

MARCH 2009

IMMIGRATION DIRECTORATE INSTRUCTIONS

CHAPTER 8 - FAMILY MEMBERS

SECTION 4 - VICTIMS OF DOMESTIC VIOLENCE

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1 Introduction

Paragraph 289A of the Rules sets out the requirements for indefinite leave to remain in the United Kingdom as the victim of Domestic Violence and should be referred to when making a decision.

An applicant who has limited leave to enter or remain in the United Kingdom as the spouse, unmarried partner, registered civil partner or same-sex partner of a British citizen or person present and settled in this country and whose marriage or relationship breaks down during the probationary period as a result of Domestic Violence, may be granted indefinite leave to remain in the United Kingdom.

This is provided that the Domestic Violence occurred during the probationary period while the relationship was subsisting, and the applicant is able to provide evidence that Domestic Violence has taken place and caused the relationship to break down permanently. That the relationship was subsisting when Domestic Violence occurred would normally be evidenced by the fact that the couple were living at the same address when the incident took place.

The provision in the Rules is intended to benefit only those who have been the victim of Domestic Violence during the probationary period. The provision is not intended to benefit persons whose relationship broke down because they were the perpetrator of Domestic Violence or where the relationship broke down for reasons other than being a victim of Domestic Violence.

The fact that a relationship breaks down due to Domestic Violence during the very early stages of the probationary period is not to be considered as an adverse factor in reaching a decision. Where an applicant can meet the requirements, the application is to be granted regardless of how much of the probationary period has been completed.

1.1 Form and Fee

Application form SET(DV) is the prescribed form for applicants to use. Applicants should pay the appropriate fee.

1.2 Destitution

A person who appears to the Secretary of State to be destitute is exempt from paying the application fee for indefinite leave to remain as a victim of Domestic Violence.

1.2.1 Definition

The legislative background for this can be found in Regulation 8 of the Immigration and Nationality (Fees) Regulations 2007. For the purposes of considering whether a person is destitute, the following definition is applicable –

A person who claims to be destitute for the purpose of being exempt from paying the fee must provide evidence to show, as at the date of the application:

a) they have no access to sufficient funds to enable payment of the specified application fee,

and

b) have total and necessary reliance on a third party for the provision of essential living costs such as basic accommodation and food.

Applicants will submit form SET(DV) to the UK Border Agency as normal. When they are claiming destitution, the applicant will not submit a fee. The applicant will be required to provide a letter outlining why they are destitute and supporting evidence to confirm their inability to pay the application fee. Applicants will be warned their application will be rejected if this evidence is not provided.

Caseworkers should take into account a person's ability to pay the application fee and their reliance on other parties for provision of their essential living costs.

1.2.2 Ability to pay the fee

Caseworkers should examine the documentation supplied with the application to assess a person's ability to pay the fee **at the time of the application**.

Supporting evidence which may indicate a person's ability/inability to pay the fee could include bank statements/savings accounts, wage slips if employed, or any other documents to indicate the applicant's financial position.

Where the applicant claims they are destitute, and to be totally reliant on a third party for the provision of essential housing and living costs, e.g. local authority or refuge, a written statement from the supporting body is required to confirm the applicant's position and that they are providing such support. Where an applicant has been assessed by a local authority or refuge as destitute, written confirmation of that assessment will be a useful piece of evidence to support any UKBA decision to waive the fee.

A person with little or nothing in the way of income through employment and/or savings they have accrued, would not be expected to have the ability to pay the application fee. If a person is being supported by friends or relatives as per 1.2.3 below, the UKBA do not expect that support to extend to paying an application fee.

1.2.3 Reliance on Third Parties

An applicant is deemed to be reliant on a third party where they can provide evidence to show that the party (including friends and relatives) is providing them with the means to subsist from day-to-day.

1.2.4 Decision to waive fee

Where an applicant meets the provisions of 1.2.2 and 1.2.3 above then the fee should be waived.

1.2.5 No decision possible on the evidence supplied

If caseworkers cannot make a decision on the evidence supplied then they must seek Senior Caseworker approval to reject the application immediately. **Caseworkers should not seek further information when assessing destitution.**

1.2.6 Evidence provided does not meet the definition of destitution

Where the evidence the applicant provides does not meet the provisions of 1.2.2 and 1.2.3 above then caseworkers should reject the application on the basis that no fee has been paid. Caseworkers should explain, thoroughly, why the applicant does not appear to be destitute on the evidence they have provided. Applicants will then be expected to pay the fee or to provide other evidence to prove they are destitute.

