences, particularly if your visa subsequently expires, making you an overstayer.

It is important that you keep a copy of the application form and all the documents you send to the Home Office. You should also make sure that you send your application by **recorded delivery** or **special delivery** so you have evidence of when the application was made.

You can find out more about recorded and special delivery by asking at your local Post Office or by looking at their website [www.postoffice.co.uk](http://www.postoffice.co.uk)

## Biometric Information

Anyone who is applying for leave to remain in the UK for longer than 6 months after 1st December 2012 must provide their **biometric data** when they make their application, if they have not already done so. Biometric information is required from any applicant and their dependants over the age of 6 years old. Refusal to provide the information may result in your application being refused.

Biometric data is personal data such as your fingerprints and a photograph of your face. Usually you will receive a Biometric Notification Letter from

the Home Office inviting you to register your biometric data at a local Post Office after you submit your application. Not all Post Offices have the facilities to offer biometric data registering, so you should check with your local Post Office where the nearest facility is.

A standard application requires enrolment at the Post Office within 15 days of receiving an invitation letter. At the time of writing this costs £19.20 and can be paid by cash or using a debit card. You do not have to pay this fee if you are not paying a fee with your ILR application because you are destitute (see below). For more information about registering your biometric data and finding a Post Office see the guide provided by the Post Office:

<http://www.postoffice.co.uk/foreign-nationals-enrolment-biometric-residence-permit>.

You may already have been given a biometric residence permit as part of your spouse visa and this is returned to the Home Office when you make a fresh application. Therefore, if you have a biometric residence permit already it is likely you will not be asked to register your biometric data again.

## The application fee

The application fee for domestic violence rule applications is currently £1051 (and £778 for each child).<sup>2</sup> However, destitute applicants do not have to pay the fee.

You will be considered **destitute** if you are able to provide evidence to the Home Office that shows that at the time that you are making the application:

- you do not have access to sufficient funds to pay the fee; and,
- you are totally and necessarily reliant on a third party for the provision of essential living costs, such as basic food and accommodation. A third party could be a friend or family member who is giving you food and accommodation, it could be a women's refuge or accommodation given to you by your local authority.

If you are destitute you will make your application in the normal way but without paying the fee. You will need to provide a letter with your application explaining that you are destitute and explaining why this is. If you have a legal representative they will write this letter for you, but if you do not have a legal representative you will have to write it yourself. You will also have to give the Home Office evidence to show that you are destitute. The evidence needs to be about your financial situation at the time that you are making your application. If you are staying with a friend or family member they should write a letter explaining that they are providing you with somewhere to stay and food because you have no way of supporting yourself without their help. They

<sup>2</sup> Immigration fees are regularly reviewed and changed. If you are paying the fee check the application form and notes for guidance, as well as the UKBA website to ensure that you pay the correct amount.

should not pay the fee for you. If you are staying in accommodation provided by your local authority or in a women's refuge they should provide a letter for you explaining that you are totally reliant on them for your accommodation and essential living costs.

## Evidence of Domestic Violence

It is useful to read this section alongside section 4 of the SET(DV) application form and the Modernised Guidance as this will help you understand what evidence of domestic violence will support your case and how the Home Office deals with the evidence it receives.

As explained above, in order to be granted ILR you have to provide evidence that you:

- have experienced **domestic violence**; and,
- this violence caused your relationship with your sponsor to **break down permanently**; and,
- your relationship broke down **during the probationary period**.

Any evidence of domestic violence can be submitted in support of your application. However, some evidence of domestic violence is more persuasive to those considering your application than others. The most useful evidence is evidence that clearly shows that your case meets the criteria of the domestic violence rule. Therefore useful evidence is evidence that:

- says that domestic violence occurred and how this conclusion was reached (e.g. how does the behaviour fit in the Government's definition of domestic violence);
- says when the violence occurred (dates and times if possible to show it occurred during the probationary period);
- says who was responsible for the violence.

## Different types of evidence

The most persuasive evidence of domestic violence is:

- A **court conviction** for an offence that fits within the definition of domestic violence set out above (such as for assault or other violent or threatening behaviour).
- A **police caution** for an offence that fits within the definition of domestic violence set out above. A caution is a formal warning that is given to someone who accepts responsibility for committing a criminal offence. They are usually given to people who do not have criminal records and for offences that are not considered to be very serious.

You may not have any evidence that the person who was violent towards you was given a caution or convicted so you have to tell the Home Office:

1. The full name, date of birth and nationality of the person who was cautioned or convicted.

2. His address at the time of the incident and, if different, his address now.
3. The date, time and place of the incident(s) for which the caution was issued or at what court your abuser was convicted (e.g. Manchester Crown Court), when and what for (sexual assault or common assault).

The caseworker will use this information to check that your abuser was convicted or cautioned for a relevant offence.

Evidence from the police is useful evidence in support of your case even if your abuser is not convicted or cautioned. You should therefore consider reporting any violent or threatening behaviour to the police. This behaviour might relate to physical or sexual violence. There is no time limit on reporting offences to the police so you can report an offence at any time. For further information about reporting offences see our legal guide **Reporting An Offence To The Police: A Guide To Criminal Investigations**.

In addition to thinking about reporting violence to the police you should also seek advice from a family law solicitor on the remedies that may protect you and any children you have from further violence. In addition to offering you protection, domestic violence injunctions are also persuasive evidence that domestic violence has occurred:

- A **domestic violence injunction** such as a non-molestation order, occupation order or other protection order, such as a restraining order. The Home Office does not accept as evidence an order which is a 'without notice' (sometimes referred to as ex parte) or interim order (an interim order is a temporary order that remains in place until a particular hearing). Where the order refers to any undertakings (see below) these must be provided with the application.

**Non-molestation orders** can protect a woman and her children from violence and threats of violence.

**Occupation orders** regulate who lives in the family home and can order a violent partner to leave it. The court can make both a non-molestation order and an occupation order if it is appropriate. Further information about non-molestation orders and occupation orders can be found in Rights of Women's **A Guide to Domestic Violence Injunctions**.

If you do not have any of the evidence set out above then the SET(DV) form goes on to suggest other evidence that might support your case. The form suggests that at least two pieces of this evidence should be submitted along with your application but the more evidence you can collect, the greater the chance of you getting indefinite leave to remain (ILR).

Evidence that may support your application includes:

- **A medical report from a hospital doctor or GP** who has examined you and confirms that you have injuries consistent with being a victim of domestic violence. The report should include:
  1. The Doctor's General Medical Council Registration Number.
  2. When you registered with your GP (if the letter is from him/her).
  3. The dates of visits when domestic violence was reported.
  4. An extract from your medical record of these details.

