

# LEGAL & POLICY BRIEFING

## The Legal Framework and Options Available to Migrant Women and Girls in Wales Subject to Violence

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## Introduction

This briefing has been designed for professionals who work in local authorities, as well as other statutory and non-statutory organisations, to provide an overview of the law and policy relevant to migrant women and girls in Wales who are or have been subject to violence.

Violence against women and girls can take many forms and includes domestic abuse, sexual abuse and exploitation, harassment, forced marriage and FGM. The briefing will explain what violence against women and girls (VAWG) is, the legal framework developed to respond to VAWG in Wales and the different legal options available to migrant women subject to violence.

This briefing considers the rights and entitlements of holders of a number of forms of migration status, including mobile EU citizens and their family members and those with limited leave to remain (LLR), including those who are in the UK on the basis of their relationship with someone who is British or settled here. It also applies to those who are irregularly present in Wales, such as those who have overstayed their permission to remain or who have been refused asylum. However, whilst the legal framework and the civil and criminal laws developed to respond to violence against women and girls apply 'equally' to both migrant women in Wales and British citizens or residents (those with ILR or permanent residence), some (but not all) of the immigration law options discussed are only available to holders of particular migration statuses.

A person's migration status is the personal status that attaches to them by virtue of their position as a subject of immigration law. Some forms of migration status, such as 'indefinite leave to remain' (ILR), may give rights that are analogous to those enjoyed by British citizens/subjects, whilst others, such as 'temporary admission', grant only a very limited right of entry and confer very few rights. Immigration law determines who is entitled to a particular migration status as well as the rights that attach to that status. Immigration law is not devolved and (broadly defined) comprises of the immigration rules, primary legislation, European Directives, international conventions and the decisions of the Tribunals, appellate courts and supra-national courts of Strasbourg (the European Court of Human Rights) and Luxembourg (the Court of Justice of the European Union). All immigration applications are decided by [UK Visas and Immigration](#) (UKVI) which is part of the Home Office.

The legal options available to women who have been trafficked are covered in [Human Trafficking, Modern Slavery and the National Referral Mechanism in Wales](#). [Access to Healthcare](#), [Welfare Benefits](#) and financial support for both [Children and Families](#) and [Single Adults](#) are also covered in other briefings in this [Migration Services in Wales series](#). Where appropriate, this briefing should be read alongside these complementary briefings to ensure that migrant women receive the support they are entitled to whilst the legal options and remedies described here are pursued.

## Status of this briefing

This briefing does not constitute legal advice, nor is it statutory guidance. Of necessity, the legal options outlined below have been simplified. Whilst efforts will be made to update this guidance as the law changes, it has been written in June 2016 and reflects the law, as it stands, at this time. Consequently, if you are working with, or supporting a migrant woman who has been subject to violence you should encourage and support her to get independent legal advice (discussed further below) and/or seek assistance from your organisation's legal services.

## How this briefing is structured

This briefing will explain:

- How violence against women and girls (VAWG) is defined in domestic (Welsh and British) and international law.
- The legal and policy framework that applies to VAWG in Wales. This framework is governed by devolved legislation which applies specifically to public and local authorities in Wales.
- The legal options available to individual women affected by violence. The options include criminal and family law remedies, as well as different immigration applications. These areas of law are not devolved and so apply to either England and Wales or the UK as a whole (depending on the area of law considered).

### Key points

- Migrant women and girls at risk of, or subject to violence, have a number of legal options available to them, including reporting offences to the police and seeking protection from the civil courts.
- There are a number of immigration law options available to migrant women subject to violence who wish to remain in the UK.
- The legal framework and the civil and criminal laws developed to respond to VAWG apply 'equally' to both migrant women in Wales and British citizens / permanent residents. However, some (but not all) of the immigration law options discussed here are available only to the holders of particular migration statuses.
- If you are working with a migrant woman you should encourage and support her to get independent legal advice.
- The legal options outlined in this briefing should be considered alongside the information contained in the other briefings in this series to ensure that any migrant woman you are working with receives the financial and other support she may be entitled to.

### Violence against Women and Girls in Domestic and International Law

This section of the briefing will introduce some of the different definitions of VAWG that exist in both domestic and international law and explain their relevance to professionals working in Wales. Where these definitions apply (discussed further below) they will do so regardless of the migration status of the victim (or indeed, perpetrator). In all these definitions the term 'women', 'woman' or 'female' includes girls (those who are under 18 years old).

The [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#) (VAWDASV(W)A 15) defines violence against women and girls in section 2 as 'gender-based violence, domestic abuse and sexual violence where the victim is female.'

Under section 24:

*"gender-based violence' means—*

*(a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation;*

*(b) female genital mutilation;*

*(c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding);*

*'domestic abuse' means abuse where the victim of it is or has been associated with the abuser;*

*'abuse' means physical, sexual, psychological, emotional or financial abuse;*

*'sexual violence' means sexual exploitation, sexual harassment, or threats of violence of a sexual nature;"*

This definition includes not only those forms of violence that are specifically referred to, such as [domestic abuse and sexual violence](#) and [female genital mutilation](#) (FGM) but also those which are not but which come within the definition given in section 24(a), such as stalking and trafficking. The legal options available to women who have been trafficked are explained in [Human Trafficking, Modern Slavery & the National Referral Mechanism](#).

The VAWDASV(W)A 15 is devolved legislation and so only applies to Wales.

The UK Government uses the definition of VAWG adopted by the UN General Assembly in its 1993 [resolution](#) on violence against women. The UK [cross-government definition](#) states that VAWG is:

*“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

The UK has also signed and ratified the [UN Convention on the Elimination of Discrimination Against Women. General Recommendation 19](#) of the CEDAW Committee (the Committee which oversees the application and interpretation of the Convention and to whom the UK Government has to report periodically) defines gender-based violence against women as a form of discrimination against women and a violation of women’s human rights.