1.3 Definition of Domestic Violence

Domestic Violence:

The Department for Constitutional Affairs' publication - 'Domestic Violence – A Guide to Civil Remedies and Criminal Sanctions' Nov 2004 states:

“There is no universally accepted definition of DV. The 1993 Home Affairs Select Committee report on DV used the following definition: **any form of physical, sexual or emotional abuse which takes place within the context of a close relationship. In most cases, the relationship will be between partners (married, cohabiting, or otherwise) or ex-partners.**”

Definition of injury (legal):

Any harm done to a person by the acts or omissions of another.

i.e. injuries are not just restricted to physical harm

1.4 Key points

The main points on which a caseworker needs to be satisfied in cases of Domestic Violence are:

- the applicant was admitted to, or given an extension of stay in, the United Kingdom as the spouse, civil partner, same-sex partner or unmarried partner of a person present and settled here; and
- the applicant is no longer living with the sponsor; and
- the applicant is able to prove they were the victim of Domestic Violence and the Domestic Violence occurred during the probationary period while the marriage or relationship was subsisting; and
- Domestic Violence was the reason for the breakdown of the marriage or relationship;

2. Persons Able To Apply Under This Category

2.1 Which Category of Person Can Apply?

Only a person who was previously admitted to, or granted an extension in, the United Kingdom as the spouse/civil partner/same-sex partner/unmarried partner is able to qualify for indefinite leave to remain in the United Kingdom as the victim of Domestic Violence.

The provision does not apply to persons admitted to the United Kingdom as the spouse, unmarried partner or registered civil partner of a sponsor who has only limited leave to enter or remain here, or who is a European Economic Area national exercising treaty rights here*, as such persons have not been admitted to the United Kingdom for the purpose of settlement. Neither does it apply to fiancé(e)s, proposed civil partners or to those seeking asylum in the UK.

* such a person can apply under the European Provisions. See [European Casework Instruction, Chapter 5, Section 5](#)

2.2 Out of time applications / Applications from a person last granted in a different category

The Immigration Rules for indefinite leave to remain do not require a person to have valid leave to remain in the United Kingdom, nor do they require a person to have last been admitted or granted as a spouse/civil partner/un-married partner/same-sex partner. The Rules only require a person to have been previously admitted or granted as a spouse/civil partner/un-married partner/same-sex partner.

If an application is received in either circumstance, caseworkers should give consideration to the reason that they were out of time or last given leave in a different category and make a judgement on whether this effects the other evidence they are submitting in support of their application.

2.3 Applicants Who Previously Applied for ILR But Were Refused Because They Did Not Have Knowledge of Language and Life (KOL) in the United Kingdom

The Immigration Rules do not preclude a person who has been given a further extension of leave as a spouse/civil partner/un-married partner/same-sex partner because they have not got KOL from meeting Paragraph 289A(i) or (ii)

e.g.

- Applicant granted Entry Clearance as a spouse for 2 years.
- Applies for ILR as a spouse. Has no KOL.
- Refused ILR but granted a further 2 years leave to remain.
- Applies for ILR on the basis of Domestic Violence.

This person **would** still meet the requirements of the second part of paragraph 289A(i) because leave to remain is still granted under the Immigration Rules as a spouse.

Furthermore paragraphs (iii) and (iv) talk about *the period referred to in 289A(i)* so there are no problems with those paragraphs either.

3. Proof of Domestic Violence

Proof that Domestic Violence has occurred should be evidenced by the applicant in the form of supporting documents submitted alongside the application.

Any evidence of Domestic Violence should be considered by caseworkers when making a decision and therefore the list below is not exhaustive.

However, there are some pieces of evidence which, where provided, should satisfy caseworkers that Domestic Violence has occurred without the need for further consideration - these are listed at Paragraph 3.1.

There are some pieces of evidence that suggest Domestic Violence has occurred but because the alleged perpetrator has neither been found guilty by a court or admitted to guilt, caseworkers should treat with caution and the evidence should be used in conjunction with all other evidence provided – details are found at Paragraph 3.2

Other examples of evidence are found at Paragraph 3.3.

