



Destitution and violence against women

This briefing has been written by Rights of Women to outline some of the laws and policies which prevent or restrict women with an insecure immigration status from accessing welfare benefits or certain community care services.

Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- **Providing women with free, confidential legal advice by specialist women solicitors and barristers.¹**
- **Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.**
- **Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.**

What is 'no recourse'?

The 'no recourse to public funds' rule is one of the Immigration Rules². It is often a condition attached to certain types of leave (permission to enter or remain in the UK) such as leave as a spouse, student or worker. These groups of people are given permission to enter the UK for certain periods of time and for certain purposes, however, while they are in the UK they are forbidden from accessing public funds.

Under paragraph 6 of the Immigration Rules public funds are:

- (a) housing from a local authority directly or indirectly;
- (b) attendance allowance, severe disablement allowance, carer's allowance and disability living allowance, income support, council tax benefit and housing benefit child benefit, income based jobseeker's allowance, state pension credit; or child tax credit and working tax credit.

If it is not listed above it is not a public fund. This means that a woman with no recourse to public funds can access free legal advice and assistance, as

¹ For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Tuesday to Thursday 2-4pm and 7-9pm, Friday 12-2pm). For advice about sexual violence, immigration or asylum law telephone 020 7251 8887 (lines open Monday 11am -1pm and Tuesday 10am -12noon).

² The Immigration Rules set out who may enter and remain in the UK and under what conditions, including whether or not a person has recourse to public funds. You can read them on the UK BA website here

www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/.

public funding for legal matters, often referred to as legal aid, is not listed as a public fund in paragraph 6 of the Immigration Rules.

The Immigration Rules do not affect either community care or welfare benefits law; they set out who and who cannot enter and remain in the UK and under what conditions. However, specific legislation exists to prevent women with an insecure immigration status from accessing certain welfare benefits and community care services.

Who else has problems accessing welfare benefits or community care services?

There are other groups of women who may be destitute as a result of their immigration position. Women in this position may not technically be 'no recourse' but they are often referred to as such because of the barriers they face accessing financial and other support.

Women who are from other European Economic Area States can never be 'no recourse'; however, such women may have problems accessing welfare benefits because of the application of the Habitual Residence Test (see further below). Most vulnerable are women who come from countries which have joined the EEA more recently. Another group of vulnerable women are women who make a claim for asylum in the UK whose claim is refused but who are unable to return home.

So what is the EEA?

The European Economic Area (EEA) is the EU (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 the UK) and three other States that while not being members of the EU, are treated in the same way, these states are Iceland, Norway and Liechtenstein. Switzerland is not a member of the EU or EEA but it is treated as if it were.

The law that incorporates European law on free movement, **The Immigration (European Economic Area) Regulations 2006**³ refers to all of these people as 'EEA nationals' and gives them the same rights as each other in the UK.

Rights and country of origin

The law that determines a woman's rights in the UK depends on where she is from and where her family is from:

- If the woman's husband, civil partner or partner is British or present and settled in the UK (e.g. someone with Indefinite Leave to Remain) then the

³ Statutory Instrument 2006 No. 1003, you can read it here www.opsi.gov.uk/si/si2006/20061003.htm.

relevant law is the Immigration Rules (and therefore the 'no recourse' rule will apply).

- If the woman is the family member of an EEA national then the relevant law is EEA law. EEA nationals and their family members cannot be 'no recourse' but they do face barriers accessing certain welfare benefits or community care services.

Often service providers do not understand who EEA nationals and their family members are and therefore wrongly deny women services.

EEA nationals and the Habitual Residence Test (HRT)

EEA nationals are eligible to apply for welfare benefits in certain circumstances. However, in order to qualify for certain benefits such as income support and housing benefit, the applicant has to be habitually resident in the UK and must pass what is known as the Habitual Residence Test (the HRT). Not all benefits are subject to the HRT e.g. working tax credit or disability benefits (although other rules apply). One part of the HRT involves having the 'right to reside'.

If you are British or have Indefinite Leave to Remain you will have the right to reside. However, not all EEA nationals have the right to reside. Unless you are an EEA national with permanent residence in the UK, having the right to reside will usually depend on whether or not you are economically active; for example, as a worker or self-employed person.

A8s and A2s

People from countries who joined the EU more recently face additional restrictions on their ability to work in the UK which in turn affects whether or not they have the right to reside for benefits purposes.

A8 Nationals are people from The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

A8 Nationals can work in the UK but have to register on the Worker Registration Scheme. Having the right to reside is dependant on completing 12 months continuous employment on the Scheme. For more information see www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/.

A2 Nationals are people from Romania and Bulgaria. They are subject to the Worker Authorisation Scheme which is even more restrictive. For further information see www.ukba.homeoffice.gov.uk/eucitizens/bulgarianandromaniannationals/.

Accessing Community Care services: EEA nationals

Adults who are EEA nationals or who have been granted refugee status by other EEA countries are excluded from almost all community care services by

the **Nationality, Immigration and Asylum Act 2002** unless the provision is necessary to prevent a breach of her human rights or rights under EU law.

Where a woman has a dependant child, the child may be eligible for assistance under section 17 of the **Children Act 1989**. This can enable the local authority to provide housing and other support for the child and his or her carer. Local authorities have a power to finance the return of the EEA national and her family to her country.

Example of a case: Zalewska [2008]⁴

Ms Z arrived in Northern Ireland from Poland and got a job working in a mushroom packing factory, she registered on the Worker's Registration Scheme as required within the first month of her employment. She then changed employment twice in Northern Ireland working for an uninterrupted period of 1 year. She did not, however, re-register her employment on the Scheme when she changed jobs.

