

**ILPA BRIEFING
House of Lords - Committee****December 2011****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
HL Bill 109****Immigration and Domestic Violence
(Schedule 1, Part 1, Paragraph 25)****BARONESS GOULD OF POTTERNEWTON**

Page 129, line 14, leave out “indefinite” (Amendment A)

Page 129, line 15, after “Kingdom” insert “, or a claim by the individual to a right to reside in the United Kingdom,” (Amendment B)

Page 129, line 17, after “individual” insert “, or had a right to reside in the United Kingdom as a partner of another individual,” (Amendment C)

Page 129, line 17, leave out “present and settled in the United Kingdom” (Amendment D)

Page 130, leave out lines 1 to 3 (Amendment E)

Page 130, leave out lines 4 and 5 (Amendment F)

Purpose

To extend the legal aid protection provided by paragraph 25 of Part 1 of Schedule 1 to the Bill to victims of domestic abuse whose immigration status is dependent on their abusive partner. These six Amendments should be considered together.

Amendment A removes the word “indefinite” so that those victims of domestic abuse who would be protected by Amendment C (see below) are not assumed to be making indefinite as opposed to limited leave to remain applications. Note that paragraph 25 would continue to be limited to “leave to remain” applications (i.e. applications made by those in the UK). Amendment E is merely consequential upon Amendment A.

Amendment B and D work together. These would bring within the protection of legal aid victims of domestic abuse whose immigration status is dependent upon their partner who is a person exercising European free movement rights (e.g. the partners of European citizens).

Amendment C would bring within the protection of legal aid victims of domestic abuse whose immigration status is dependent on their partner who is a person with limited leave to remain (e.g. the partners of refugees, who are initially granted five years limited leave to remain). Amendment F is consequential upon Amendment C.

Briefing Note

Paragraph 25 currently provides for legal aid for migrant victims of domestic abuse whose leave to enter or remain is dependent on their relationship as the partner of a British citizen or person with indefinite leave to remain, so that they may have legal aid to help them address the consequences to their immigration status if escaping the abusive relationship. The amendments would extend the same protection to migrant victims of domestic abuse whose immigration status is dependent on a partner who is exercising European free movement rights or dependent on a partner who has limited leave to enter or remain. The Government has indicated that it is considering the first of these extensions (that related to European free movement rights), but not the second (see *Hansard* HC, Report, 31 October 2011 : Column 650).

The Government has explained the reasons for introducing paragraph 25 into the Bill as follows:

“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.”

(Hansard HC, Public Bill Committee, 19 July 2011 : Column 245 *per* Jonathan Djanogly MP, Parliamentary Under Secretary of State for Justice)

This reasoning applies with equal force to those whose immigration status is dependent on a partner exercising European free movement rights or a partner with limited leave to enter or remain.

A further factor in some cases will where there are children involved. A victim of domestic abuse may face considerable pressure by reason of the prospect of being permanently separated from the children if forced to leave the UK, or separating them from the other partner and/or from their school, friends etc. if leaving the UK with the children.

For further information please get in touch with:

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Annexe: Domestic Abuse, illustrative examples

Case example: A

A (a non-European citizen) is married to a European citizen, who has come to the UK to work. She has joined him in the UK. Neither of them are subject to immigration control. He has the right to reside in the UK under European law by reason of his exercising his European free movement rights. She has the right to reside in the UK under European law by reason of her relationship to him. If they remain together in the UK, after five years, they will each acquire a permanent right of residency.

A, however, is subject to domestic abuse at the hands of her husband. If she escapes the relationship, she may lose her right to reside in the UK. If so, she would become subject to immigration control and would have no recourse to public funds, by reason of which she may not qualify to be supported by a refuge. However, if the marriage is terminated by reason of the domestic abuse she may retain the right to reside. Her circumstances are complex, in significant part by reason of the distinct legal provisions of EU law that apply.

Case example: K

K came to the UK with her husband who was on a UK ancestry visa, he has five years leave to remain in the UK after which time he will be able to apply for indefinite leave to remain. K has the same period of leave as his dependant. Three years into her visa K's husband was physically violent towards her, throughout their marriage he had been very financially controlling and he had also succeeded in isolating her from her family back home.

K discovered that she was pregnant and throughout her pregnancy and after the birth of her child the physical violence she experienced became more frequent and severe. Although the police were involved after the last incident, K did not co-operate with the investigation because she did not want to jeopardise her husband's (and therefore her own) ability to remain in the UK. She is receiving support from a woman's organisation here and from her health visitor. She would like to separate from her husband but does not want to return to home country now because of the amount of time she has lived here and because she is concerned about her and her child's safety if she were to return.

Case example: L

L is the partner of a refugee. They have two children. The partner has limited leave to remain (for five years) after which he can apply for settlement. L and the children have been permitted to stay in the UK on the basis of their family relationship to a refugee. They too will be able to apply for settlement in due course. However, L is being abused by her partner. She wants to escape the abusive relationship. However, she is worried that by doing so she risks losing her permission to stay in the UK, or prospect of attaining indefinite leave to remain at the end of her five years limited leave in the UK and, if removed from the UK, possibly losing the children.

Case example: M

M was admitted into hospital with a fractured hand and multiple cuts and bruising following a violent assault by her husband. This was not the first assault she had

suffered from him. After leaving hospital, M was placed at a women's refuge but was told that they could not accommodate her for more than a few days by reason of her having no recourse to public funds. M had very little information as to her status, other than she and her nine years old son was dependent on that of her husband. M was very distressed.

The first hurdle for solicitors working under legal aid was to establish her immigration status, ultimately established via a subject access request. At the time of the assaults her husband had limited leave to remain under the ancestry route, and she and their son had leave as his dependants. He had made an application for indefinite leave to remain, which was outstanding. She and their son were dependants on that application. Having established this, solicitors were then able to advise her as to what steps she could take, including to remain in the UK with her and her son.

Without legal advice, which the refuge could not give, M faced losing her place at the refuge and returning to her violent husband.