

**ILPA BRIEFING
House of Commons - Report****October 2011****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
Bill 235****Immigration and Domestic Violence
(Schedule 1, Part 1, Paragraph 10)**Caroline Lucas
Bridget Phillipson**113**Page **112**, line **5** [*Schedule 1*], at end insert –*Immigration: victims of domestic violence and indefinite leave to remain*

24A(1) Civil legal services provided to an individual (“I”) in relation to an application by the individual for indefinite leave to remain in the United Kingdom, or a claim by the individual to a right to reside in the United Kingdom, on the grounds that –

- (a) I was given leave to enter or remain in the United Kingdom for a limited period as the partner of another individual present and settled in the United Kingdom, or had a right to reside in the United Kingdom as a partner of another individual, and
- (b) I’s relationship with the other individual broke down permanently as a result of the abuse of I by an associated person.

General exclusions

(2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

Specific exclusion

(3) The services described in sub-paragraph (1) do not include attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on an application.

Definitions

(4) For the purposes of this paragraph, one individual is a partner of another if –

- (a) they are married to each other,

(b) they are civil partners of each other, or

(c) they are cohabitants.

(5) In this paragraph –

“abuse” means any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.

“associated person”, in relation to an individual, means a person who is associated with the individual within the meaning of section 62 of the Family Law Act 1996;

“cohabitant” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act);

“indefinite leave to remain in the United Kingdom” means leave to remain in the United Kingdom under the Immigration Act 1971 which is not limited as to duration;

“present and settled in the United Kingdom” has the same meaning as in the rules made under section 3(2) of the Immigration Act 1971;

“right to reside” means a right of residence established under Directive 2004/38/EC of the European Parliament and the Council 29 April 2004 on the right of citizens of the Union and their family members to move and reside within the territory of the Member States amending Regulation (EEC) No, 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EC, 90/365/EEC and 93/96/EEC.

Purpose

A probing Amendment to highlight the inadequacy of Government Amendment No. **59** in failing to provide for Legal Aid in relation to immigration for victims of domestic abuse whose immigration status is dependent on their partner, but whose immigration status is not that of a probationary spouse or partner. The Amendment is based on the Government Amendment, but with four discrete changes. The two references to the ‘right to reside’ in sub-paragraph (1) and the reference in sub-paragraph (5) are to include victims of domestic violence whose lawful residence in the United Kingdom is dependent on their relationship to a person exercising European free movement rights. The final change is to the definition of ‘abuse’ in sub-paragraph (5). The definition in this Amendment adopts the definition used by the Association of Chief Police Officers, see also Amendment No. **23** (also in the names of Caroline Lucas and Bridget Phillipson) concerning the definition of domestic abuse used in paragraph 10 of Part 1 of Schedule 1 to the Bill.

Briefing Note

Government Amendment No. **59** is tabled in response to the Minister’s commitment given during debate in Committee, at which time Jonathan Djanogly, Parliamentary Under-Secretary of State, said about immigration applications by victims of domestic abuse:

“After further consideration, however, we accept that such cases are unusual. There is a real risk that, without legal aid, people will stay trapped in abusive relationships out of fear of jeopardising their immigration status. The type of trauma that they might have suffered will often make it difficult to cope with such applications. We also appreciate that people apply under great pressure of time, and access to a properly designated immigration adviser is a factor. We intend to table a Government amendment to bring such cases into scope at a later stage.”

(Hansard HC, Public Bill Committee, 19 July 2011 : Column 245)

The Government’s Amendment is restricted to persons who are present in the UK with limited leave as spouses or partners of British citizens or settled persons (those with indefinite leave to remain), whose relationship breaks down during that period because of domestic abuse and who can prove this to the satisfaction of the Secretary of State. These persons are often referred to as probationary partners (because their limited leave to remain is for a ‘probationary’ period at the end of which they may apply for indefinite leave to remain). Their cases generally fall within the current immigration rules (the domestic violence immigration rule)¹.