The term 'injury' refers to both physical and psychological injuries. Your GP does not have to say conclusively that domestic violence occurred; just whether in his or her opinion, your injuries are consistent with what you have said.

- An **undertaking** given to a court. The undertaking should include a provision that the perpetrator of violence will not approach you.

An undertaking is a solemn promise given to a court not to do certain things (such as using or threatening violence or coming near you). For further information about undertakings, see our legal guide **A Guide to Domestic Violence Injunctions**. Undertakings can be evidence that domestic violence occurred; they will be more persuasive when the perpetrator promises not to use violence against you and / or not to approach you and less persuasive when you and he give the same undertaking. If you give an undertaking you should include this with your application.

- A **police report** confirming that they have been called out because of domestic violence. The report should:
  1. Contain a copy of the incident log.
  2. Show the address where the domestic violence took place.
  3. State that the police came because of domestic violence.
- A **letter from social services** confirming their involvement with you because you have experienced domestic violence.
- A **letter of support or a report from a domestic violence support organisation**.

Any domestic violence support organisation can provide evidence that may be accepted by the Home Office as evidence of domestic violence.

If you work for a domestic violence support organisation and you have been asked to write a letter of support for one of your service users you can make it more persuasive by:

1. Printing it on headed paper and ensuring that it is detailed, accurate and properly written.
2. Explaining your and your organisation's skills and expertise. What training or experience do you have? How long has your organisation been providing services to victims of violence? What are your referral criteria? Does the woman that you are supporting meet those criteria?
3. Addressing the requirements of the domestic violence rule: that the relationship broke down permanently during the probationary period because of domestic violence. You can do this by addressing issues including:
  - a. Was there domestic violence? How does the behaviour your service user experienced fit within the Home Office's definition of domestic violence? How were these conclusions reached? For example, how did the applicant appear when she disclosed that she had experienced violence? Was she distressed or anxious?
  - b. How have you reached your conclusions? From your assessment of the applicant's story? From her behaviour or demeanour? You could include a copy of any risk assessment done by your organisation alongside your letter of support or extracts from your or other support worker's notes.
  - c. When did the violence take place? How do you know this?

- If your case has been referred to a multi-agency risk assessment conference (MARAC), **evidence from the chair of the MARAC** stating that you have been the victim of domestic violence.

- **Other documentary evidence**

If you do not have any of the evidence listed above you can explain why this is in your application form and supporting letter. You can also submit any other supporting evidence, including letters from:

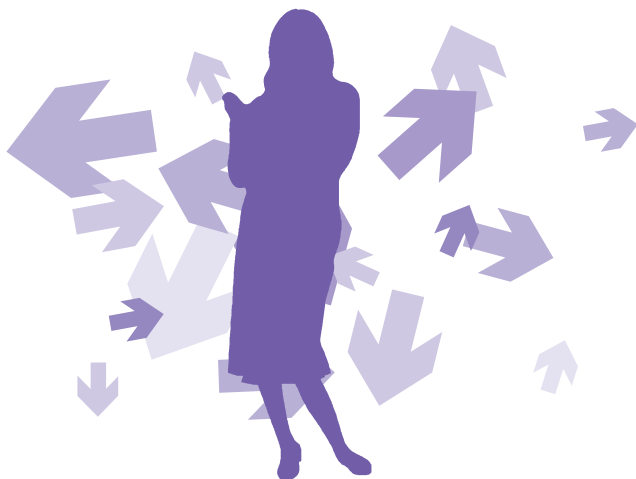
- a) a health visitor or your midwife;
- b) the school or family centre where your children go;
- c) a counsellor; and/or,
- d) a neighbour or friend who witnessed an incident of violence.

Or you could include information from other legal proceedings you have been involved in, for example from:

- a) your petition for divorce if domestic violence was mentioned as a reason for your marriage breaking down (see our legal guide **A Guide to Divorce**);
- b) a child contact or residence order if domestic violence was raised in these proceedings. For example, your husband may have supervised contact with your child because of the domestic violence you experienced. If this is the case then evidence of this would be useful evidence in support of your application. For further information about issues relating to children see our legal guides **A Guide to Parental Responsibility**, **A Guide to Child Contact** and **A Guide to Residence Orders**.

## What happens if I don't have evidence of the violence I experienced?

If you were prevented from leaving your home or contacting people for help you may not have any evidence of the domestic violence you experienced during the probationary period. What you say about what happened to you during your relationship is evidence of domestic violence. You can therefore make an application for ILR with no evidence other than a letter from you explaining what happened to you. If you are in this situation you may want to contact a domestic violence support organisation. They may be able to help you get services, such as counselling or other support. They may also provide you with a supporting letter. A letter from a domestic violence support organisation explaining that isolating someone and preventing them from getting help are forms of domestic violence would be useful evidence that could support your application.



### Example of a case: **Balakoohi v Secretary of State for the Home Department [2012]**<sup>3</sup>

The court in this case was looking at evidence given in an application for ILR from a victim of domestic violence to see if it met the criteria of the domestic violence rule. The court looked at the evidence of when the relationship had ended and how that can be proved. The court reminded the Home Office that the husband is not an independent witness on when the marriage ended and they should be cautious in accepting what is said about when a relationship broke down where there has been domestic abuse. The Home Office were encouraged to find other sources of information and to use their powers to obtain police disclosure of any incidents.

## Evidence that your relationship was genuine and continuing at the start of the probationary period

In addition to providing evidence of the domestic violence you have experienced, you are also asked to provide evidence that you and your sponsor were living together at the start of the probationary period. This evidence is to show the Home Office that the relationship was genuine and continuing at the beginning of the probationary period. In the SET(DV) form the Home Office asks for 5 letters either addressed jointly to both you and your sponsor, or addressed to you separately but at the same address. The SET(DV) application form gives a number of examples of what letters could be submitted, including:

- telephone, water, electricity or gas bills or statements;
- a rent book or tenancy agreement; and/or
- correspondence from your GP or local health authority (for example, your NHS card or letters confirming medical appointments or health visits).

In most cases where a woman has fled her home because of domestic violence it will not be possible or safe for her to take such letters with her. You can explain why you do not have some or all of the evidence asked for in your application. You can also get evidence showing that you lived with your sponsor at the beginning of the probationary period once you have left him. For example, you can ask your GP for a letter confirming when you registered with them and what address you were living at.

<sup>3</sup> Balakoohi v SSHD [2012] EWHC 1439 (Admin).



## Your supporting letter

In addition to getting evidence about the domestic violence you have experienced you must also write a letter to the Home Office setting out your case. If you have a solicitor or immigration advisor they will help you write this letter. If you don't have a legal representative you can write it yourself. The purpose of the letter is to explain why you are entitled to ILR under the domestic violence rule.

