

**Domestic violence
and immigration law:
the *“domestic violence rule”***

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.

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 adviser 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 public funding and getting legal advice contact the **Legal Aid Agency** on **0345 345 4345** or search for a Legal Aid provider at <http://find-legal-advice.justice.gov.uk/>.

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 (CAB). To find contact details of law centres see www.lawcentres.org.uk and for contact details of CABs see www.citizensadvice.org.uk

This legal guide explains the immigration law and policy relevant to women from abroad who are in the UK on a spouse or partner visa and are experiencing domestic violence. The domestic violence rule, explained in this guide, may apply to you if you are in the UK as the wife, partner or civil partner of someone who is British or has Indefinite Leave to Remain (ILR).

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

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 and are regulated by the Solicitors Regulation Authority (SRA) www.sra.org.uk. You can check that a solicitor is regulated by the SRA by using the 'find a solicitor' search engine on the Law Society website <http://solicitors.lawsociety.org.uk/> or by contacting the SRA directly on **0370 606 2555**.

An **immigration adviser** 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 advisers contact the Office of the Immigration Services Commissioner (OISC) www.oisc.gov.uk. You can check whether an immigration adviser is regulated by the OISC by contacting the OISC directly on **0345 000 0046**.

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 **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.

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.nationaldomesticviolencehelpline.org.uk

Who Should Read This Guide

This legal guide is aimed at individuals who have been granted permission to live in the UK under the immigration rules based on their relationship with their British or settled partner.

If you do not fall into this category, you may be able to make an application based on your family and private life in the UK or you may be able to apply for asylum. Please refer to pages 13-14 for further information.

The European Economic Area (EEA)

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. Your rights are set out in the Immigration (EEA) Regulations 2016 and the Citizen’s Directive 2004/38/EC. You should seek legal advice about your rights.

The **European Economic Area** is the European Union (EU) (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, 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.

UK law refers to all of these people as ‘EEA nationals’.

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 or your biometric residence permit. A biometric residence permit is a document, shaped like a bank card, issued by the immigration authorities as proof of your right to stay in the UK. If your documents have been taken from you, seek legal advice from our advice line, a solicitor or an immigration advisor.

What does relationship breakdown mean for your immigration status?

You may have come to the UK on a spouse or partner visa, as the dependant of a student or the dependant of someone who is working in the UK. The reason you were given your visa was to allow you to enjoy your relationship with your partner in the UK. When that relationship ends, your visa may be cancelled by the Home Office. Your husband or partner does not have the power to cancel your visa. Only the immigration authorities have this power. If the authorities receive information about your relationship breakdown, they may write to you to inform you that they have cancelled your visa – this is known as **curtailment**. The letter from the authorities should tell you when your visa will expire (commonly in 60 days) and should inform you that you can make a further application to remain in the UK if you have reason to do so. If you receive such a letter, you should seek legal advice without delay from our advice line, a solicitor or an immigration advisor. You should also seek legal advice without delay if you have not received such a letter but have plans to travel overseas after your relationship has broken down.

The Domestic Violence Rule

This rule applies if you are in the UK as the wife, partner* or civil partner of someone who is British or has Indefinite Leave to Remain (ILR).

If you are in the UK on a spouse or partner visa, you are likely to have been given leave to enter or to remain in the UK for 33 months or 30 months - this is often referred to as the **probationary period**. Shortly before this period ends and if everything in the relationship is going well, you must apply for an extension of the probationary period for a further 30 months. All of this time is referred to as the probationary period. After a total of 5 years with leave as a spouse or partner, you will be able to apply for indefinite leave to remain (ILR) in the UK. Indefinite leave to remain is the right to live permanently in the UK.

If you made your application for a spouse or partner visa before 9 July 2012 a different set of rules will have applied and it is likely that you will have been given a probationary period of either 24 months or 27 months leave.

Definition of spouse and partner*

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 guide **A Guide to Entering Into A Civil Partnership**). Same-sex marriages have been available in England and Wales since March 2014. An unmarried partner is a person that the applicant lives with and includes a same sex partner. The Home Office recognises unmarried partners if they have been living together for at least 2 years. 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.

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).

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 unmarried partner of a British citizen or a person settled in the UK (this means that you are currently on, or were on, a spouse or partner visa); and,
2. you are able to provide evidence that during the probationary period this relationship broke down permanently because of domestic violence; and
3. you meet certain suitability criteria (see page 11). 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. Since 9 July 2012, the rules for women on spouse or partner visas can be found in Appendix FM of the Immigration Rules. The domestic violence rule is called Section DVILR.