Finally, the [Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence](#) which the UK has signed (but not yet ratified) defines VAWG in Article 2 as:

*“a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

These definitions differ in the way that they describe, understand the relationship between and respond to violence against women and gender-based violence. They can be taken, however, as broadly encompassing the same range of harms and behaviours, such as domestic abuse, sexual exploitation and forced marriage. The only legal definition applicable in Wales (to those who work in relevant authorities or who have devolved functions) is that of the VAWDASV(W)A 15. However, because the UK is a signatory to CEDAW and has signed the Council of Europe Convention, these definitions (and the substantive provisions that go with them) are relevant. Whilst the provisions in CEDAW and its general recommendations cannot be directly enforced in law in Wales (or anywhere else in the UK) the UK as a whole is bound by it. Similarly, whilst the UK Government has not yet ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Abuse the UK cannot act in a way that would defeat the object and purpose of that treaty.<sup>1</sup>

## Legal and Policy Framework for Responding to VAWG in Wales

### The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (VAWDASV(W)A 15) provides a legal framework in Wales for responding to VAWG (as well as gender-based violence, domestic abuse and sexual violence when experienced by men and boys, issues not covered in this briefing).

The purpose of the Act is to improve:

- (a) arrangements for the prevention of gender-based violence, domestic abuse and sexual violence;
- (b) arrangements for the protection of victims; and,
- (c) support for people affected by such violence.

The Act:

- Places a duty on Welsh Ministers to prepare, publish, implement and review a national strategy on gender-based violence, domestic abuse and sexual violence within certain time scales (sections 3-4).
- Places a duty on local authorities to prepare, publish, implement and review a local strategy on gender-based violence, domestic abuse and sexual violence (sections 5-8 as amended).

1. Article 17 of the Vienna Convention on the Law of Treaties.

- Gives Welsh Ministers a power to require Local Authorities to publish information about how its education functions are being exercised to promote the purpose of the legislation and to issue guidance to particular educational institutions (sections 9 and 10).
- Gives Welsh Ministers the power to issue statutory guidance, following consultation, to relevant authorities on how it should exercise its functions to pursue the purpose of the Act (section 15-16).
- Enables the appointment of a National Adviser on gender-based violence, domestic abuse and sexual violence (sections 20-21). The National Adviser reviews the actions taken by public sector bodies in Wales under the Act and advises Ministers on her findings.

The Act has a specific provision on VAWG (section 2) which requires a person exercising 'relevant functions' (duties set under the Act, such as those in the preceding paragraph) to have regard to the need to remove or minimise factors which increase the risk of VAWG occurring, or exacerbate its impact.

The first national strategy must be in place within 6 months of the May 2016 elections for the National Assembly for Wales, replacing [The Right to Be Safe](#), the WAG's first integrated violence against women strategy. The first local joint strategies must be published within one year of the local, ordinary elections which will take place in May 2017. The first National Adviser, Rhian Bowen-Davies, has been in post since September 2015. [Statutory Guidance](#) on the National Training Framework on violence against women, domestic abuse and sexual violence (one of the central means by which the Act will be delivered) was published in January 2016. The UK Government's [Strategy to End Violence Against Women and Girls 2016-2020](#) specifically refers to the VAWDASV(W)A 15 and the National Training Framework in its section on 'Working with Wales.'

A central innovation of the VAWDASV(W)A 15 and subsequent statutory guidance is the introduction of 'Ask and Act'; a process of targeted enquiry to be practiced across public services to identify VAWDASV. The term targeted enquiry describes the recognition of indicators of VAWDASV as a prompt for professionals to ask their client whether they have been affected by any of these issues. 'Relevant professionals' in 'relevant authorities' will be required to 'Ask and Act': to 'ask' potential victims of VAWG about it where such violence is suspected and to 'act' to reduce the harm that this violence produces (section 15).

'Ask and Act' aims to increase the number of women identified as experiencing violence, to offer referrals and interventions to those identified and to engage with victims who are 'vulnerable and hidden' at the earliest opportunity.<sup>2</sup> The 'Ask and Act' requirement is, therefore, particularly relevant to professionals who work with, or come into contact with, migrant women (more on this below). This group is vulnerable to violence and, where it is experienced, often have a heightened or more intense experience of it because of their migration status and the fact that they are often placed in a position of dependency by this status on the person who perpetrates violence against them.<sup>3</sup> Migrant women may also under-report such violence for this and other reasons, including concerns about confidentiality or receiving a racist or inappropriate response.<sup>4</sup> Finally, migrant women face additional barriers to receiving those services which may assist them overcome violence. Such barriers may be legal, in the form of the 'no recourse to public funds' (NRPF) requirement (which excludes some migrant women from accessing certain welfare benefits) or practical, including, for example, language barriers.<sup>5</sup>

2. See A Consultation on draft statutory guidance on "Ask and Act" under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and section 60 of the Government of Wales Act 2006 (Welsh Government) for further information.

3. For an example of research that supports this claim see Sundari Anitha, 'Legislating Gender Inequalities' (2011) 17 *Violence Against Women* 1260.

4. A Consultation on draft statutory guidance on "Ask and Act" under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and section 60 of the Government of Wales Act 2006 (Welsh Government), page 80-81 and

5. Anne Hubbard, Joanne Payton and Amanda Robinson 'Unchartered Territory – violence against migrant, refugee and asylum seeking women in Wales, Wales Migration Partnership, November 2013 and Erica Burman and Khatidja Chantler, 'Domestic Violence and Minoritisation: Legal and Policy Barriers Facing Minoritized Women Leaving Violent Relationships' (2005) 28 *International Journal of Law and Psychiatry* 59.

