

Briefing Document

Aim: To make legal provisions for the "Granting of 'independent' residence permits to migrants who experience domestic violence"

Submitted by the

**Domestic Violence Coalition
May 2013 to the Joint Committee on Justice, Defence and Equality.**

The Domestic Violence Coalition is made up of the following organisations:



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Introduction

This briefing document has been compiled by the Domestic Violence Coalition of nine frontline organisations operating across Ireland to assist members of the Oireachtas in their consideration of measures to protect and support domestic violence victims in migrant communities.

As organisations working with victims in every part of Ireland we are aware that many feel trapped in threatening, abusive and violent relationships.

In the following pages we explain the reasons why victims are not coming forward to seek help and offer a number of options to address this issue.

The document recognises and acknowledges that progress has been made in this area but goes on to highlight shortfalls which have yet to be addressed.

We believe that there are four areas which require urgent consideration

- The need to formally recognise domestic violence in immigration law
- Reform of current administrative practices
- The provision of safe emergency accommodation as well as welfare benefits
- That the Irish government sign and ratify the Council Of Europe Convention on Combating and Preventing Violence against Women and Domestic Violence as a matter of urgency.

The briefing document offers short term measures which can be undertaken to go some way to meeting these needs, however, it also highlights the necessity for legislative action to ensure a long term solution.

In order to assist the Oireachtas the suggested wording for draft immigration legislation is outlined in Section 3 of the document. The section offers three suggestions on wording and we welcome feedback on each text.

As a coalition we also believe it is important that members are aware of the impact their work can have on individuals and the hope future legislation would offer people in truly desperate situations, so a case study is also being provided.

We enter into this process in the spirit of co-operation and assistance and will make ourselves available to assist both the Committee and other members of the Oireachtas in their work to advance this important issue.

The Domestic Violence Coalition is made up of the following organisations: Womens Aid, Adapt Domestic Abuse Services, Doras Luimní, Nasc – the Irish Immigrant Support Centre, the Domestic Violence Advocacy Service Sligo, Akidwa, Longford Women’s Link, Sonas Housing and the Immigrant Council of Ireland.



Executive Summary

The Immigrant Council of Ireland (ICI) is an independent human rights organisation. We advocate for the rights of migrants and their families and act as a catalyst for public debate as well as legislative and policy change. The ICI is an Independent Law Centre, which means we can provide legal representation to migrants and their families. This submission to the Joint Committee on Justice, Defence and Equality is made by the ICI based on the experience of its clients and service users the experience of clients and service users of the other member organisations in the Domestic Violence Coalition. The Domestic Violence Coalition is made up of the following organisations: Womens Aid, Adapt Domestic Abuse Services, Doras Luimní, Nasc – the Irish Immigrant Support Centre, the Domestic Violence Advocacy Service Sligo, Akidwa, Longford Women’s Link, Sonas Housing and the Immigrant Council of Ireland.

The Domestic Violence Coalition recommends that the Minister for Justice and Equality should incorporate provisions regarding domestic violence situations in any newly published draft immigration legislation and introduce comprehensive secondary regulations dealing with family reunification, including matters related to entry, residence and access to independent/permanent residence for family members of Irish citizens and third country nationals living in Ireland, including where domestic violence is experienced.

Specific issues and recommendations require consideration, these being:

- Providing **formal recognition of domestic violence in immigration law** by making provisions which enable dependant family members to apply to remain in Ireland as victims of domestic violence; and
- Reform of the current administrative immigration arrangements that govern domestic violence situations, ensuring that all measures are taken to ensure that the person effected is given all opportunity to remedy their situation and that no administrative barriers (such as prohibitive cost, processing delay, or lack of clarity on immigration status) are imposed; and
- Pending determination of applications to remain in Ireland, providing that victims of domestic violence **can access safe emergency housing and essential welfare benefits** to meet basic needs.

These issues are set out in detail in the following submission. The Domestic Violence Coalition have also formulated **suggested wording for draft immigration legislation and are outlined in Section 3 of this Briefing.**

Statistics regarding those effected: While overall statistics on the number of applications of this nature received by immigration authorities are not available, an indication of number the immigration related cases of this nature can be surmised by looking at the cases represented by the Immigrant Council of Ireland Law Centre. Over the past number of years, the ICI has formally assisted with 54 cases where domestic violence was a factor in the persons situation, and has provided assistance to a substantial number of support cases where the applicant was being supported by another organisation such as a refuge. This has amounted to approximately 10% of the ICI’s overall caseload, and has experienced a gradual increase over the past 2 years. It should be noted that the vast majority of cases of this nature were successfully resolved, albeit with a large variety in the manner in which these cases were dealt with by the authorities.