Your letter must be signed by you and should explain:

- Where you and your sponsor lived after you arrived in the UK. This is to show the Home Office that your relationship was genuine and was continuing at the beginning of the probationary period.
- The domestic violence you experienced and who was responsible for it. You should include any **psychological, emotional, physical, sexual or financial** abuse that you experienced. You should include details of when and where the incidents took place and who was responsible for them. If you cannot remember the exact date when an incident occurred you need to provide as much information as possible about what happened. For example, it could be that you remember that a particular incident took place around the time of a religious festival, or just after the children had gone to school. The purpose of this information is to show the Home Office that the domestic violence occurred during the probationary period.
- Whether you reported the violence to any agencies or services, and if not, why not. For example, you might not have known that there were people who could help you or you might have been prevented from seeking help.
- If any supporting evidence or documents are not available, why this is. For example, you might not have any evidence that you were living with your sponsor at the start of the probationary period. If this is the case you should explain why this is, for example, because your sponsor was financially abusive so you did not take part in running the household's finances.
- Where you are living now and why, for example, you are staying in a women's refuge because your marriage has broken down and you are destitute. If you are still living with your sponsor you will need to explain why this is.
- If you have any unspent criminal convictions or other bad character that means you do not fit the suitability criteria (see below), such as giving false information to authorities, this will usually prevent you from being granted ILR but you may be granted limited leave to remain instead, so it is advisable to explain in more detail why this has occurred. It is particularly important to explain if

what happened was as a result of the abuse you experienced e.g. your partner was violent towards you but called the police and said it was you who was violent to him.

- **That your relationship with your sponsor has permanently broken down during the probationary period because of the domestic violence.** This is very important as this is the domestic violence rule; you must show that your case fits into the domestic violence rule in order to get ILR.

## Access to passports and travel documents

Some perpetrators of domestic violence take their partner's passport and documentation. No one has the right to take your documents from you so if this happens you should report your passport as stolen to the police. The police report / crime reference number is evidence of domestic violence. The SET(DV) application form also has a specific section that you will have to complete if you can't send your passport with the application.

## Women who have overstayed their spouse visa

The domestic violence rule does not require you to have current leave to remain in the UK (to be on a current visa) as a spouse, civil partner or partner. You may have overstayed your visa because of the violence you experienced. If you are an overstayer you can apply for ILR as a victim of domestic violence. Your application will be dealt with in the same way as women who apply before their spouse visa expires but your ability to **appeal** (see below) against a negative decision will be affected. If you have overstayed your visa you will have to explain why this was and include any evidence which supports your explanation. For example, if you overstayed your visa because you did not know when it expired because your passport was taken from you, you will need to explain this in your letter; evidence that supports this would be reporting your passport as stolen to the police. It is important that you try and get legal advice if you have overstayed your visa and that you make your application under the domestic violence rule as quickly as possible.

## Criminality

In order to be granted ILR under the domestic violence rule, you will need to be free of (not have) unspent criminal convictions. You will have a criminal conviction if you have been **convicted** in a court of a criminal offence and received a **sentence** (punishment). A conviction will be classed as 'unspent' if:

- You have been convicted of an offence for which you have been sentenced to imprisonment for longer than 4 years.

- You have been convicted of an offence for which you have been sentenced to imprisonment for between 1 year and 4 years, unless a period of 15 years or more has passed since the end of the sentence.
- You have been convicted of an offence for which you have been sentenced to imprisonment for less than 12 months, unless a period of 7 years or more has passed since the end of the sentence.
- In the 24 months before you make your application you have committed a criminal offence for which you were arrested and either sent to court and sentenced to a sentence other than prison or given a **caution, conditional caution** or other **out of court disposal** that is recorded on your criminal record.

When applying under the domestic violence rule you may, instead of being granted ILR, be granted a period of up to 30 months leave if you have received a sentence other than prison, an out of court disposal or a prison sentence of under 1 year but this will depend on the circumstances of the offence. You may also not be granted ILR if you are subject to a deportation order. If you have criminal convictions or you are subject to a deportation order seek legal advice.

## Suitability criteria

If you applied for your spouse visa after 9 July 2012 then you must also show that you are **suitable** for ILR. In addition to the criminality criteria, you will not be considered suitable if:

- You have committed more than one offence and can be considered a persistent offender, or that offence has caused serious harm.
- You could otherwise be considered to be of bad character because of your associations, criminal conduct or links to organisations.
- You have failed to provide information when asked, including failing to go to an interview or medical examination without reasonable excuse.
- You have submitted false documents or made false representations in support of any application for entry or leave to remain.
- You owe £1000 or more to the NHS for medical treatment.

You must always meet the suitability criteria for a successful application under the Immigration Rules. If you applied for your spouse visa before 9 July 2012, these criteria may still be considered. If you have a criminal record, or you think you will not be seen as suitable to be granted ILR by the Home Office it is important to get legal advice before you submit your application.

## The decision

Your application will be decided by a caseworker at the Home Office. They aim to deal with applications under the domestic violence rule within 20 working days. The caseworker will look at your letter, application form and supporting evidence to see if, on the balance of probabilities, the requirements of the domestic violence rule are met. The caseworker will follow the guidance when deciding your application. The caseworker may contact your legal representative, or you if you do not have one, for any further information that he or she needs to make a decision.

If your application is successful you will be granted ILR. This is the right to live permanently in the UK. If you have ILR you can work, study and access welfare benefits and housing support. Women who have ILR can go on to apply for British Citizenship when they meet the relevant requirements. If you meet all the criteria except for the suitability criteria, then you may be granted a further period of limited leave to remain instead.

For further information about British Citizenship see <https://www.gov.uk/browse/citizenship/citizenship>

If your application is refused and you made it before your visa expired you can appeal against it to the **First-tier Tribunal (Immigration and Asylum Chamber)** (see below for further information). You should seek legal advice on appealing as soon as you can.

If you made your application as an overstayer you will not have an immediate right to appeal against the decision unless the Home Office make a decision at the same time to remove you and return you to your country. In that case you would be able to appeal against the removal decision on human rights grounds. If you are in the situation of having no right of appeal you should seek legal advice as soon as you can. Your legal representative may be able to challenge your refusal by **judicial review** if it has not been made in the correct way. Judicial review is a legal process through which people in the UK can hold decision makers in public authorities to account. Your legal representative may also be able to appeal any decision that is taken to remove you on human rights grounds or advise you on other applications that you may be able to make for permission to remain in the UK.

## Financial support while you make your application

Women making applications under the domestic violence rule can get accommodation and access to welfare benefits whilst they make the application through the Home Office **Destitution Domestic Violence Concession (DDVC)** (see below).