At the time of writing, the Welsh Government's consultation on the draft statutory guidance is closed and a response is expected later in 2016. According to the consultation, however, 'relevant professionals' are likely to be those who are:

- In a public facing role, coming into contact with patients/service users where either an assessment is made and/or care is delivered and which provides an opportunity to 'ask' (whether that contact is a 'one off' or part of an ongoing relationship).

And;

- The group of service users is likely to have experienced a form of VAWG.
- This experience complicates and impacts on the nature of the service user's engagement with the service offered in that role.

Or;

- In a setting or location which is reason alone to 'Ask and Act' (e.g. midwifery, mental health, child protection).<sup>6</sup>

Relevant professions are likely to include:

- Those providing health and medical care including midwives, health visitors, GPs, A&E staff, nurses (including Community Psychiatric Nurses and district or practice nurses) paramedics and those working on mental health or substance misuse issues.
- Staff working in Local Authorities including Child Protection Social Workers, Safeguarding Vulnerable Adults Social Workers, Safeguarding leads in Education, Housing options and Homelessness officers and Youth Offending Team Representatives.
- All firefighters with community based responsibilities.

Professionals subject to the 'Ask and Act' requirement will receive statutory guidance as well as training, through the National Training Framework, to ensure that those those subject to it understand the nature and extent of the obligation. Relevant authorities (as defined section 14 of the Act) are expected to develop an 'Ask and Act' policy which will outline the approach to be undertaken by their staff in compliance with the statutory guidance. If a migrant woman is identified as experiencing violence, one of the ways a relevant professional can 'act' is, however, to advise her on the value and importance of seeking legal advice and to assist her to obtain and act on this advice. A relevant professional can also, drawing on the other briefings in this series, ensure that a migrant women is receiving the accommodation, financial and other support she is entitled to. Finally, a relevant professional can also 'act' by providing evidence in support of certain types of immigration application, such as those that are based on domestic violence.

### ***The Human Rights Act 1998***

In addition to the requirements and duties created by the VAWDASV(W)A 15, public authorities in Wales are also required to act in compliance with the [Human Rights Act 1998](#).

The Human Rights Act incorporates the [European Convention on Human Rights](#) into domestic law. Whilst the Human Rights Act 1998 does not contain express provisions on VAWG it does make certain fundamental rights directly enforceable in UK courts and places duties on public authorities to act in accordance with them (section 6 of the Act). These rights include the right to life (Art 2 ECHR), the right to be free from torture and inhuman and degrading treatment (Art 3 ECHR), the right to respect for private and family life (Art 8 ECHR) and the right not to be

6. A consultation on draft statutory guidance on "Ask and Act" under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and section 60 of the Government of Wales Act 2006, Welsh Government Consultation Document, page 23.

discriminated against (Art 14 ECHR, this right has to be relied on in conjunction with another Convention right). These rights have been relied on by women subject to or at risk of different forms of violence, by ensuring, for example, that perpetrators of domestic violence are properly investigated and victims supported and that women at risk of FGM are not returned to a country where it might be carried out.<sup>7</sup> These rights are, therefore, important to those working in the criminal justice system as well as in the immigration, health and social care contexts. Centrally, they have to be guaranteed to everyone within the jurisdiction (in this case, England and Wales) regardless of migration status.

### **Female Genital Mutilation Act 2003**

Section 5B of the Female Genital Mutilation Act 2003 (as amended) places a specific duty on regulated teachers and health and social care professionals to report FGM to the police in cases of girls under 18 years old. This mandatory reporting duty operates in addition to existing safeguarding duties and responsibilities.

### **Legal Options Available to Migrant Women Subject to Violence**

This section of the briefing focuses on some of the most relevant legal options available to migrant women subject to violence. The options and areas of law discussed are all non-devolved (and depending on the area of law, either apply throughout the UK or to England and Wales). This section starts with an overview of the criminal justice system's response to VAWG, highlighting some of the criminal offences that may be committed by a perpetrator of violence and the protections available to victims (regardless of the migration status of the victim or offender). Legal aid and the civil options available to migrant women subject to violence will then be considered, including the use of protective orders such non-molestation and restraining orders. Finally, some of the immigration law options available to migrant women subject to violence will be reviewed, including the domestic violence rule and making a claim for asylum. Public law remedies, including child protection proceedings as well as the support available to children and vulnerable adults from local authorities are not be discussed here, but are also important to consider in cases involving violence against girls. Accordingly, the information provided here should be supplemented with advice from the local authority and/or your own organisation's legal services. Further information about, and advice on, the legal options available to migrant women subject to violence against women is also available on the [Rights of Women](#) website and via their advice lines (see 'Sources of Support' below).

### **VAWG and the Criminal Law**

Whilst there is no single criminal offence of 'violence against women', there are a number of different offences that may be committed by a perpetrator of VAWG. Specific offences have been developed to respond to particular forms of VAWG (some are discussed further below) and to respond to the harm that children in particular may experience. It is not possible to list all these offences here or explain particular offences in detail. What is important to note is that perpetrators of VAWG may be engaging in behaviour that is criminal and that migrant women may report such behaviour to the police in order to seek protection from it and/or to ensure that the person responsible is held to account. Evidence that a migrant woman has reported violence to the police and/or that a perpetrator has been cautioned or convicted may also support an immigration law application made on the basis of that violence. Further information and advice on particular criminal offences, including those specifically designed to protect children and young women, can be sought from the specialist organisations listed at the end of this briefing.

The ability of the police to protect women and girls from violence is not limited to investigating and, if necessary, arresting a perpetrator. The police have a range of powers in relation to VAWG, including those which enable them to exclude a violent partner from the family home.