The Council of Europe: In addition to the issues set out in this briefing document, all member organisations of the Domestic Violence Coalition strongly urge that the Council of Europe Convention on Combating and Preventing Violence against Women and Domestic Violence be signed and ratified by Ireland as a matter of urgency. The Convention covers victims from any background, regardless of their age, race, religion, social origin, migrant status or sexual orientation and is a significant international means of ensuring that violence of this nature is challenged in the strongest terms and that those who experience domestic violence are appropriately supported.

Section 1: Reasons as to Why Measures Are Required to Address the Issue

In order to protect migrants experiencing domestic violence, the members of the Domestic Violence Coalition urge that Government formalise the current discretionary administrative approach that is taken towards applications to be granted an independent residence permit.

In the **short term**, a comprehensive and coordinated administrative response is required by the relevant statutory stakeholders, namely the Irish Naturalisation and Immigration Service (INIS) and the Department of Social Protection/HSE. The Domestic Violence Coalition recognises and welcomes the publication in August 2012 of information relating to the policies and procedures of INIS regarding the possibility of applying for an independent residency permit for non-EEA nationals who are experiencing domestic violence. While this information makes considerable progress in clarifying the approach of the immigration authorities regarding domestic violence situations, the Domestic Violence Coalition maintains that:

1. While this policy clarification is welcome, **it is not a legislative provision** and still relies on the discretion of the immigration authorities. While the need for an element of discretion in immigration decisions is understandable, discretion should govern the exceptions to a given circumstance and not be the guiding principle underpinning a decision making process.
2. Arising from this lack of clarity, it is unclear **what type of immigration status** those who are issued with an independent residence permit will receive. While the INIS have stated that full residency rights ('Stamp 4') is a possible outcome, it is equally possible that a person will be issued with a lesser more restrictive immigration status. This is a barrier not only to the applicant being able to rebuild their lives and circumstances in the aftermath of experiencing domestic violence, but also can act as a disincentive to applying in the first place.
3. In addition to the lack of clarity regarding the type of immigration status issued, there is no guidance from INIS as to the **likely processing time for an application**. This level of clarity is key not only to assure an applicant that their case will be handled in a speedy manner by the immigration authorities, but is also key for support organisations such as women's refuges so that they can be more clear on the general time frame in which the applicant may need support. To date some applications have taken a number of weeks to process, while others have taken a number of months.
4. The Domestic Violence Coalition is of the position that the **€300 fee** usually attached to the Garda National Immigration Bureau certificate of registration is a significant barrier to successful applicants for independent status taking up that permission. In the majority of cases applicants for independent status have come from a situation of dependency on their abuser and may not have sufficient resources to reregister and thus be able to seek employment or support. The Domestic Violence Coalition is of the firm position that domestic violence situations where an independent status has been issued by the INIS should be added to the INIS list of those who are exempt from paying this administrative fee.

Social Protection: In addition to immigration implications, there are also considerable issues in existence regarding social assistance for those who experience domestic violence. In the majority of cases, persons experiencing domestic violence face massive uncertainty in the short term as to what their entitlements will be to emergency support and accommodation. This uncertainty is often magnified considerably by the temporary difficulties that a non-EEA national applicant may face while they are resolving the situation surrounding their immigration status or awaiting a decision from the INIS regarding their application for independent status. At minimum, Community welfare officers should be directed to positively exercise the discretion, which they already have, to issue a temporary basic supplementary welfare payment to ensure that a person is in a position to access emergency accommodation and supplies. This is essential to ensure that women and their children who are at risk can remain in their homes safely or, if they need to leave, that they can do so safely and without risk of being left destitute or having to return to their partner to avoid destitution or if they are unable to be accommodated at refuge accommodation for financial reasons. If the

applicant is a non-EEA national and is also required to make an immigration related application, this payment should be issued regardless of what stage the applicants immigration application is at and regardless of what immigration status (if any) the applicant is currently in possession of. It is essential that guidelines be issued to Community Welfare Officers and to frontline staff of the Department of Social Protection to ensure that appropriate consideration of domestic violence situations is undertaken, and that the habitual residence assessment takes significant account of the applicant's immediate need for safety and support. Training must also be provided to ensure that all frontline staff are aware of the variations that can exist in an applicant's status, particularly during the crucial period when person is seeking to address their immediate situation.