## Other applications

### What about women who can't rely on the domestic violence rule?

Only women who have leave (permission to be in the UK) as a spouse, civil partner or partner can make applications under the domestic violence rule. If you have leave as a fiancée, student or worker you cannot make an application under the domestic violence rule even if you have married someone who is British or present and settled in the UK (has ILR). If you are married, in a civil partnership or in a relationship with someone who is not settled in the UK (for example, you are the dependant of a worker) you also cannot make applications under the domestic violence rule. However, there may be other applications that you could make if you want to remain in the UK. It is vital, however, that if you are in this situation that you seek legal advice as soon as possible.

### Asylum under the European Convention on Human Rights and the Refugee Convention

In some countries and cultures being a divorced or separated woman is not acceptable. Ending a relationship because of domestic violence, having a relationship with someone else or having children outside of marriage may also be considered unacceptable or shameful. Women may be harmed in their country for a number of reasons, including, in some cases, just because they are women. The harm women may be at risk of could be carried out by a woman's family or by her community. Women at risk of such harm may not be able to seek protection from the police or the authorities in their home country or be able to live separately from those who could harm them in another part of their country.

If you fear that if you were returned to your own country you would face serious harm and your country would not be able to protect you, you can make an application for asylum in the UK. A claim for asylum is a claim for protection under either the Refugee Convention or Article 3 of the European Convention on Human Rights (the right to be free from torture, inhuman or degrading treatment). Women who make successful claims for asylum may be given either **Refugee Leave** or **Humanitarian Protection** for 5 years, depending on the nature of their case. For further information about asylum law and making a claim for protection in the UK see Rights of Women's **Seeking Refuge? A handbook for asylum-seeking women**.

You can download **Seeking Refuge? A handbook for asylum-seeking women** from here  
[www.rightsofwomen.org.uk/legal.php](http://www.rightsofwomen.org.uk/legal.php)

### Staying in the UK on the basis of private and family life

Women who have lived in the UK may also be able to apply for leave to remain on the basis of Article 8 of the **European Convention on Human Rights**. This article says that everyone has the right to respect for her or his private and family life. Respecting private and family life means that public authorities (for example, the Home Office) can only interfere with these rights if they are allowed by law, and only where it is necessary for certain good reasons. Your family life means your relationships with your children or other family members. Article 8 will also cover the family life of your children. Your private life means your personal life and includes things like your work or studies and your privacy. It can also include your mental and physical health and well being. You will have established private life when you have been settled for a significant amount of time in a country. Your family life is your relationships with members of your family, for example, your children or your partner.

From July 2012, the Home Office has set out new **rules** (which form part of the **Immigration Rules**) that state how someone can establish a right to a private or family life in the UK. This is limited to your rights as a partner of someone who is British or settled (has ILR) or as the parent of a child in the UK, or if you meet certain long residence criteria. You also have to fulfil **eligibility** and **suitability criteria** (see below). From July 2012 you will need to show that you can fit these rules before you can be granted leave to remain on the basis of private and family life. If you do not fit these rules it may be possible to still apply for leave to remain outside of the rules on the basis of having private and family life in the UK (see below), but this is hard to achieve, and it is likely you will need legal advice. Legal aid is not available for any application on the basis of private and family life so you will need to pay privately if you see a solicitor, or you could contact our legal advice line or a law centre or Citizen's Advice Bureau for free legal advice.

If you believe that you can make an application under the Immigration Rules, then you will need to fill out the correct form and either pay a fee or apply for a fee waiver; for more information please see the Rights of Women guide **Women, Families and Article 8**. The Immigration Rules about private and family life can be found in **Appendix FM**.

### Applying under the long residence rule

If you have been in the UK for 20 years (with leave or without leave), or you are between 18 and 25 and have lived in the UK for half your life or you have lived in the UK for less time but you have no social, cultural or family ties to the country where you would go if you left the UK, then your private and family life will be considered by a decision-

maker under Appendix FM. You must also fulfil the **suitability** and **eligibility criteria** (see below).

## Applying to stay in the UK because you have a British or settled partner

If you are the partner of someone who is British or settled (has ILR) **but** you do not have leave to remain in the UK already as their spouse, partner or civil partner, then you can make an application under Appendix FM for leave to remain in the UK. When considering your application the Home Office believe that there must be **insurmountable obstacles** to you **both** moving abroad to continue your family life before leave can be granted.

## Applying to stay with a child in the UK

Under Appendix FM you may apply for leave to remain in the UK in order to enjoy your family life with your child.

If you have a child under 18 who is British or settled (has a parent who has ILR), then you can apply for leave to remain under the rules if:

- you are their **sole carer**; or,
- they live with you and have contact with their British or settled parent; or,
- you have court ordered contact with your child who lives with their other parent **and** you are taking, and intend to continue to take, an active role in your child's upbringing.

The **sole carer** of a child means that you make the decisions about their upbringing and welfare. It is not the same as having parental responsibility or a residence order, although this may be evidence that you are a sole carer. See our legal guides **A Guide to Parental Responsibility** and **A Guide to Residence Orders** for more information.

If your child is not British or settled here, then you may still both be able to apply for leave to remain under Appendix FM if your child has been in the UK for 7 years or more **and** it would not be reasonable to expect them to leave the UK.

## Eligibility criteria

The Home Office says that in order to enjoy your family and private life in the UK you must have been in the UK legally and if you have overstayed you must have only overstayed for a period of 28 days or less, you must have enough money to support yourself without recourse to public funds and you must meet the English Language requirement. These are known as the **eligibility criteria**. However, if

you are the parent of a child who has lived in the UK for 7 years or more, or you have a relationship with a British citizen or someone who has ILR but you do not have leave as their partner, civil partner or spouse e.g. you have a student visa, then you may not have to meet these requirements. You must also meet the **suitability criteria**. The suitability criteria that applies to these applications is the same as the suitability criteria required for applications for ILR under domestic violence rule (see above).

## Family life under the European Convention on Human Rights

Everyone's family and personal lives are different and not all situations fall within the Immigration Rules. The rules set out situations where it is accepted that you cannot have a family or private life if you do not remain in the UK.

If you do not meet the criteria in the rules, then you may still be granted leave on the grounds of Article 8 of the European Convention on Human Rights. The courts have told the Home Office that they must still consider whether you have a private or family life here even if you are not able to fulfil the requirements in the rules.<sup>4</sup>

When the Home Office look at whether you have a private or family life outside the Immigration Rules they will first decide whether or not you do have a private or family life in the UK and then whether or not it would be possible for you to have that private and family life in your own country. The decision maker will consider not only how your private and family life would be affected by your return to your own country but also how your family would be affected by your return.