In relation to domestic abuse, for example, relevant criminal offences include those which relate to assault and battery (such as common assault or assault occasioning actual or grievous bodily harm under section 47 of the Offences Against the Person Act 1861), those that relate to sexual violence (including the offences of rape and

7. *Fornah v Secretary of State for the Home Department* [2006] UKHL 46 and *Opuz v Turkey App no 33401/02* (ECtHR, 9 June 2009).



sexual assault under the Sexual Offences Act 2003) and those that concern particular types of harmful behaviour, such as that which is controlling or coercive (an offence under section 76 of the Serious Crime Act 2015). In addition to investigating such offences the police have a range of other powers that may assist victims of domestic abuse and their families. For example, Domestic Violence Protection Notices (DVPNs) can be issued by the police (under the Crime and Security Act 2010) to protect a victim by placing strict conditions/prohibitions on the perpetrator. These notices are supplemented by Domestic Violence Protection Orders (DVPOs) (which may be granted by a magistrates' court following an application from the police where a DVPN has been issued) to protect a victim of violence and enable her to remain in the family home by excluding the perpetrator from it for a short period of time (up to 28 days). These orders can be used alongside other criminal or civil law proceedings (discussed below). Finally, the [Domestic Violence Disclosure Scheme](#) (DVDS or Clare's Law) enables individuals to request information, 'the right to ask', or receive information about, 'the right to know', a current partner who may or may not have previous convictions for violence.

Stalking, harassment and putting someone in fear of violence are also offences (under the Protection from Harassment Act 1997) regardless of the relationship, if any, between the victim and perpetrator. The Sexual Offences Act 2003 criminalises a broad range of harms, including non-consensual sexual offences (when committed against both adults and children), sexual offences committed by those in certain positions of trust and within familial relationships and sexual offences against people who have certain types of mental disorders. Other relevant sexual offences include those that relate to the sexual exploitation of children, the prostitution of others, paying for sexual activity with someone subject to force and trafficking (under the Sexual Offence Act 2003 as amended).

Specific offences have also been developed to target particular forms of VAWG, such as FGM and forced marriage. In addition to the offence of coercive control (discussed above in relation to domestic abuse), the Female Genital Mutilation Act 2003 (as amended) criminalises the carrying out of FGM in the UK; makes it a criminal offence to take someone out of the country for the purposes of FGM (or to otherwise aid the commission of FGM abroad) and to fail to protect a girl under the age of 16 from FGM. It is also a criminal offence to force a person to marry (under section 121 of the Anti-Social Behaviour, Crime and Policing Act 2014).

Criminal offences are investigated by the police and prosecuted by the Crown Prosecution Service. Wales has four police forces [Dyfed-Powys Police](#), [Gwent Police](#), [North Wales Police](#) and [South Wales Police](#) which in turn are served by [CPS Cymru-Wales](#). Each police force has its own [victim care team](#) which gives victims of crime (whether or not they have reported it to the police) information and support, including help applying for criminal injuries compensation.

The [Code of Practice for Victims of Crime](#) sets out the minimum levels of service which victims of crime can expect from agencies, such as the police and CPS, who are involved in the criminal justice system. The Code makes specific provision for victims of crime who are vulnerable or intimidated (for example children or victims of sexual offences) and such victims should receive an 'enhanced service'. The Code ensures that all victims of crime receive information about their case promptly at certain points in the investigation/prosecution, are assessed to see what support they need and are referred to specialist support services. Other protections for victims include the provision of 'special measures' should a case come to court (such as giving evidence from behind a screen or via a live link) and, in cases involving sexual violence or FGM, having anonymity.

## VAWG and the Civil Law

In addition, or as an alternative to reporting violence to the police, migrant women subject to VAWG may wish to seek protection from violence from the civil courts. The civil courts are non-criminal courts that deal with a range of legal issues, including family law (public and private) housing, debt, welfare benefits, discrimination and immigration/asylum law.

If a woman needs help paying for legal advice she may be able to receive legal aid: free legal advice and representation. Legal aid is available to migrant women (subject to the financial eligibility rules and the merits of their case) regardless of the particular migration status held.<sup>8</sup> Migrant women who are experiencing domestic abuse, for example, may be able to get advice on the different court orders that may protect them and their families from further violence, as well as advice on ending a relationship (divorce/civil partnership dissolution) protecting children (applications in relation to child contact or residence) and remaining in the UK (under the domestic violence rule). Whether or not a woman can receive legal aid will depend on three things:

- Whether or not the legal issue(s) she wants advice on are within the scope of legal aid. Not all areas of family or immigration law are covered by the legal aid scheme. In general though, legal aid is available for advice/representation on family or immigration issues relating to VAWG (including domestic violence protection orders and for applications for asylum and under the domestic violence rules, discussed below).
- Whether or not she meets the financial eligibility requirements.
- Whether or not the case passes (and continues to pass) the merits test. In order for legal aid to be granted and for funding to be continued the case has to have sufficient 'merit'; it has to concern something important to the person who is bringing it and it has to have a particular chance of success.

A solicitor or immigration advisor will be able to provide a woman with information on her eligibility for legal aid and will make the necessary application(s) for her. Further information about legal aid and its [eligibility requirements](#) is available on the [GOV.UK](#) website.

Protection from VAWG from the civil courts often involves applying for and receiving particular types of protective orders. Orders are usually applied for by individual applicants who have been affected by particular conduct, such as domestic abuse. In some cases, such as those involving forced marriage or FGM, applications can be made by a relevant third party, such as a local authority or specialist support organisation. Orders can require the person against whom they are made, the respondent, to do and/or to not do certain things, such as to return photos, leave a family home and/or stop using or threatening violence. The migration status of the applicant or respondent may be considered by the court when deciding whether or not to grant a particular order but having, or not having, a particular migration status does not affect a woman's (potential or actual) entitlement to it. For example, the fact that a migrant woman subject to violence may find it more difficult than her British husband to secure alternative accommodation may be a factor that is taken into account in her favour by a court considering her application for an occupation order against him. Being in receipt of a protective order may also be important evidence in support of some immigration applications.