You can find this rule here:

<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members>

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

<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members>

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 on page 2 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 or your sponsor physically left the home you shared together. However, your relationship might have broken down before you were able to leave the accommodation you shared with your sponsor. You must decide when, in your mind the relationship broke down permanently and why it broke down.

It is not important that you continued to live with your sponsor after the relationship broke down as you may have not been able to access safe accommodation until sometime after the relationship had ended. You will then need to explain this in your supporting letter (see page 10). Please refer to our family law guides, **A Guide to Divorce** and **A Guide to Dissolving Civil Partnerships**.

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. A legal representative will be able to collect evidence for you and help make your application. You can look for a legal representative in your area by contacting the Legal Aid Agency (see page 1) or contacting legal aid providers in your area directly
<http://find-legal-advice.justice.gov.uk/>.

If you are not financially eligible for legal aid because your income or capital is too high, you can look for a legal representative in your area through the Law Society website
<http://solicitors.lawsociety.org.uk/>.

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

What form do I use?

Applications for ILR under the domestic violence rule must 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. Form SET (DV) is available from the Home Office website. It states the date from which it is valid.

The application form and the notes that will help you fill it in can be downloaded from here:

<https://www.gov.uk/government/publications/application-to-settle-in-uk-form-setdv>

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 completed application form. The UK Visas and Immigration department receives and processes your application on behalf of the Secretary of State for the Home Department - also referred to as the **Home Office**.

Guidance

Caseworkers in the Home Office UK Visas and Immigration department are given instructions to help them decide whether or not a particular case meets the criteria in the Immigration Rules. These instructions are known as the **Modernised Guidance**. 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 titled 'Victims of domestic violence' and is found in the Modernised Guidance under the collection titled 'family of people settled or coming to settle'.

You can download Modernised Guidance on victims of domestic violence here:

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

Completing the application form

All the relevant sections of the SET(DV) form 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, including proof of your identity. You are required to send your valid passport with the application and if you are unable to do so you will need to explain why. An incorrect application form will be considered to be invalid and will be rejected without consideration. This could have serious consequences, particularly if your visa subsequently expires, making you an overstayer.

It is very 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.

Biometric Information

After submitting your application, you should receive a biometric notification letter from the Home Office asking you to register your biometric information at a local Post Office. Not all Post Offices have the facilities to register biometric information, so you should check with your local Post Office where the nearest facility is or search online for a branch with 'Home Office biometric enrolment' at <http://www.postoffice.co.uk/branch-finder>.

Anyone who is applying for leave to remain in the UK for longer than 6 months must provide their **biometric information** when they make their application. Biometric information is a digital photograph of your face and a scan of your fingerprints. It is required from any applicant and their dependants. Failure to provide the information may result in your application being rejected without consideration.

A standard application requires enrolment of your biometric information at the Post Office within 15 working days of receiving a biometric notification letter. 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 information 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 will likely already have been given a biometric residence permit as part of your spouse or partner visa and this must be returned to the Home Office when you make a new application.

The application fee

The application fee for domestic violence rule applications is currently £2297 for each person. For example, if you are applying for ILR for yourself and one child, the total fee is currently £4594. Immigration fees are regularly reviewed and changed. If you are paying the fee, check the application form and guidance note, as well as the Home Office website to ensure you pay the correct amount.

If you are **destitute** at the time of making your application, you 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. If you do not do this, the Home Office could reject your application without giving you the opportunity to provide further information. 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. Evidence that you are unable to pay the fee may include your recent bank account statements. 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 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 of this legal guide alongside section 4 of the SET(DV) application form and the modernised guidance as this will help you understand what evidence of domestic violence is needed to 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,
- your relationship with your sponsor has **broken down permanently because of this domestic violence**; 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 on page 2 (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 on page 2. 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 (e.g. sexual assault or common assault).

The Home Office 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** is an order including 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 page 8 overleaf) 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 our legal guide **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:

1. 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:

- The Doctor's General Medical Council Registration Number.
- When you registered with your GP (if the letter is from a GP).
- The dates of visits when domestic violence was reported.
- 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.

2. 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 **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.

3. A **police report** confirming that they have been called out because of domestic violence. The report should:

- Contain a copy of the incident log.
- Show the address where the domestic violence took place.
- State that the police came because of domestic violence.

4. A **letter from social services** confirming their involvement with you because you have experienced domestic violence.

5. 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. Making sure you sign and date the letter.
3. 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?
4. 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?

6. 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.

7. Other documentary evidence

If you do not have any of the evidence listed above in points 1-7 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;
- 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 arrangements 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 **Children and the law: parental responsibility** and **Children and the law: when parents separate**

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.