If your family life is with someone who is British or has ILR (for example, your children) or you have a new relationship with someone who would not return with you, then even if you do not fulfil the Immigration Rules criteria a decision-maker must consider how being separated from them would affect both your and their family life. In addition, when making an immigration decision, the decision-maker must always consider the best interests of your children and whether it is in their best interests to remain in the UK, have contact with both their parents or any other decision which may affect their upbringing. This is a primary consideration if your children are resident in the UK<sup>5</sup> even if they are not British citizens and do not have ILR. An application relying on your family life with a child may be appropriate when your child has to live in the UK because his or her father (or another person with parental responsibility for your child), does not give his or her permission for them to return to your own country with you. For further information about parental responsibility and taking children out of the

<sup>4</sup> MF (Article 8 – new rules) Nigeria [2012] UKUT 00393.

<sup>5</sup> ZH (Tanzania) v SSHD [2011] UKSC 4.

country see our legal guides **When Parents Separate** and **A Guide to Parental Responsibility**.

If your family life is with people who do not normally live in the UK and who would be returned with you, the court will consider what effect returning you and them would have on your and their family life. The fact that your family life in your country would not be the same as your family life in the UK will not be enough to enable you to remain in the UK. In order to be granted protection in the UK, the effect of returning you to your country must be that you would be **completely denied** your family life there.

In Article 8 cases the Home Office and the courts have to balance your rights to respect for your family and private life against the needs of the UK to exercise immigration control. This means that they have to look at the effects on you and your family of a decision to remove you from the UK and decide if their decision to remove you is a **proportionate** one. The courts are unlikely to agree with decisions which have the effect of separating parents from their children or breaking up marriages or other significant relationships.<sup>6</sup>

### Family life case study: Keiko and Ai

Keiko came to the UK to study and then to work. She formed a relationship with Mark and they had a daughter, Ai, who is now 7. Keiko left Mark because of his violence. Mark now has supervised contact with Ai at a contact centre while Keiko has formed a new relationship with Leroy. Leroy has a son of his own, Elijah, which means he does not want to live with Keiko in Japan.

If considered under the Immigration Rules, then Keiko could rely on the length of time her daughter has been in the UK (7 years). If Ai had lived in the UK any less time than 7 years then this would not fit the Immigration Rules criteria so Keiko would need to make an outside the rules application and then appeal to the First Tier Tribunal for consideration of her and Ai's family life under Article 8.

If Keiko is returned to Japan on her own it could be a disproportionate interference with her family life with her daughter and her family life with Leroy. If Keiko returns with Ai then it would be a disproportionate interference with Ai's and Mark's relationship and her relationship with Leroy. The decision-maker in this case would have to look at the consequences of returning Keiko on her own family life, as well as on the family life of both Ai and Leroy.

## What happens if I am granted leave to remain on the basis of family life?

If you are successful in demonstrating your private and family life in the UK, either with an application under the rules or outside the rules, then you may be granted limited leave to remain for 30 months (2 ½ years), which can be renewed. You could then apply for ILR after either 5 or 10 years. During this time you can work but you will only be able to claim welfare benefits if you can prove to the Home Office that you are **destitute**. The Home Office has indicated that because an applicant will be able to work when they have limited leave to remain, it will be very difficult to show that they are destitute.

## The Zambrano application

If your child is a British Citizen, then you are also entitled to remain here under European Law (the EEA Regulations (2006)) if requiring you to leave would mean that your British child would have to leave with you.<sup>7</sup> This is because of a case called **Ruiz Zambrano**.<sup>8</sup> You must be the **sole carer** of your child for this to apply. There are no other eligibility or suitability criteria you have to fulfil. An application under Zambrano is made at no cost using the application form DRF1. While the application is being considered, the Home Office must allow you to work. This right of residence currently does not give you any route to permanent settlement in the UK or recourse to public funds (ability to claim most welfare benefits).

## Appeals against negative domestic violence rule and immigration rule decisions

If your application for permission to remain in the UK, whether under the domestic violence rule or another immigration rule is refused you **may** be able to appeal against that refusal to the **First-Tier Tribunal (Immigration and Asylum Chamber)**. For information about appealing against negative asylum or human rights decisions see Chapter 8 of **Seeking Refuge? A handbook for asylum-seeking women**.

Whatever decision you have that you want to appeal against, it is very important that you seek legal advice.

The First-Tier Tribunal is independent of the Home Office. Decisions at the Tribunal are taken by **Immigration Judges**.

You can read about the Tribunal and download an appeal form here <https://www.gov.uk/immigration-asylum-tribunal>

<sup>6</sup> See the comments of Baroness Hale at paragraph 50 in *R v. SSHD ex parte Razgar* [2004] UKHL 27.

<sup>7</sup> *Harrison (Jamaica) v SSHD* [2012] EWCA Civ 1736.

<sup>8</sup> *Ruiz Zambrano v Office National de L'Emploi* (C-34/09).

In the letter refusing your application there should be details of how you can appeal and an application form, called a notice of appeal, to enable you to do it. **IAFT1 Notice of Appeal to the First-Tier Tribunal** must be completed and received by the Tribunal within **10 business days** of the date you were served with your refusal.

A **business day** is any day other than a Saturday or Sunday, a bank holiday, Good Friday or any day between the 25th to 31st December.

Being **served** with a decision means being given the decision; usually decisions are served by being sent in the post to you and your legal representative. When documents are sent in the post they are held to be served on you the second day after it was sent to you, unless you can prove that this did not happen.

At the appeal the Immigration Judge will hear from you and / or your legal representative as well as from a representative from the Home Office. The Immigration Judge has to decide whether, on the **balance of probabilities**, you meet the relevant legal criteria, such as the requirements of the domestic violence rule. This means that the judge has to decide whether it is more likely than not that you meet the relevant legal criteria. He or she has to decide this at the time that the appeal is being heard. This means that you can use evidence that was not available at the time that the caseworker made their decision at your appeal.

Decisions of the First-Tier Tribunal can be appealed to the Upper Tribunal only in certain limited circumstances, such as an error on a point of law. You should try and seek legal advice if you think you can appeal your case further.

## Financial support

Women with an insecure immigration status, like women making applications under the domestic violence rule, are generally prevented from accessing welfare benefits and certain community care services in two different ways:

- Firstly, they may have a **“no recourse to public funds”** condition attached to their permission to be in the UK. This condition may be stamped in your passport if you come to the UK on a spouse or other visa. It means that if you receive one of the “public funds” set out in the box below you will be in breach of your permission to be in the UK. This could lead to your permission to be in the UK being withdrawn or make it more difficult for you to be granted leave to remain in the future.
- Secondly, a person subject to immigration control is not eligible for most benefits and many community care services.