Under the Family Law Act 1996 (as amended) a variety of protective orders are available to victims of VAWG. These orders can only be sought against 'associated persons', such as family members or current or ex-partners and they can be used to cover both the applicant and any 'relevant child' of the family (section 62 of the Act). Orders available include:

- Occupation orders: these orders relate to the family home and can exclude a perpetrator of violence from all or part of it.
- Non-molestation orders: these orders can forbid a perpetrator of violence from using or threatening violence and can prevent him/her from coming within a certain distance of the applicant's home (so they may need to be combined with an occupation order) or place of work. These orders are flexible and can be used to forbid a wide range of abusive behaviour.
- Transfers of tenancies: these orders transfer a tenancy from a perpetrator of violence to a victim, in certain circumstances, to enable her to remain in the family home.

8. The Ministry of Justice attempted to limit access to legal aid to some migrants through the introduction of a 'residence test'. This attempt was rejected by the Supreme Court (R (on the application of The Public Law Project) (Appellant) v Lord Chancellor (Respondent) 2016).

- Forced marriage protection orders: these orders can forbid a respondent(s) from engaging in behaviour that seeks to force, or attempt to force, another person into a marriage.

Interim care orders (orders made under the Children Act 1989 for the protection of children from harm) can also contain provisions that exclude perpetrators of violence from the home in which the child subject to the order lives, and where, amongst other things, the court is satisfied that if the exclusion requirement is added to the order the child will cease to suffer, or cease to be likely to suffer, significant harm (section 38A of the Children Act 1989).<sup>9</sup>

Under the Protection from Harassment Act 1997, a restraining order may be made against a 'relevant person' (who does not have to be 'associated' to the applicant). Restraining orders can be made by:

- the High Court or county court to restrain a 'relevant person' from pursuing conduct that amounts to harassment; or
- a criminal court, such as a magistrates or Crown Court, against a defendant on conviction (or in more limited circumstances, on acquittal) to ensure ongoing protection for a victim of stalking or harassment following a criminal trial related to these issues.

Finally, Schedule 2 of the Female Genital Mutilation Act 2003 (as amended) makes provision for courts to make FGM Protection Orders. These orders can be made to protect a girl who is at risk of, or who has already undergone, FGM.

Further information about applying for protective orders (including making an application 'without notice' to the perpetrator of violence), the legal tests to be satisfied and enforcement (breach of some of the orders described is a criminal offence whilst others have to be enforced by going back to the court which made it) as well as the benefits of such orders for individual women should be sought from a solicitor or legal advisor (in addition to, where necessary, seeking advice from the local authority and/or your organisation's legal services).

## **VAWG and Immigration and Asylum Law**

If a migrant woman is subject to violence and the person on whom she is dependent for her migration status (for example, her husband or employer) is also the person who is violent towards her, then her migration status may be rendered precarious by that violence. A woman in this situation may want or need to remain in the UK on a different basis, one that is independent of her abuser. Alternatively, a migrant woman may require protection in the UK from violence that would occur (or continue) were she to return to her country of origin.

This section will begin by considering the rights of mobile EU citizens and their family members to enter and remain in the UK, as well as how rights may be retained on relationship breakdown in cases involving domestic abuse. An overview of the immigration law options available to migrant women subject to violence who are unable to benefit from European free movement law will then be provided, including the domestic violence rule and applications for asylum.

It is vital that migrant women subject to violence receive legal advice on their situation. Under the Immigration and Asylum Act 1999 only those who are regulated solicitors, barristers, legal executives, regulated by the Office of the Immigration Services Commissioner (OISC) or exempt by ministerial order are able to give legal advice on immigration and asylum law. Migrant women subject to violence may be able to get legal aid (subject to the financial eligibility rules) to enable them to make certain types of immigration applications, including those for asylum or under the domestic violence rules.

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9. Parts 4 (care and supervision) and 5 (protection of children) of the Children Act 1989 remain in force in Wales and are not replaced by the Social Services and Well-being (Wales) Act 2014.

Migrant women subject to violence may, where it is necessary and appropriate for them and any children they have, wish to seek accommodation and support in a women's refuge. Whether or not a woman can be supported in a refuge will depend on her personal and financial circumstances, as well as the criteria and capacity of the refuge in question. In general terms, however, it can be said that that migrant women who are able to receive welfare benefits can be accommodated in a refuge. This includes, for example, women who are granted leave under the Destitute Domestic Violence Concession and some mobile EU citizens and their family members (both discussed further below). Local authorities may also support certain migrant women and their children in refuge or in alternative accommodation. Finally, asylum-seeking women may be supported in refuge by the UKVI (discussed further below). Whether or not a woman who is not eligible for welfare benefits, who is not an asylum-seeker or someone eligible for support from the local authority will be able to go into a refuge will depend on the funding and capacity of the specialist organisation concerned. For further information on NRPF and those sources of accommodation, financial and other support which are available to migrant women subject to violence see [Migrants' Entitlement to Welfare Benefits in Wales](#), [Children and Families: Destitution, Safeguarding and Services under the Social Services and Well-being \(Wales\) Act 2014](#) and [Single adult migrants: Destitution, safeguarding and services under the Social Services and Well-being \(Wales\) Act 2014](#).<sup>10</sup>

### Mobile EU Citizens and their family members

A significant source of European free movement law is the Citizens' Directive,<sup>11</sup> as incorporated into British law by the Immigration (European Economic Area) Regulations 2006 (as amended). European free movement law is also comprised of other related Treaties and Regulations, as well as the judgements of the CJEU (the [Court of Justice of the European Union](#)). Under European free movement law citizens from other European countries can enter and then remain in the UK and exercise certain rights, such as the right to work and access welfare benefits (if certain conditions are met, UK citizens are given analogous rights to enter and remain in other European countries; in certain circumstances they and their family members may be able to retain and benefit from these rights should they return to the UK.