In the **longer term**, a legislative response is required. Within the existing Programme for Government there are a number of opportunities to progress legislative reform, including, for example, the review of existing domestic violence legislation. However, the proposed future immigration legislation and/or secondary regulations made there under are an obvious place for addressing this issue. While a draft of this Bill has yet to be released for consideration, it is expected to come before the Dáil in the latter half of 2013. Based on existing immigration legislation and previous drafts of this Bill produced by the previous government, it can be deduced that elements of this Bill will relate to the powers of the Minister in the granting and renewal of residence permits.

Sections of the Bill will give the Minister power to grant residence permissions to different categories and subject to different circumstances. The Minister has wide powers to make regulations governing the grant of, *inter alia*, residence permissions.

To date, the holder of a residence permission, who is entitled to do so, can apply to the Minister for a residence permission of a different category. Furthermore, a person may apply for renewal of the residence permission.

In previous versions of this Bill, a number of key elements arose regarding the content:

- While it was acknowledged that variations in residency permissions that arise, for example in the case of relationship breakdown, may be addressed in secondary legislation and by way of regulation, no outline was given of the type of permissions that the Government envisages will be legislated for under future Regulations.
- There was no definition or guidance as to what is deemed to qualify as "exceptional circumstances".

In the absence of real **clarity as to what may actually qualify for consideration** under future immigration legislation or future secondary regulations, (i.e. what is required, how long applications may take to be processed, the likely outcome, the type of residence permission and any conditions attaching), on the basis of our experiences of supporting women experiencing domestic violence, the Domestic Violence Coalition remains concerned that women or organisations supporting them will remain unclear as to what remedy is really available to them to address their situation.

Section 2: General Principles to Guide the Administrative and Legislative Approach

The Domestic Violence Coalition recommends that the administrative and legislative response should **contain explicit reference to domestic violence** and is broad enough to cover the range of situations in which **the Minister already issues independent residence permits where domestic violence has been experienced**. The Domestic Violence Coalition acknowledges that in the information issued in 2012 by the INIS, references are made to some of the points below. These principles are however worthy of reiteration as further clarification is required in policy, procedure and future legislation.

By way of very general considerations Ireland can look at the UK experience in terms of precedence in introducing and refining the Domestic Violence Concession over a number of years. Ireland should take account of the following:

- A wide definition of domestic violence should be used, importantly including violence from the partner's family members. The definition used under the UK immigration rules is:

Domestic violence is classed as 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.

- The fact that the relationship broke down due to domestic violence during the very early stages of residence in Ireland should not be an adverse factor in reaching a decision.
- The rules should apply equally to female and male partners, to married and unmarried partners, and to those in opposite and same sex relationships.
- The fact of domestic violence in Ireland should bring an individual within the scope of the provisions. Granting residence permission should not involve a consideration of the consequences for the migrant partner if they had to return to their country of origin, although this may of course be relevant in some applications.
- An applicant should not be required to have a valid residence permission to remain in Ireland at the time of making the application. This is a very important point as many victims of domestic violence take time to appreciate or be advised that there is a remedy available and, by that time, their leave may have expired. This does not preclude a successful application under the UK rules.
- Applicants are normally required to provide evidence of the domestic violence. Decision makers must be given guidance to understand that different applicants will have different evidence taking into account the well-established fact that victims of domestic violence will often not report matters to the police, will often not pursue legal action against the perpetrator, and may not seek support from other agencies (through lack of knowledge, fear, or shame). An unduly rigid approach should not be taken and any evidential requirements should be met if it is established 'on the balance of probabilities' that the relationship broke down to domestic violence whatever evidence is being produced.
- Applications should be processed within a specific period of time and the applicant should be eligible to receive necessary accommodation and other supports during the application process.
- Applicants should be exempt from the payment of any immigration-related fees.
- Not all applicants will require legal representation to make an application. However, legal aid should be available where applicants do require such assistance.