Paragraph 4 fully explains and offers guidance on such evidence of Domestic Violence.

3.1 Perpetrator Found Guilty

- i. [a relevant court conviction against the sponsor; or](#)
- ii. [full details of a relevant police caution issued against the sponsor.](#)

3.2 Formal Documentary Evidence

- i. [Non-molestation order](#)
- ii. [letter from Chair of a Multi-Agency Risk Assessment Conference \(MARAC\)](#)

3.3. Other Proof of Domestic Violence

It is often difficult for victims of Domestic Violence to produce the documentary evidence of violence as set out at 3.1 and 3.2 above, and there is often an unwillingness or insufficient evidence to take the matter to Court or to a MARAC.

Therefore caseworkers may find they are required to make the kind of judgement normally undertaken by other professional bodies, they may also find that they have to consider the validity and authenticity of the documents provided by the applicant. In view of this, caseworkers should seek advice from their Senior Caseworker and/or other relevant bodies when assessing an application.

Caseworkers should still try to obtain evidence from the police, courts or MARACs but **where this is not possible**, consideration should be given to the following non-exhaustive list:

- i. a medical report from a hospital doctor confirming that the applicant has injuries* consistent with being a victim of Domestic Violence; AND/OR, a letter from a GMC registered family practitioner who has examined the applicant and is satisfied that the applicant has injuries* consistent with being a victim of Domestic Violence;

* see definition of injury in [paragraph 1.3](#). This need not be just physical injuries.

- ii. an undertaking given to a court that the perpetrator of the violence will not approach the applicant who is the victim of the violence;

Caution should be exercised here. It is important to note that the many undertakings occur in order to resolve a Non-Molestation Order proceeding without further costs and hearings.

An undertaking is not an admission of guilt and a Power of Arrest cannot be attached to it.

There is equal chance that an applicant has given an undertaking to court themselves and caseworkers will need to investigate whether this is the case

- iii. a police report confirming attendance at an incident resulting from Domestic Violence;
- iv. a letter from a social services department confirming its involvement in connection with Domestic Violence;
- v. A letter of support or a report from a Domestic Violence support organisation.

This evidence may relate to one incident or a number of incidents and should be used to build a case history in order to make as thorough a decision as possible when making a judgement on whether Domestic Violence has taken place. All decisions based on evidence such as that listed at paragraph 3.3 should be thoroughly explained. Applicants are required to provide as many pieces of evidence as possible to prove they were the victim of Domestic Violence, an applicant providing just one piece of evidence from the list at paragraph 3.3 would not usually be deemed to have proven their case.

Witness statements from friends or family and letters from official sources that relay unfounded reports by the applicant but do not confirm the incident should be treated with caution. All such evidence should be verified where possible and treated as additional evidence when building up the case background.

4 Guidance On Proof Of Domestic Violence

4.1 Criminal Conviction

A Criminal Conviction is indisputable evidence that Domestic Violence has occurred and proof of a criminal conviction can automatically be used for the purposes of Paragraph 289A(iv)

Information on the CPS Policy for prosecuting in Domestic Violence cases can be found in [LINKS](#) below.

4.1.1 Criminal Conviction – Case not yet heard

Where a criminal case is pending, caseworkers should ask the applicant for all relevant evidence from both parties (where not already provided) and make a **separate** assessment of their application.

It is important to remember the burden of proof in criminal cases is *beyond reasonable doubt*

But the standard of proof in immigration cases is based on *the balance of probabilities*

Where a caseworker feels it is not possible to make a decision on an application until a Criminal court case is heard they should refer the case to a Deputy Chief Caseworker.

4.2 Police Cautions – Evidence Required

Where an applicant claims that the police have issued a caution against the sponsor or have decided to prosecute him or her, ***the applicant will not be able to produce any documentary evidence to this effect.*** The applicant must be asked to provide details of the sponsor's full name, date of birth, nationality, address (both at the time of the incident and at the time of the application, if different) and the date, time and place where the incident for which the caution was issued, or for which the sponsor is being prosecuted, took place - (where not already provided).

Caseworkers will need to make enquiries of the Criminal Records Office (CRO) of the Police Force covering the area where the incident took place. A list of Police Forces can be found in the shared information folder – please see Senior Caseworker for further advice.