In this set of briefings the term 'mobile EU citizen' refers to the citizens of other EU countries (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 four other countries that while not being members of the EU, are treated in a similar way (Iceland, Norway, Liechtenstein and Switzerland).

Mobile EU citizens have the right to enter the UK and reside here for an initial period of three months. After three months mobile EU citizens who are 'qualified persons' have an extended right of residence. Qualified persons are those who are workers, self-employed, self-sufficient, job-seekers or students. Some statuses may be 'retained' even though the person concerned no longer fulfils the requisite criteria. For example, worker status may be retained by:

- A woman who gives up work or work-seeking in the late stages of pregnancy, providing that she returns to work or finds another job within a reasonable period following the birth of her child.<sup>12</sup>
- A woman who becomes the primary carer of her child who is in education (usually aged between 5-18 years).<sup>13</sup>

10. For further information on the impact of NRPF on women at risk of or subject to violence see Duncan Mackenzie and Andrew Stephens 'Research into how 'No Recourse to Public Funds' status affects those experiencing gender based violence, domestic abuse and sexual violence in Wales', Local Government Data Unit – Wales, May 2015.

11. European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely 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/EEC, 90/365/EEC and 93/96/EEC OJ L 158/77.

12. *C-507/12 Jessy Saint Prix v Secretary of State for the Work and Pensions* ECLI:EU:C:2014:2007.

13. *Case C-480/08 Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department* ECLI:EU:C:2010:83.

After 5 years residence in the UK mobile EU citizens may become permanent residents.

The family members of mobile EU citizens have the same rights to enter and then remain in the UK as mobile EU citizens themselves. This applies whether or not the family member is themselves an EU citizen or is a third-country national (a citizen of a country that is not in the EU or treated as if it were). The definition of a 'family member' for the purposes of European free movement law (and as applied in the UK) is a broad one and a mobile EU citizen's:

- (a) spouse or civil partner;
- (b) children who are under the age of 21 or are dependents;
- (c) dependent direct relatives in the ascending line (so, for example, parents and parents-in-law);

As well as:

- (d) Any other family members who are dependents or members of the household of the EU citizen, or who have serious health reasons for requiring the personal care of that citizen.
- (e) The partner with whom the EU citizen has a durable relationship (so unmarried partners whether in same-sex or opposite sex relationships).

So, to give an example to demonstrate the scope and application of European free movement law, the Nigerian wife of a German worker can enter the UK with him, can work and/or access welfare benefits on the same basis that he can and, after 5 years, apply for permanent residence in the UK along with him.

If a migrant woman's relationship with a mobile EU citizen breaks down because of domestic abuse and the woman concerned is herself an EU citizen, she can remain in the UK (and continue to work and potentially access welfare benefits) on the basis of her own European free movement law rights. If the woman concerned is a third-country national (from outside the EEA) and she is married/in a civil partnership with the mobile EU citizen then, whilst she remains married/a civil partner, she continues to benefit from the rights that the mobile EU citizen has, even if she is living separately from him/her. If the third-country national's relationship with the mobile EU citizen ends in divorce/dissolution and she experienced domestic violence then, under Article 13 Citizens' Directive/Regulation 10 of the Immigration (European Economic Area) Regulations 2006, she may be able to retain her rights of residence. Rights may also be retained if the mobile EU citizen with whom she has a relationship dies, if the relationship has lasted a particular period of time or if there are children (under certain circumstances). Whilst Article 13/Regulation 10 only applies to victims of domestic violence who were married or in a civil partnership with the mobile EU citizen on whom they depended for their rights of residence, its protections have been extended to third-country national victims of domestic violence who are/were in durable relationships.<sup>14</sup> Third-country nationals may also be able to derive a right of residence from that of their EU citizen child where they are that child's primary carer.<sup>15</sup> Residence cards and derivative residence cards can be applied for from UKVI for the purposes of demonstrating a woman's right to live in the UK under European law.

### Other applications

There are a number of immigration applications that can be made by a migrant woman who is in the UK, who cannot benefit from European free movement law and who does not wish to return to her country of origin. The following routes are particularly relevant to migrant women subject to violence; they should be considered alongside other immigration and asylum law options (such as applying to work, study or settle in the UK; or applying to remain as the parent of a child who is British or resident here).

14. GMIAU have reported in a letter to ILPA that they have successfully obtained a residence permit for an un-married partner whose relationship broke down because of domestic violence. ILPA members can see the letter here [www.ilpa.org.uk/resource/31886/greater-manchester-immigration-aid-unit-to-ilpa-of-26-february-2016-re-retained-right-of-residence-c](http://www.ilpa.org.uk/resource/31886/greater-manchester-immigration-aid-unit-to-ilpa-of-26-february-2016-re-retained-right-of-residence-c).

15. *Case C-34/09 Ruiz Zambrano v Office national de l'emploi (ONEM)* [2011] ECR I-1177.