The Domestic Violence Coalition would *be of the view* that implementing measures that follow the above principles would **bring Ireland into line with all other EU countries** in protecting migrant women experiencing domestic violence and would immeasurably improve the situation of individuals who desperately need access to visible and certain remedies.

Section 3: Suggested wording for future immigration legislation:

The Domestic Violence Coalition is of the position that future immigration legislation must make particular reference to addressing domestic violence circumstances. While it is difficult to propose amendments or suggestions without a publically available draft Bill, the below

suggestions are intended as a guide to the type of clarity that is required from legislation. The Domestic Violence Coalition will make more specific tailored recommendations once a draft Bill becomes available in late 2013. Some suggested worded amendments to consider for inclusion:

Suggestion 1:

"(X) The holder of a residence permission whose permission to reside in the State is dependent on the residence status of a sponsor may make an application under *subsection (X)* on an individual and personal basis in particularly difficult circumstances.

(X) A holder of a residence permission whose permission to reside in the State has expired due to particularly difficult circumstances shall not be prohibited from making an application under *subsection (X)*.

(X) For the purposes of *section X* "particularly difficult circumstances" includes the infliction of domestic violence by the sponsor on the holder while the relationship between them was subsisting."

OR

Suggestion 2:

Section X

"(X) Without prejudice to the generality of *subsection (X)* the holder of a residence permission whose permission to reside in the State is dependent on the residence status of a sponsor may, in particularly difficult circumstances, apply to the Minister on an individual and personal basis for permission to reside in the State.

(X) A holder of a residence permission whose permission to reside in the State has expired due to particularly difficult circumstances shall not be prohibited from making an application under *subsection (X)*.

(X) For the purposes of *section X* "particularly difficult circumstances" includes the infliction of domestic violence by the sponsor on the holder while the relationship between them was subsisting."

Suggestion 3 (Stand alone provision):

"X.– (1) A person whose permission to reside in the State is dependent on the residence status of another person may apply to the Minister on an individual and personal basis for a residence permission in particularly difficult circumstances.

(2) Without prejudice to the generality of *subsection (X)* particularly difficult circumstances includes domestic violence.

(3) A person shall not be prohibited from making an application under *subsection (1)* when their permission to reside in the State has expired due to particularly difficult circumstances".

Appendix: Case Study

Florence: Florence is originally from the Democratic Republic of Congo and has been residing in Ireland since 2009 as the spouse of a Green Card holder. She held a Stamp 3 (dependant) status on her Garda National Immigration Bureau (GNIB) certificate of registration. This status did not permit her to access the labour market or social welfare. Florence and her husband had one child who was born in 2011. In 2012 Florence's partner became severely violent towards her and their son. Florence fled the home and sought protection in a local refuge. As the renewal of Florence's

GNIB card was dependant on the continued existence of her relationship with her husband, she was unsure how to renew it and became undocumented in the State in late 2012. With the assistance of the ICI, Florence made a written application to the immigration authorities concerning her immigration status and seeking a renewal of her permission to be in Ireland independent of her relationship with her abusive spouse. This application benefited from the clarity provided by the immigration guidelines for domestic violence cases campaigned for by the ICI and its coalition partners and made public in August 2012. While her application to the immigration authorities was being processed, Florence had no income or savings and made applications to the Department of Social Protection for social assistance. Her initial applications were turned down on the basis of her not being deemed to be 'habitually resident' in the State. These applications are currently under appeal and it is expected that they will take a number of months to process. With the intervention of the ICI, Florence managed to secure emergency needs payments from her local CWO that allowed her to contribute towards her accommodation in the refuge accommodation. Prior to ICI intervention she had been turned down for emergency needs payments on two occasions by the same CWO and had seriously considered returning to her partner due to the lack of financial support available. After a ten week processing time, Florence received a response from the immigration authorities that she was being granted permission to renew her immigration status on an independent basis. Luckily, she had managed to put some money aside from her emergency needs payments to pay the €300 fee required for the reissue of a GNIB certificate of registration. Florence is still awaiting the appeal of the refusal of her social welfare application and is currently living at a subsistence level, dependant on continued emergency needs payments from the community welfare officer.

ENDS

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