Where the police confirm that a caution was issued to the sponsor for Domestic Violence against the applicant it can be used as evidence that **Domestic Violence has occurred for the purposes of Paragraph 289A(iv).** This is because a Police Caution is an admission of guilt.

See [LINKS](#) below for further guidance on Police Cautions.

4.3 Court Orders

The applicant is required to submit the ***original, or a certified copy of, the court order.*** (A court order is also known as an injunction)

Under Section 33 & 42 of the Family Law Act 1996 a person can file for occupancy or a non-molestation order. A non-molestation order is usually the one that is most relevant in Domestic Violence cases.

Respondent's name Estranged partner's name or a member of his/her family.

Layout: The Orders generally follow this layout:

1. **District Judge's** name and **Court address**.
2. Paragraph indicating whether the Order is made **Without Notice (ex-parte)**:
3. Paragraph about any **'undertakings'*** (if made) - reference to attachment(s), etc.
* Undertakings (by one or both parties) may be given to a Court instead of proceeding to a full hearing for a Final Non-molestation Order, or together with the issue of a Final NMO where 'no finding of fact' is made. Therefore, where Undertakings are given, there has not necessarily been a **'finding of fact'** on the allegation(s). An Undertaking is not an admission of guilt (unless it specifically says so).
4. **'Important Notice to the Respondent'**
5. **'It is ordered that:'** followed by details of what the Respondent **'must not do'**.
6. Detail about **period** for which the Order is to **remain in force**.
7. **'Power of Arrest'** - reference to attachment, etc.
8. **'No finding of fact'** (on the allegations by the Applicant) - may be detailed at the start or end of the Order.
9. **'Notice of Further Hearing' (Interim Orders)** - may be 'headed up' in this way, or may just provide details of time/date/place of further hearing.
10. **Costs**

Power of Arrest

The Domestic Violence, Crime and Victims Act 2004 made breaching a non-molestation order an offence, however this did not come into force until 1 July 2007.

Prior to 1 July 2007, the Court would sometimes attach a Power of Arrest on a Non-Molestation order which, again, meant that a breach of an order would be an offence.

The Power of Arrest is a standard statement and can often contradict what is written in the main text of the order and caseworkers should exercise appropriate caution.

Caseworkers should only take what is written in the order as evidence of Domestic Violence, not what is written under the Power of Arrest.

See [LINKS](#) below for further guidance on Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions

4.3.2 Delay in hearing

Where the applicant claims they are waiting for a court hearing for a Court Order, a decision on the application may be delayed pending the outcome of that hearing, provided evidence is received **from the Court** confirming the case has been listed to be heard, and the date of the hearing.

An ex-parte application is normally heard on the day of application and the date for the full hearing (if there is to be one) is normally within 7 days. Every effort is made

by the court to resolve the case on the date set, but where the case is complicated and likely to last a full day it may be re-listed but will be given priority and will be heard at the earliest opportunity. It is therefore most unlikely that there will be any significant delay.

4.3.3 Action for Caseworkers

Some Final Orders are given by the Judge as a finding of fact – these can be taken as proof that Domestic Violence has occurred.

Where there is no finding of fact then this will be stated implicitly on the court order. Therefore the giving of a non-molestation order does not necessarily mean that Domestic Violence has occurred and should not be used as evidence on its own.

Caseworkers should ask for, if not provided, any evidence that was submitted to the court and make a judgement with reference to that evidence and any other evidence provided by the applicant – comparing and contrasting different statements, affidavits etc.

Caseworkers should reflect on what a Judge considers when giving an order, the consistency and credibility of evidence provided and the standard of proof required by Immigration Law when making a decision based on such evidence.

4.4 Multi-Agency Risk Assessment Conference (MARAC)

A MARAC is a means of ensuring the safety and welfare of a victim of Domestic Violence. A MARAC is independent of any Civil or Criminal Court proceeding and because of this there is not necessarily any court involvement.

The MARAC is designed to facilitate information sharing between a number of different agencies, both statutory and voluntary to enable a safety plan to be made for each victim. Only the most high risk cases are referred to a MARAC.

Where an applicant states they have been referred to a MARAC, caseworkers should identify the Chair and send them a letter asking them to confirm that the applicant is the subject of a convened MARAC.