### ***Applying for ILR as a victim of domestic violence***

The 'domestic violence rule' is a set of provisions in the [Immigration Rules](#) which allows those who have permission to remain in the UK as the spouse, civil partner or partner of someone who is British or settled here and whose relationship has permanently broken down because of domestic violence during their probationary period (the period during which they have limited leave to remain as a partner) to be granted ILR.<sup>16</sup> The domestic violence rule cannot be used by those who are in a relationship with someone who themselves has limited leave to remain, such as by the dependent of a student or a worker. To benefit from the 'domestic violence rule' applicants have to complete a complex application form and produce evidence that their relationship with their partner was genuine and subsisting, but that this relationship was caused to break down because of domestic violence. Any evidence that an applicant has that demonstrates that their relationship was continuing and was caused to permanently break down because of domestic violence can be submitted in support of application. In relation to domestic violence, such evidence may include, but is not limited to, a police report, a letter from a GP/medical professional, a letter from a specialist domestic violence support organisation, a letter from the Chair of a MARAC ([Multi-Agency Risk Assessment Conference](#)) or a protection order (such as a non-molestation order). The Destitute Domestic Violence Concession (DDVC) is available to those who are eligible for ILR under the rule and enables some applicants to access public funds (welfare benefits and housing-related support, such as Housing Benefit) while their application is prepared and decided (for more information on the DDVC, see [Migrants' Entitlements to Welfare Benefits in Wales](#)).<sup>17</sup> If an application under the domestic violence rule is refused, the applicant can have the decision reviewed under an administrative review process. If the outcome of a review is negative the refusal may be challenged in court through judicial review proceedings. Applications under the domestic violence rule remain in the scope of the legal aid scheme.

### ***Applying for International Protection/Asylum***

Broadly speaking, a claim for international protection or asylum in the UK is a claim for refugee status and/or a form of subsidiary protection, such as humanitarian protection.

Under the Refugee Convention and the EU Qualification Directive, a woman may be recognised as a refugee if, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, she is outside her country of nationality and is unable or unwilling to avail herself of the protection of that country.<sup>18</sup> Being granted refugee status therefore depends on showing a relationship or 'nexus' between 'being persecuted' and one of the reasons given: your race, religion, nationality or your membership of a 'particular social group'. The particular social group reason has been interpreted to include women at risk of a number of different forms of VAWG, including domestic violence, trafficking, forced marriage and FGM.<sup>19</sup> Women who fear persecution because of their sexual orientation or gender identity can also seek protection on the grounds of their membership of a 'particular social group'.<sup>20</sup>

Where there are substantial grounds for believing that there is a real risk that if a woman was returned to her country, she would be subject to torture or inhuman and degrading treatment contrary to Art 3 ECHR, she may receive subsidiary protection in the UK. Protection is also available under the Qualification Directive where it

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16. The relevant rules are paragraphs 289 A-D of the Immigration Rules; section DVILR of Appendix FM and Part 6 of Appendix Armed Forces (which covers the partners of those who are serving in the Armed Forces).
  17. The DDVC is available to those who were last admitted to, or were last granted an extension of stay in the UK as a spouse, civil partner, unmarried or same sex partner of either a British citizen or person present and settled in the UK; or, of a serving or discharged member of HM Forces who is a British citizen or who has served for at least four years; their relationship has broken down due to domestic violence; and, they are destitute and need of benefits, Home Office, Domestic Violence Notification Form (2 December 2013).
  18. Article 1A(2) of the 1951 Convention Relating to the Status of Refugees (as amended); Article 2(c) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted OJ L 304/12.
  19. See *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal, Ex parte Shah* [1999] UKHL 2 and *SM (lone women - ostracism) Pakistan* [2016] UKUT 67 (IAC) in relation to domestic violence, for example.
  20. *HJ (Iran) v Secretary of State for the Home Department* [2010] Imm AR 729, [2010] 3 WLR 386, [2011] AC 596, [2011] 1 AC 596, [2010] UKSC 31.

can be shown that there are substantial grounds for believing that if returned, a woman would be at real risk of suffering serious harm in the form of exposure to the death penalty, torture or inhuman or degrading treatment or punishment or indiscriminate violence.

A woman who makes a claim for asylum will have to attend an interview and explain why she needs protection in the UK. Women asylum seekers can and should ask for a female interviewer and interpreter. Child care should also be provided for the asylum interview. An asylum claim may be supported by evidence other than that provided by the woman concerned and may include, for example, medical evidence or expert evidence on the conditions in a woman's country of origin. If a claim for asylum is refused it may be appealed to the First-Tier (Asylum and Immigration) Tribunal.

Women claiming asylum may, depending on their financial and personal circumstances, receive accommodation and financial support while an application is decided (for more information on Home Office asylum support and through any appeals process, see [Migrants' Entitlements to Welfare Benefits in Wales](#)). Chapter 23 of the [Asylum Support Instructions](#) (formally known as Policy Bulletin 70) sets out what Home Office and accommodation provider staff should do when they receive a report of domestic violence from, or in connection with, someone they support. The instructions cover the emergency response arrangements that should be in place should a woman need to leave her home and how alternative accommodation and support, including in a women's refuge if necessary can be provided. It is important that women seeking asylum who are experiencing domestic violence and who are dependent for their claim on the perpetrator of violence receive independent legal advice as soon as is possible. Women in this situation may be able to make a claim for asylum in their own right. Asylum claims remain within the scope of legal aid. Whether or not an individual will receive, or will continue to receive, legal aid for their case will depend on their financial circumstances and an assessment of the merits of their case.

### ***Private and family life in the UK***

Migrant women subject to violence may be able to apply for permission to remain in the UK on the grounds of their private and family life here, under Article 8 ECHR. The right to respect for private and family life is not an absolute right, but a woman cannot be returned to her country of origin if to do so would result in a 'flagrant breach' or 'nullification' of that right.<sup>21</sup> Whether or not a woman will be able to remain in the UK to continue her private and family life here (rather than continuing it in her country of origin) will depend on a number of factors, including whether or not the person or people she has her family life with could return with her (or could not, for example, where a woman's partner is a refugee or where relocation would involve severe hardship). Applying to remain in the UK on the basis of private and family life is a complex process which involves completing an application form and providing supporting evidence. Legal aid is not available for these applications.