Many types of leave to remain in the UK, like leave as a spouse or worker, are given to applicants on the basis that once they are in the UK they will have no recourse to public funds. Public funds are defined in paragraph 6 of the Immigration Rules as:

- Public housing under the housing acts; and,
- attendance allowance, severe disablement allowance, carer's allowance, disability living allowance, personal independence payment (PIP), income based employment support allowance, income support, council tax benefit, housing benefit, a social fund payment, child benefit, income based jobseeker's allowance, state pension credit, child tax credit and working tax credit.

If you are in the UK on a spouse visa you can access tax credits and child benefit which you are entitled to as a family and which are received by your partner. If you separate, this does not entitle you to claim the benefits by yourself and if you do so, then this may affect your application for ILR. This is because a Government policy enables those on certain family visas to claim child benefit and working tax credit without breaching the “no recourse to public funds condition” as the entitlement is for the whole family. This policy, **Public Funds** is available to download:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284160/Public\\_funds\\_v12\\_0EXT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284160/Public_funds_v12_0EXT.pdf)

Having ‘no recourse to public funds’ is a serious problem for women experiencing violence as it often means that they are unable to access support or a safe place to stay. The following sections of this legal guide will explain the sources of financial and other support that might be available to you.

## Services which all women can get

All women, regardless of their immigration status can:

- Apply for and receive **legal aid** to enable them to get advice and representation from a solicitor or immigration advisor. Legal aid is means and merits tested at the point of service and is not available for all immigration assistance. It is available for applications under the domestic violence rule, asylum, cases where you have been identified as a victim of trafficking and if you are detained. For further information about legal aid and to find a legal representative contact **Civil Legal Advice** (details at the end of this legal guide) or check your eligibility on the Civil Legal Aid calculator at <https://www.gov.uk/legal-aid>.

- Seek help from the police and other emergency services by calling 999.
- Seek protection from the family courts from violence by applying for a non-molestation or occupation order.
- Register with a GP and access medical treatment.
- Access education funded by a Local Education Authority (this is relevant to you if you have school-age children).
- Get a free travel pass if you are disabled or over 60.
- Get free prescriptions and help to travel to hospital if you are on a low income by applying on form HC1 (for further information see <http://www.nhsbsa.nhs.uk/HelpWithHealthCosts.aspx>).
- Apply for and receive benefits that you have become entitled to because you have worked in the UK and paid national insurance contributions. These are often referred to as contributory benefits and include: contribution based job seekers allowance, incapacity benefit, contribution based employment and support allowance, a retirement pension, widowed parent's allowance, bereavement payment, maternity allowance, industrial injuries benefits, guardian's allowance; and, statutory sick, maternity, paternity and adoption pay.
- Access certain community care services (see further below).

If you are on a current spouse visa you can work. If you are on other types of visas, for example, a student visa, your ability to work may be restricted.

## Financial support for asylum-seeking women

Asylum-seeking women are also prevented from accessing welfare benefits and certain community care services from their local authority. They are further prevented from being able to work unless they have permission from the Home Office. However, a separate system of support has been created for people who have made a claim for protection<sup>9</sup> in the UK. If you are an asylum-seeker or if you are thinking about claiming asylum, see our publication **Seeking Refuge? A handbook for asylum-seeking women**.

## The Destitution Domestic Violence Concession (DDVC)

The Destitution Domestic Violence Concession (DDVC) is for women:

- who entered the UK on a spouse or partner visa and are eligible to apply for ILR under the domestic violence rule; and,
- who will make an application for ILR under the domestic violence rule; and
- who are destitute and need financial help.

From April 2012, if you meet the above criteria then you are able to make an application for temporary leave to remain in the UK so that whilst your application for ILR under the domestic violence rule is being considered, you are eligible to claim benefits.

The temporary leave replaces your spouse visa with leave with access to public funds for 3 months, but does not grant you any permanent right to remain. **This is why it is very important that you submit your claim for ILR under the domestic violence rule by the end of the 3 month period.**

Unlike the application for ILR under the domestic violence rule, the DDV Concession application does not require a Home Office decision-maker to look at the merits of a claim. Leave will be granted under the Concession simply where the criteria above are met. A positive decision granting leave under the DDV Concession is no indication that the application for ILR under the domestic violence rule will be successful.

Temporary leave will be granted initially for a period of 3 months and gives qualifying women entitlement to public funds and all the benefits above that are listed as "public funds". This means that you will be able to access a refuge place because you will be entitled to housing benefit and you will also be entitled to either income-based jobseekers allowance, income-based employment support allowance or income support. If you have submitted your application for ILR within the 3 months leave and the Home Office take longer than the 3 months to decide the application for ILR, then your temporary leave to remain will continue until a decision is made.

To make an application for public funds under the DDVC you will need to fill out the application form entitled **Protecting victims of Domestic Violence (DDV)** available at:  
<https://www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence>

<sup>9</sup> A claim for protection is a claim under the Refugee Convention or Article 3 of the European Convention on Human Rights, see chapter 2 of **Seeking Refuge? A handbook for asylum-seeking women** for further information.

## Support from your local authority – community care services

If you are experiencing domestic violence you may approach your local authority for help. Community care services are services that are arranged and / or provided by your local authority's social services department. They can be given to adults and children who are in need and they can include accommodation, financial and other support.

You can find the details of your local authority by looking here [www.direct.gov.uk/en/index.htm](http://www.direct.gov.uk/en/index.htm) or in a telephone book.

If you have limited leave to remain, for example, you are on a spouse or student visa, you can access services from your local authority if you have care needs, but not simply because you are destitute. You are destitute if you have no money or place to stay. You are entitled to a community care assessment under section 47 **NHS and Community Care Act 1990** if you have a need for care due to long-term illness, mental illness or a disability. If you are unlawfully in the UK (for example, if you are an overstayer), you are excluded from almost all community care services by the **Nationality Immigration and Asylum Act 2002** section 54 and Schedule 3 **unless** giving you services is necessary to prevent a breach of your human rights. This could apply if you are pregnant and too ill to travel home or if you have an outstanding human rights claim with the Home Office (see below). These rules also apply to women asking for help for a child (see below). However, services can be provided to women and children experiencing domestic violence who have an insecure immigration status in certain circumstances, as the following section explains.

## Women who have current leave to remain in the UK and who need care and attention

If you have current permission to be in the UK (this includes if you made an application for leave to remain in the UK before your leave expired but a decision has not yet been made, or if you are appealing against a negative decision to an application that you made in time) you can be provided with accommodation and services if you have a need for **care and attention** that is not caused solely by the fact that you are destitute under **section 21 of National Assistance Act 1948**. This means that in order to be given accommodation and services you must have a need for them that is

separate from the fact that you currently have no money or place to stay. Destitution can be a cause of your need; it just cannot be the **only** cause. The need could be caused by a disability, your age or a physical or mental health problem.