5. Domestic Violence From A Family Member Other Than The Spouse

Where an applicant submits evidence to show that he or she has been subjected to Domestic Violence from persons other than the sponsor, they may still qualify for settlement under the rule. Evidence must clearly show that the violence has been the reason for the breakdown of the marriage - *for example: where the persons abusing the applicant are members of the sponsor's family and against whom the sponsor offers no protection.*

5.1 Where this involves minors

Where the perpetrator is a minor (under 18 in England and Wales, under 16 in Scotland) then they are dealt with differently by law. Offenders will be given a Reprimand or a Final Warning – both of these are admissions of guilt and therefore can be taken as evidence that Domestic Violence has occurred.

6. Counter Claims

When considering an application for Domestic Violence caseworkers may receive counter claims from the alleged perpetrator, in some cases these claims may already be on the Home Office file.

Counter claims are able to be considered as evidence alongside an application for indefinite leave to remain, but where the applicant is able to produce evidence of a court conviction, a police caution or that they are subject of a MARAC, counter-claims should be disregarded.

Where the applicant is relying on other evidence that Domestic Violence has occurred, caseworkers should consider the counter claims. Caseworkers should weigh up the evidence presented by each side and make a judgement as to whether they are satisfied, on the balance of probabilities, that Domestic Violence has occurred.

7. Refusals

The general guidance on adverse decisions at [Chapter 9, Section 1](#) provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Indefinite leave to remain should normally be refused if any of the requirements of paragraph 289A of the Rules are not met.

Irrespective of whether the applicant has a Full, a Limited or No Right of Appeal, each decision should be explained as thoroughly as possible.

Detailed explanation should always be given in cases where the Secretary of State does not consider the evidence provided is proof that Domestic Violence has taken place.

7.1 Curtailment

When a refusal is appropriate on an application from a person who -

- still has over 1 month leave to remain in the United Kingdom as a spouse/civil partner/same-sex partner/unmarried partner, and
- whose relationship has broken down, and
- is not able to prove their relationship broke down as a result of Domestic Violence

their remaining leave should be curtailed.

This is because of the very fact they now cease to meet the rules under which they were granted leave to enter/remain in the United Kingdom.

7.2 Refusal Formulae

You have applied for Indefinite Leave to Remain in the United Kingdom as a victim of Domestic Violence, however...

Applicant did not have Leave to Enter / Remain as a spouse or civil partner of a person present and settled

“In view of...[enter details] the Secretary of State is not satisfied that you were admitted to the United Kingdom or given an extension of stay for a period of 2 years as the spouse /civil partner of a person present and settled here”

Paragraph 289C with reference to Paragraph 289A(i) of HC395 (as amended)

Applicant did not have Leave to Enter / Remain as an unmarried or same-sex partner of a person present and settled

“In view of...[enter details] the Secretary of State is not satisfied that you were admitted to the United Kingdom or given an extension of stay for a period of 2 years as an unmarried /same-sex partner of a person present and settled here”

Paragraph 289C with reference to Paragraph 289A(ii) of HC 395 (as amended)

Applicant’s relationship was not subsisting at the beginning of the period they were granted leave to enter/remain in the UK as a spouse / civil partner / unmarried partner / same-sex partner

“In view of...[enter details] the Secretary of State is not satisfied that your relationship was subsisting when you were granted Leave to Enter/Remain in the United Kingdom as a spouse/civil partner/unmarried partner/same-sex partner”

Paragraph 289C with reference to Paragraph 289A(iii) of HC 395 (as amended)

Applicant’s relationship did not permanently break down during the “probationary period”

“In view of....[enter details] the Secretary of State is not satisfied that you are able to produce evidence to show that your relationship permanently broke down before the end of your grant of Leave to Enter/Remain in the United Kingdom as a spouse/civil partner/unmarried partner/same-sex partner”

Paragraph 289C with reference to Paragraph 289A(iv) of HC 395 (as amended)

Applicant’s relationship did not break down due to Domestic Violence

“In view of ...[enter details] the Secretary of State is not satisfied that you are able to produce evidence to show that your relationship broke down as a result of Domestic Violence”

Paragraph 289C with reference to Paragraph 289A(iv) of HC 395 (as amended)

8. Links

[Crown Prosecution Policy on Domestic Violence](#)

[Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions](#)

[Guidance on Police Cautions](#)