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21. *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64 (22 October 2008) (which concerned a woman's return to situation where her son would be removed from her care in a case that had involved domestic violence).

## Further resources

### Key legislation

- [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#)
- [The Immigration Rules HC 251 \(as amended\)](#)
- [The Immigration \(European Economic Area\) Regulations 2006 \(as amended\)](#)

### Relevant policies and guidance

- [Code of Practice for Victims of Crime \(England and Wales\)](#)
- [Domestic Violence Disclosure Scheme: Guidance \(England and Wales\)](#)
- [Fact sheet on mandatory reporting of FGM \(England and Wales\)](#)
- [Multi-agency statutory guidance on female genital mutilation \(England and Wales\)](#)
- [Statutory Guidance on the National Training Framework on violence against women, domestic abuse and sexual violence \(specific to Wales\)](#)
- [Strategy to End Violence against Women and Girls: 2016-2020 \(England and Wales\)](#)
- [The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage \(England and Wales\)](#)

### Other sources of information

- Anne Hubbard, Joanne Payton and Amanda Robinson '[Uncharted Territory – violence against migrant, refugee and asylum seeking women in Wales](#)', Wales Migration Partnership, November 2013.
- Duncan Mackenzie and Andrew Stephens '[Research into how 'No Recourse to Public Funds' status affects those experiencing gender based violence, domestic abuse and sexual violence in Wales](#)', Local Government Data Unit – Wales, May 2015.
- [Wales Strategic Migration Partnership](#) - Partnership to enable strategic and political oversight on migration and to provide an independent leadership, advisory and co-ordinating body on migration in Wales.

## Support for women and girls

### Domestic Abuse and Sexual Violence

Live Fear Free Helpline: 0808 8010 800 (run by Welsh Women's Aid)

Email: [info@livefearfreehelpline.wales](mailto:info@livefearfreehelpline.wales)

<http://livefearfree.gov.wales/?lang=en>

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

### FGM

National NSPCC FGM Helpline: 0800 028 3550

Email: [help@nspcc.org.uk](mailto:help@nspcc.org.uk)

[www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/female-genital-mutilation-fgm/](http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/female-genital-mutilation-fgm/)

### Forced Marriage

Forced Marriage Unit Helpline: 020 7008 0151

Email: [fmu@fco.gov.uk](mailto:fmu@fco.gov.uk)

[www.gov.uk/stop-forced-marriage](http://www.gov.uk/stop-forced-marriage)

### Legal advice and information on VAWG issues in England and Wales

Rights of Women

020 7251 6575

Email: [info@row.org.uk](mailto:info@row.org.uk)

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



### **Legal advice and information on European law**

The AIRE Centre  
020 7831 4276  
Email: [info@airecentre.org](mailto:info@airecentre.org)  
[www.airecentre.org](http://www.airecentre.org)

### **Specialist services to people from Black and Ethnic Minority (BME) backgrounds in Wales Bawso**

24 hour helpline: 0800 7318147  
[www.bawso.org.uk](http://www.bawso.org.uk)

### **Trafficking/Slavery**

Modern Slavery Helpline: 0800 0121 700  
Helpline online <https://modernslavery.co.uk/contact.html>  
<https://modernslavery.co.uk/index.html>

### **For victims of crime:**

Criminal Injuries Compensation Authority  
[www.gov.uk/government/organisations/criminal-injuries-compensation-authority](http://www.gov.uk/government/organisations/criminal-injuries-compensation-authority)  
[www.gov.uk/government/organisations/criminal-injuries-compensation-authority/about/welsh-language-scheme](http://www.gov.uk/government/organisations/criminal-injuries-compensation-authority/about/welsh-language-scheme)

### **Victim Support**

[www.victimsupport.org.uk/help-and-support/get-help/support-near-you/wales](http://www.victimsupport.org.uk/help-and-support/get-help/support-near-you/wales)

### **For migrant, asylum seeking and refugee women:**

#### **Women Seeking Sanctuary Advocacy Group Wales**

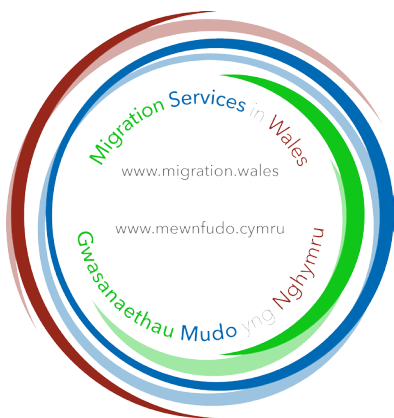
Advocacy and research group which works with and for refugee women and their families  
<https://wssagwales.wordpress.com/>

#### **Welsh Refugee Council**

[www.welshrefugeecouncil.org](http://www.welshrefugeecouncil.org)

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### Migration Services in Wales

Funded by Welsh Government, Migration Services in Wales is a project led by the Welsh Refugee Council in partnership with COMPAS that aims to increase understanding of migration policy and practice in Wales, and to support and facilitate the development of a ‘strategic approach’ to migration in Wales, one that will ensure relevant stakeholders are able to access detailed and up-to-date information.



### The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory’s analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



### COMPAS

The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

[www.compas.ox.ac.uk](http://www.compas.ox.ac.uk)



### Welsh Refugee Council

The Welsh Refugee Council has over 25 years’ experience working with refugees and asylum seekers in Wales. It aims to ensure that Wales is a place of welcome through the delivery of specialist services in Cardiff, Wrexham, Newport and Swansea and by influencing policy and practice to improve the lives of migrants across Wales.