The rule exists in an effort to ensure that people do not stay in abusive relationships because they fear removal. The UK Border Agency has recognised the particular difficulties experienced by people in this position by setting up a scheme, the Sojourner Project,² to provide financial support for an eight-week period to women applying for permission to remain under that rule, who are not normally entitled to welfare benefits and thus cannot access refuge accommodation. The Government is committed to establishing access to benefits for this group in April 2012.

The Minister identifies four factors relevant to why Legal Aid should be provided in these cases:

- the risk that victims will stay trapped in abusive relationships for fear of jeopardising their immigration situation
- the trauma they may have suffered which will often make it difficult to cope with making an application
- time pressures that apply in immigration proceedings
- difficulties of access to a properly designated immigration adviser

These factors are clearly borne out in that domestic abuse-related immigration applications are far from straightforward:

- The UK Border Agency’s record in dealing with these cases is especially poor. Some 61% to 69% of refusals are overturned on appeal;³
- The gathering and presentation of evidence, with associated costs and risks, is often necessary for success. Many applications are (including wrongly) refused by the UK Border Agency on the grounds of inadequate evidence;
- To escape abusive relationships, victims need to understand the implications for their immigration status. They need immigration advice. Only regulated advisors can provide this; a refuge etc. cannot. Without advice and assistance, the aim of the domestic violence immigration rule is defeated because victims do not find the confidence to escape.

¹ HC 395 as amended, rules 289A to 289C

² See <http://www.eaves4women.co.uk/Sojourner/Sojourner.php>

³ Figures disclosed by the UK Border Agency to Rights of Women show success rates on appeal within this range for the period April 2009 and September 2010.

As regards the last of these factors, Southall Black Sisters said in their evidence to the Public Bill Committee (LA 18)⁴:

“It is a criminal offence for a non-accredited person to give immigration advice. The majority of support services for victims of domestic violence do not have such accreditation which is why they refer to legal immigration practitioners and caseworkers.

Women’s organisations and other support services across the UK have varying degrees of quality, experience and capacity. Most do not have the training or skills necessary to assess the merits of a case or carry out complicated case or representation work which involves detailed knowledge of immigration law. The gap that will be left cannot be met by other support services. The lack of access to quality advice and representations will have a detrimental impact on how applications are prepared and represented at the initial or appeal stage.”

Al-Hasaniya, a Moroccan women’s community organisation also with specific experience of assisting victims of domestic abuse, made a similar point in their evidence to the Public Bill Committee (LA 69)⁵:

“...we (and organisations like us) cannot lawfully provide advice about immigration unless we become registered with the Office of the Immigration Services Commissioner (OISC). To be registered we would need to show a general expertise in immigration law. We do not have that expertise, and it is not within the scope of our services to seek to develop or maintain such an expertise. If Legal Aid becomes no longer available for immigration matters, we will not be able to fill the gap. Many of our clients will simply be left without advice or assistance on these matters.”

Even under current arrangements it has been difficult for those working with domestic abuse survivors to find legal advisors or solicitors who can take on the case at short notice, and prepare the documentation to send to the UK Border Agency within the time permitted. Southall Black Sisters set out the complex evidential and other demands in these cases in their evidence to the Public Bill Committee. Al-Hasaniya stated:

“Our Domestic Violence project has worked with solicitors and other advice agencies to provide the support and assistance that victims need. However, the situation in the Borough has become increasingly difficult now that we are reduced to only one Legal Aid solicitor to whom we can refer cases. While we are very grateful for the support she provides, we are very concerned that with only one option for referral the situation has become extremely precarious.”

Immigration clients who have been victims of domestic abuse find themselves in extremely difficult circumstances. As with other victims of domestic abuse, their lives (and often those of children) are turned upside down by their experiences and often the need to abandon their lives and move into hiding or away to safety. Their abusive spouse or family may have controlled their lives (including their immigration status) until that point. They require good legal advice and assistance to enable them to take the next step in resolving their problems. Many issues such as benefit entitlement, re-housing, contact and residence arrangements for children are effectively put on hold

⁴ See <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la18.htm>

⁵ See <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la69.htm>

until the immigration matter is resolved. Some survivors will have become overstayers.