The issue of what a need for care and attention is was looked at by the House of Lords in a case called **R(M) v Slough [2008]**.<sup>10</sup> This case said that the person asking for help must need some 'looking after'. This could involve needing nursing or help with shopping, cooking or living independently. The care could be from a statutory service, such as a community mental health team, or from a voluntary sector organisation, like a domestic violence support project. The care and attention a person requires should also be related to their need for accommodation.

Accommodation can be provided to prevent a person from becoming ill as well as to people who are already ill or have some other health problem. In **R(M) v Slough [2008]** the House of Lords said that someone who was HIV positive could be provided with accommodation and services if they were beginning to become unwell, but before he or she gets worse. However, the provision of accommodation must be related to the other services that someone requires. If you require accommodation because you need care and attention, then it must be so that the services you require can be given to you. If the services you need could be given to you without accommodation, then requiring care and attention will not be enough (**SL v Westminster City Council [2013]**<sup>11</sup>). This applies to situations of physical and mental ill health equally and where providing someone with accommodation and support is necessary to prevent them from becoming more unwell. For example, a woman with a mental health problem which would get significantly worse if she were to be made homeless can be provided with accommodation and support before that happened.

In the case of **R(M) v Slough [2008]** the House of Lords made it clear that their judgement was consistent with the decisions made in previous cases. This means that it is useful to look at cases which were decided before it as well as the case of **R(M) v Slough [2008]** itself to see what could cause a need for care and attention.

In the case of **R (Khan) v Oxfordshire CC [2004]**<sup>12</sup> it was decided that the effects of domestic violence could give rise to a need for care and attention. In the case of **R (Pajaziti and Pajaziti v Lewisham LBC) [2007]**<sup>13</sup> it was decided that having a major depressive illness could give rise to a need for care and attention.

<sup>10</sup> R(M) v Slough [2008] UKHL 52.

<sup>11</sup> SL v Westminster City Council & Anor [2013] UKSC Civ 954.

<sup>12</sup> R (Khan) v Oxfordshire CC [2004] EWCA Civ 309.

<sup>13</sup> R (Pajaziti and Pajaziti v Lewisham LBC) [2007] EWCA Civ 1351.



## Pregnant women with current leave to remain in the UK

If you are pregnant, on a current visa and fleeing domestic violence, your local authority can provide you with accommodation and support under section 21(1)(aa) of the **National Assistance Act 1948** to ensure that, if you do not have anywhere else to live, you do not become homeless.

## If you are an overstayer

If you are an overstayer you can only be given support under section 21 of the **National Assistance Act 1948** if it is necessary to prevent a breach of your human rights, for example:

- your rights under Article 3 of the European Convention on Human Rights (ECHR) to be free from torture, inhuman or degrading treatment;
- your rights under Article 8 of the ECHR to private and family life; and / or
- your rights under Article 6 of the ECHR to take part in certain legal proceedings in the UK.

If you are in this situation it is important to link your request for support from your local authority with the fact that you are resolving your immigration situation. The case of **Amalea Clue** is also relevant here, see below.

## Women with children

Local authorities have an obligation to provide services to children who are “in need” under section 17 of the **Children Act 1989**. Services that can be given under section 17 include a place to live and financial support. Homeless children or children who are cared for by parents fleeing domestic violence who have an insecure immigration status and who cannot support themselves are considered to be “in need”.

Under sections 17(1) and (3) of the **Children Act 1989** local authorities must take whatever steps are **reasonably practicable** to enable a child to live with their family where that is necessary to promote and safeguard the child’s welfare. Where a parent loves and cares for their child or children, accommodating them together will be necessary for the child’s welfare. Article 8 of the ECHR as brought into UK law by the **Human Rights Act 1998** requires public authorities to respect people’s private and family life. This, along with section 17, can require local authorities to accommodate and support you and your children together.

As with adult community care services, a local authority cannot provide section 17 help to a woman who is unlawfully in the UK (such as an overstayer), **unless** it is needed to avoid a breach of her or her child’s human rights (see above) such as

their rights under Article 8 ECHR to have private and family life together. The exclusion of overstayers from receiving support does not apply to children, whether or not those children are themselves British. Local authorities must therefore help you and your child or children if support is needed to avoid a breach of your or your children’s human rights. This could be because you have made a claim on human rights grounds to the Home Office which has not yet been decided or because you are physically unable to travel to your home country.

### Birmingham City Council and Amalea Clue [2010]<sup>14</sup>

Amalea Clue came to the UK from Jamaica on a visitor’s visa with her daughter. When the visa ended Ms Clue applied to become a student but her application was refused. She was therefore an overstayer. Ms Clue formed a relationship with someone who was British and they had three children together. This relationship then broke down and Ms Clue returned to live with her aunt in Birmingham. Ms Clue then applied to remain in the UK on the grounds that her oldest child had been living in the UK for over 7 years.

Ms Clue approached Birmingham local authority for accommodation and support under section 17 of the **Children Act 1989**. The family was assessed but the local authority concluded that Amalea and her children could return to Jamaica together. They argued that this would not breach the family’s Article 8 rights because they would all be together. Birmingham local authority therefore refused to offer the Clue family any help other than assistance returning to Jamaica. However, if Ms Clue did return to Jamaica, she would not be able to continue with her application for permission to remain in the UK. Ms Clue challenged the decision of the local authority by judicial review and the case went to the Court of Appeal. The Court found that where a woman was an overstayer, was destitute but had made an application for leave to remain in the UK (which was not obviously hopeless or abusive) the local authority should support the applicant and her family until a decision on the immigration application had been made. Ms Clue’s immigration application was successful and she and her eldest daughter were given indefinite leave to remain.

This case confirms the importance of linking resolving your immigration status to your application for support from your local authority. Local authority support should continue even whilst you are appealing an application that has been refused by the Home Office initially.<sup>15</sup>

<sup>14</sup> Birmingham City Council and Amalea Clue [2010] EWCA Civ 460, you can read and download the case from here [www.bailii.org/ew/cases/EWCA/Civ/2010/460.html](http://www.bailii.org/ew/cases/EWCA/Civ/2010/460.html)

<sup>15</sup> R(KA) v Essex County Council [2013] EWHC 43 (admin)

Sometimes women with an insecure immigration status are told that if they try and get help from their local authority, their child or children may be taken from them and looked after by the local authority.<sup>16</sup> Separating children from their parents raises serious issues under the **Children Act 1989** and the **Human Rights Act 1998** and is only lawful in very limited circumstances. Social services cannot take your child into care unless either they have **your agreement or an order from the family court**. If you are told that your children may be taken from you it is vital that you seek legal advice as soon as possible. You can also ask for a written explanation from the social worker involved of how, in making that decision, the local authority has considered your and your child's needs and Article 8 ECHR rights.