Evidence that you and your partner had been living together

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 from the time when you were granted leave to enter or remain as a spouse or partner until such time as your relationship broke down. This evidence is to show the Home Office that the relationship was continuing before it broke down permanently. 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:

- bank statements or letters;
- council tax, telephone, water, electricity or gas bills or statements;
- 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 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.

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 legal representative 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.
- 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. 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 how you are supporting yourself. For example, you are staying in a women's refuge because your relationship 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 page 11), 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 to state as this is a key requirement of 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 other 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 them as stolen to the police. The police report / crime reference number is evidence of domestic violence. You must send both your passport and biometric residence permit (if you were issued with one) with your SET (DV) application. If you are unable to do so you must explain why including why you have been unable to get a replacement passport issued.

Women who have overstayed their spouse or partner 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 or partner visa expires. 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 and / or documents were taken from you, you will need to explain this in your letter; evidence that supports this would be reporting your passport and / or documents 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 apply for 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 4 years or more.
- 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.
- You have committed more than one offence and can be considered a persistent offender, or that offence has caused serious harm.

When applying under the domestic violence rule you may, instead of being granted ILR, be granted a further 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 will also not be granted ILR if a deportation order has been made against you. If you have criminal convictions or a deportation order has been made against you, seek legal advice.

Suitability criteria

In addition to the criminality criteria, the Home Office will apply other suitability criteria to your application for ILR.

You will **not** be considered suitable for ILR if:

- 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 information or withheld important information in your application for ILR

*For clarity: the reference to a medical examination here is entirely separate to any medical examinations that relate to the abuse or violence experienced by the applicant. Here, we refer to the powers the Home Office holds in relation to someone who has not attended a medical examination that they were invited to attend to test whether they may be endangering the health of others, for example, due to exposure to an infectious disease.

Other criteria may also count against you. You may not be considered suitable for ILR if:

- You have submitted false information or withheld important information in any previous application to the Home Office
- You owe money to the Home Office because of a previous court case at the end of which the court ordered you to pay money to the Home Office
- You owe £500 or more to the NHS for medical treatment

If you have a criminal record, or you think you will not be seen as suitable to be granted ILR by the Home Office because of any of the above reasons, it is important to get legal advice before you submit your application.

'...In order to apply for ILR under the domestic violence rule, you will need to be free of (not have) unspent criminal convictions...'

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, the requirements of the domestic violence rule are met. The caseworker needs to be satisfied that, based on the evidence you have provided, it is more likely than not your relationship broke down permanently because of domestic violence during the probationary period. The caseworker will follow the guidance (see above) 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 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...'

If your application is refused you will receive a letter from the Home Office explaining the reasons it has been refused. The letter will also explain your right to challenge the refusal decision. You will have a right of **administrative review** – this is an application you can make to the Home Office to review their decision for particular errors. It is very important that you seek legal advice as soon as you can.

Your legal representative, or you if you are unrepresented, can apply for an administrative review online. The deadline for making an application for administrative review is 14 days from the date you (or your legal representative) received the refusal decision from the Home Office. It may be important for you to prove exactly when you received the decision, so make sure you keep the envelope if the decision was sent to you in the post. The application fee for administrative review is currently £80. You do not have to pay the fee if you were exempt from the ILR fee in your original application. The Home Office will usually send you their decision on the administrative review within 28 days.

For further information about applying for administrative review and to access the online form, see

https://eforms.homeoffice.gov.uk/outreach/UKVI_Admin_Review_Guidance.ofml

If your application for administrative review is refused, 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. Judicial review must be done as soon as possible and at the latest 3 months from the date of the decision (which may be the original Home Office decision). Your legal representative may also be able to advise you on other applications that you may be able to make for permission to remain in the UK.

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 of someone who is British or has ILR 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 has ILR in the UK. 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

Sadly, we recognise that in some countries and cultures being a divorced or separated woman is not seen as 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

<http://rightsofwomen.org.uk/get-information/immigration-and-asylum-law/seeking-refuge-handbook-asylum-seeking-women/>

'...Sadly, we recognise that in some countries and cultures being a divorced or separated woman is not seen as 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...'

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 such as the maintenance of immigration control. Your **family life** means your relationships with your children and partner or other family members. Your **private life** means your personal life and includes things like your work, studies, relationships and community activities. 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.

The Home Office has set out 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. The rules are limited to your rights as:

- the partner of someone who is British or settled (has ILR) or has refugee status;
- the parent of a British or settled (has ILR) child in the UK or a child who has lived in the UK for at least 7 years;
- someone who has lived in the UK for a long time and can meet certain long residence criteria.