The factors identified by the Minister generally recognise these extremely difficult circumstances. However, these circumstances do not merely apply to those who fall within the domestic violence immigration rule. There are several other cases, in which a person's immigration status is dependent on a partner where the person may be a victim of domestic abuse, and may therefore be trapped in an abusive relationship because of fears about their immigration status.

Victims of domestic abuse are not necessarily probationary partners. They may be the partner of someone with limited leave or of a person exercising European free movement rights. While they do not fall within the domestic violence immigration rule, they may face the same problems as those who do. They too need legal advice and representation if they are not to face great injustice within the immigration system as a result of the abuse they have faced. Unchallenged decisions to remove adult victims of domestic violence could result in the separation of parent and child. It is an unsatisfactory response to their situation to fund legal assistance to obtain an injunction (which remains in scope) but not to enable them to obtain an immigration status which is not dependent on their partner. Without special protection there is the risk that they remain (with their children) in abusive relationships for fears of the immigration consequences of escape. It may lead those with a risk on return to advance an asylum case they would not otherwise have made.

Examples of such cases are set out in the Annexe. Neither would be eligible for Legal Aid under the Government's Amendment. The first of the two would be eligible under Amendment No. **113**, which extends the Government's Amendment so as to provide for Legal Aid for the partners of persons exercising European free movement rights, in addition to probationary partners. This would be an important extension providing greater protection to victims of domestic abuse who may otherwise remain trapped in an abusive relationship by reason of fears about their immigration status. However, the Government should go further and provide the protection of access to legal advice and representation, by way of Legal Aid, to all such victims.

For further information please get in touch with:

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Annexe: Domestic Abuse, cases

Case of A

A is a citizen of an Eastern Europe country which recently joined the European Union. She was here on the basis of her self-employment in the UK until she married her British husband and applied for a spouse visa, which was granted for the standard two year probationary period until 2007. There were instances of domestic violence during the course of the probationary period, although she remained living with her husband after this. They moved away from the city where they lived to a more rural area where her husband's family lived. She was isolated from her support networks. She had two children with her husband, and he was also abusive towards them.

Her husband effectively caused her to overstay her visa by telling her that there was no requirement for her to apply to extend it before it expired in 2007. She had no reason to doubt this at the time. It was only late in 2009 that she discovered that she did not have the right to reside in the UK solely on account of her nationality. There are no solicitors or organisations dealing with immigration law in the part of the UK where she lives. The close immigration law provider is 75 miles away. A sought help and received limited information from a local Citizen's Advice Bureau. A was subjected to further violence resulting in criminal charges against her husband, and managed to obtain support to travel the 75 miles to get legal advice. The lawyers obtained evidence to support an application on the basis of domestic violence. The lawyers also put forward a case under Article 8 of the European Convention on Human Rights, long residence and the rights of her two British children. The letter of representations was 11 pages long, and 63 separate pieces of evidence were submitted. The Home Office considered the application and granted indefinite leave to remain within four weeks. The lawyer observes "...if she had been able to obtain early legal advice...closer to her home she could probably have escaped her abusive relationship a lot sooner."

Case of B

B was a national of a country in the Caribbean with two children of four and eight (both British Citizens). She had arrived in the UK about 2000 on a visitors' visa and switched to student visa. She became involved with a widowed man from her community. She moved in with him and he is the father of her eldest child. He mistreated her throughout the relationship, using her lack of immigration status as a threat and forced her to have sex. He travels on business frequently. On one trip unbeknownst to her he got married. She found out about this when a woman telephoned the house threatening her and warning her to leave.

She challenged him and he threatened to go to the authorities re her immigration status and to keep their child. She eventually sought help and was supported by the Sojourner project. As she did not have any valid leave, an application was submitted for her under Article 8, rather than on the basis of domestic violence under the Immigration Rules.

She was eventually granted three years Discretionary Leave. Given that she had no means of supporting herself, she was entirely reliant on legal aid in order to obtain legal representation.