Guidance produced by the **NRPF network** on domestic violence and no recourse confirms the importance of children being accommodated with their parents where it is in the children's best interests. You might find it useful to quote this when talking to the social worker dealing with your case:

"A Child in Need assessment should be made in respect of children and families with NRPF, who present as requiring accommodation. A destitute child will be a 'child in need'. Local authorities have a general duty to safeguard and promote the welfare of children within their area who are in need and, so far as is consistent with that duty, to promote the upbringing of such children by their families. As such, a local authority will usually have a duty to accommodate a destitute child, either under Section 20 CA [Children Act] or under Section 17 CA [Children Act] with their carer if in their best interests and to prevent a breach of the child or carer's right to family and private life. In making this decision consideration needs to be given to the child's individual needs and its right to family life under Article 8 of the ECHR."

You can read the full guidance here:  
<http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>

## Accessing community care services

If you think that you are entitled to receive help from your local authority you should approach them and ask for an assessment of your needs and the needs of any children that you have. There is a legal obligation to assess a person who the local authority might have the power to provide services to. If the local authority refuses to assess you and any children that you have seek legal advice as this can be challenged by judicial review. If you are homeless your local authority must consider exercising its power to give you immediate emergency accommodation while it assesses you.<sup>17</sup>

Once the local authority has identified your needs it has a duty to take steps to provide services to meet those needs. This will be set out in your **care plan**. Local authorities can decide how best and most cost effectively to provide services to people who need them. For example, if your or your child's assessment says that you need safe accommodation the local authority can meet that need by putting you in Bed and Breakfast accommodation, putting you in private rented accommodation or by paying for you to go into a women's refuge. If you are unhappy with either your assessment or your care plan you should seek legal advice as you can complain about it, or in some circumstances, challenge it by judicial review.

## Women who have been detained in hospital because of their mental health

If you have been 'sectioned' or detained under section 3 of the **Mental Health Act 1983** you have the right to aftercare services including accommodation and financial support. This is usually arranged by the joint Community Mental Health Team.

## Family law options

Depending on your circumstances, family law remedies, such as non-molestation orders can be used to protect you and any children that you have from violence, end your marriage or relationship as well as help you become more financially secure. The fact that you have no recourse to public funds or do not yet have status in the UK does not prevent you from using family law remedies or applying to the family courts for help and protection.

<sup>16</sup> The accommodation of children alone can be done under section 20 of the **Children Act 1989** in certain circumstances.

<sup>17</sup> This is under section 47(5) of the **National Health Service and Community Care Act 1990** and **R (AA) v Lambeth LBC (2002) 5 CCLR 36**.

A non-molestation order can protect you and any children that you have from violence and occupation orders can exclude the perpetrator from your family home while ordering him to continue to pay the mortgage, rent or other bills. You can therefore use an occupation order to enable you to continue to live in your family home even if you need the financial support of your partner to do this. If you are married or in a civil partnership and you want to end this relationship you can start divorce or dissolution proceedings. Once you have done this you can apply to the court for your husband or civil partner to financially support you, this is called maintenance pending suit. Through the financial proceedings that go alongside divorce or dissolution you can apply for maintenance or for the ability to live in the family home for the long term. For further information about these and other family law remedies speak to a family law solicitor, contact our family law advice line and see our legal guides on these issues: **A Guide to Divorce, A Guide to Financial Arrangements following Marriage Breakdown, A Guide to Civil Partnership Dissolution and A Guide to Financial Arrangements following Civil Partnership Dissolution**, all available at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

If you have children you can seek financial support from the parent they do not live with, see our legal guide **A Guide to Child Support**.

Further information on no recourse to public funds:

The NRPF network is a network of local authorities which looks at the response of local authorities to people with care needs who have no recourse to public funds (NRPF). The Network has produced guidance for social workers on how to respond to people with no recourse. You can read this guidance here:

<http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>

Maternity Action has a range of legal guides about accessing health care and other services for pregnant women and mothers; you can read it here:

[www.maternityaction.org.uk](http://www.maternityaction.org.uk)



The law relating to immigration and domestic violence is complex; in this legal guide we have only provided a basic overview of the relevant law and procedure. We would strongly advise you to seek legal advice. Please note that the law and procedure referred to in this legal guide is as it stood at the date of publication. The relevant law and procedure may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 11am – 1pm, Tuesdays and Wednesdays 2pm – 4pm and 7pm – 9pm, Thursdays 7 – 9pm and Friday 12pm – 2pm.**

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues, call our Immigration and Asylum Law Line on **020 7490 7689 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 12pm – 3pm and Thursdays 10am – 1pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on **020 7251 8887 (telephone)** or **020 7490 2565 (textphone)** on **Tuesdays 11am – 1pm and Thursdays 2pm – 4pm.**

## Other useful contacts

### Broken Rainbow

(same-sex domestic violence advice)

**08452 604460**

[www.broken-rainbow.org.uk](http://www.broken-rainbow.org.uk)

### Civil Legal Advice

**0845 345 4 345**

(for finding a publicly funded family or immigration solicitor)

[www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice)

### Immigration Lawyers Practitioners Association

(for information about immigration and asylum law through their 'Info Service' and to find an immigration lawyer)

[www.ilpa.org.uk](http://www.ilpa.org.uk)

### National Domestic Violence Helpline

**0808 2000 247**

[www.womensaid.org.uk](http://www.womensaid.org.uk)

### Office for the Immigration Services Commissioner

(for finding an immigration advisor)

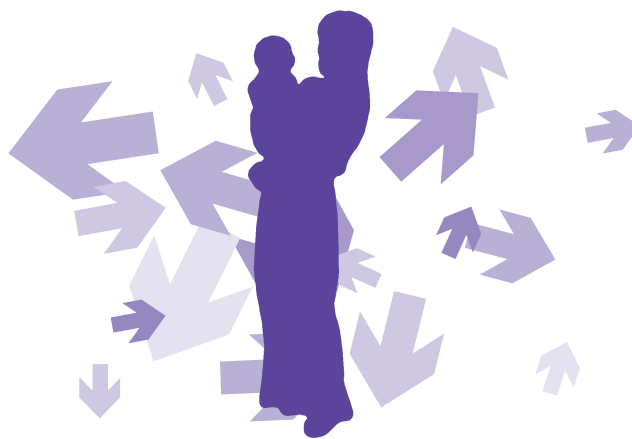
[www.oisc.gov.uk](http://www.oisc.gov.uk)

### Southall Black Sisters

(support for BME women who have experienced abuse)

**020 8571 9595**

[www.southallblacksisters.org.uk](http://www.southallblacksisters.org.uk)



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