The rules set out eligibility and suitability criteria that you need to meet. You will need to show that you can fit these rules before you can be granted leave to remain on the basis of private or 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, but this is hard to achieve, and it is likely you will need legal advice. For further information about making an application based on your private and family life in the UK see our legal guide **Seeking Refuge? Women, families and Article 8**.

'...Women making applications under the domestic violence rule can get accommodation and access to welfare benefits...'

Financial Support

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

Women in the UK with a spouse or partner visa are likely to 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 entered the UK on a spouse or partner visa, or it may be written on the back of your biometric residence permit. It means that you cannot receive any of the **public funds** set out in the box below. If you did receive any of these public funds you would be in breach of your visa conditions which could lead to your visa being cancelled or could make it more difficult for you to be granted leave in the future.

Many types of leave in the UK, like leave as a spouse or partner of someone who is British or has ILR, are given to applicants on the condition 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 given by the local authority housing department under their homelessness and social housing responsibilities; 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, universal credit, state pension credit, child tax credit and working tax credit.

If you are in the UK on a spouse or partner visa you can access tax credits and child benefit which you are entitled to as a family and which are received by your British or settled 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. You can read more about this in the Home Office Modernised Guidance on 'Public Funds' available to download here:

<https://www.gov.uk/government/publications/public-funds>

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. Women who are eligible to apply for ILR under the domestic violence rule (see above) and who need access to public funds in order to find safe accommodation and support themselves before making their application can apply for support under the Destitution Domestic Violence Concession (DDVC).

The Destitution Domestic Violence Concession (DDVC)

You are eligible for support under the Destitution Domestic Violence Concession (DDVC) if:

- you were last granted leave to enter or remain as the spouse, civil partner or unmarried partner of someone who is British or has ILR; and
- your relationship has broken down because of domestic violence; and
- you are going to make an application for ILR under the domestic violence rule; and
- you are destitute and need financial help. You are destitute if you have no access to money or are reliant on a third party (e.g. family member or friend) to pay for your essential living costs such as basic accommodation and food.

If you meet the above criteria then you are able to make an application under the DDVC for 3 months temporary leave to remain in the UK while your application for ILR under the domestic violence rule is being prepared and considered.

If your application under the DDVC is successful, you will be granted 3 months temporary leave to remain which allows you to access 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.

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

It is important to understand that this 3 months temporary leave replaces your spouse or partner visa. The application does not grant you any permanent right to remain. You must submit your application for ILR under the domestic violence rule before the end of the 3 months temporary leave period. 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. If you do not make an application for ILR within the 3 months temporary leave period, and you make no other application for leave to remain, you will become an overstayer and lose your right to financial support. You will not be able to switch back to your former leave as a spouse or partner.

To make an application for 3 months temporary leave with access to public funds under the DDVC you will need to fill out the application form titled **Victims of Domestic Violence (DDV) concession** available at:

<https://www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence>

If you apply for 3 months temporary leave under the DDVC and your application is refused, there is no right to challenge this decision except by way of judicial review (see page 12). If your application is refused, you should seek legal advice as soon as possible.

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 for general information only. Please note that the law explained in this legal guide is as it stood at the date of publication. The relevant law and procedure may have changed since then. If you are affected by any of the issues in this guide you should seek up-to-date independent legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this guide.

Rights of Women September 2017

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**. The advice line is open on **Mondays 10am – 4pm and Thursdays 10am – 4pm**.

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on **020 7251 8887**. The advice line is open on **Tuesdays 11am-1pm**.

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call the following:

Women living and working in London: call **020 7490 2562**. The advice line is open **Mondays 11am-1pm, Tuesdays to Thursdays 2pm-4pm**.

For all women: call **020 7251 6577**. The advice line is open **Monday to Thursdays 7pm – 9pm and Friday 12-2pm**.

To check for any changes to our advice lines since this guide was published, visit our website **www.rightsofwomen.org.uk**.

Other Useful Contacts

Support with abuse

National Domestic Violence Helpline

0808 2000 247

www.nationaldomesticviolencehelpline.org.uk

Southall Black Sisters

020 8571 9595

www.southallblacksisters.org.uk

(support for BME women who have experienced abuse)

Finding a solicitor or immigration advisor

Legal Aid Agency

0345 345 4345

Ministry of Justice

<http://find-legal-advice.justice.gov.uk/>

The Law Society

www.lawsociety.org.uk

Office of the Immigration Services Commissioner

www.oisc.gov.uk

Immigration Lawyers Practitioners' Association

www.ilpa.org.uk

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helping women through the law