Ms Z and her daughter were experiencing domestic violence and she went into a women's refuge. Ms Z then became unemployed and was denied access to welfare benefits. The House of Lords held that UK's arrangements for dealing with A8 countries were not disproportionate even though the consequences for Ms Z were devastating.

Baroness Hale disagreed with the majority judgement of the House of Lords, at paragraph 51 of the judgement she said Ms Z:

“.....had therefore been in continuous employment for more than 12 months and if registered throughout would have been entitled to benefits. We do not know why she left work. Her three year old daughter joined her here in January 2005.... At the end of June, they left the family home because of domestic violence and initially moved in with a friend and then to a Women's Aid hostel in Portadown on July 21. The appellant made her application for income support on 22 July 2005. These circumstances may have *little relevance in law* but they tend to indicate two things: first, that she was going through a very difficult time when she ceased work; and second, that there is nothing at all to suggest that she came here to work with a view to claiming benefits in due course. Indeed, the Tribunal... stated that she was continuing to seek work although not required by the benefit rules to do so.”

Women from outside of the EEA: spousal visas

Women may come to the UK from outside the EEA for many reasons, including to join their spouse, civil partner or partner.

⁴ Zalewska (AP) v Department for Social Development (Northern Ireland) [2008] UKHL 67

A woman may come to the UK to join her spouse, civil partner or partner if:

- Her sponsor is present and settled in the UK or is being admitted on the same occasion for settlement.
- They are both aged 21 or over on the date she will arrive.
- They have met and intend to live together permanently.
- They are able to maintain and accommodate themselves without additional recourse to public funds.

The normal application process is as follows:

1. Apply for entry clearance in country of origin (pay fee)
2. Entry clearance (leave to enter) granted.
3. Arrive at UK port or airport, date of arrival stamped in passport, this is the start of 2 year probationary period.
4. During the probationary period the applicant improves her English or studies the Life in the UK book and takes the test.
5. Before the probationary period expires make an application for Indefinite Leave to Remain (form SET(M) with fee).
6. [Or, if unable to meet the Life in the UK or language requirements, application for further leave to remain (form FLR(M) with fee. Once the required standard is reached she can then make her ILR application].
7. ILR granted.
8. If ILR is refused the applicant may appeal the decision to the First-tier Tribunal (Immigration and Asylum Chamber).

The domestic violence rule

The domestic violence rule can be found at paragraphs 289A-289C of the Immigration Rules.

The domestic violence rule states that if a woman experiences domestic violence then she can apply for ILR at any time during the 2 year probationary period or after (but implications if she is an overstayer) if:

1. She has been admitted to the UK for a period not exceeding 27 months or was given an extension of stay for a period of 2 years **as the spouse or civil partner of a person present and settled the UK.**
2. She was in a subsisting (continuing) relationship with the partner at the beginning of the 2 year probationary period; and
3. She is able to provide such evidence as required to show that the relationship was caused to permanently break down **before the end of the 2 year period** because of domestic violence.

For further information see www.ukba.homeoffice.gov.uk/while-in-uk/domesticviolence/ and www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/.

Financial support for women who are on, or who have overstayed, spousal visas

During the probationary period and while an application under the domestic violence rule is being processed, women who are on or who have overstayed spousal visas are prevented from accessing certain community care services and welfare benefits. The effect that the 'no recourse' rule has on women experiencing violence is devastating, as was recognised by Margaret O'Mara, Director, Crime Reduction in a letter sent on the 16th February 2006:

“However, while this application [under the domestic violence rule] is pending, and despite its being considered as quickly as possible, their existing immigration status means they have no access to housing provision. In addition, as the majority of these women are from BME communities, there are often additional barriers such as language which can impede obtaining accurate case histories in the assessment process. Without a place of safety or any means of support, these women are often forced to return to their home to face further abuse and in some extreme cases, homicide.”

A woman in this situation who has children, or who has 'additional special needs' (such as a disability or mental health problem) should approach her local authority for support. Where there are children support can be provided under section 17 of the **Children Act 1989**. Where the woman is 'destitute plus' support can be provided under the **National Assistance Act 1948**. Women in this situation can also access the Sojourner Project.

The Sojourner Project

The Sojourner Project is for women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain (ILR) under the domestic violence rule. The Project will run until 31st March 2011 when it should be replaced by a permanent solution to the 'no recourse' issue. For queries and to refer yourself or someone else contact the Sojourner Project Duty Worker on 020 7840 7147 or sojourner@eaveshousing.co.uk. For further information about the project visit www.eaves4women.co.uk/sojourner/sojourner.Php.

Refused asylum seekers: a humanitarian crisis in the UK

Asylum-seekers are given financial support while their claim for protection is being processed. If they are refused protection their support is withdrawn even if it is not possible for them to return to their country. Some refused asylum seekers may qualify for section 4 support, many will not. The consequences for many refused asylum seekers of being unable to access financial support include homelessness, sexual exploitation, illegal working and internal trafficking.

The British Red Cross's report '[Not gone, but forgotten](#)' found that:

“Giving food to destitute asylum seekers here is not very different from handing out food from the back of lorries in the Sudan. The humanitarian need is the same.”⁵

Further information

Rights of Women delivers training on ‘no recourse’ and other legal issues that affect women; we also have a range of legal guides and publications which can be downloaded free of charge from our website, visit www.rightsofwomen.org.uk for further information.

The **NRPF network** is a network of local authorities which looks at the response of local authorities to people with care needs who have no recourse to public funds. The Network has produced guidance for social workers on how to respond to people with no recourse. You can read this guidance here: www.islington.gov.uk/Health/servicesforadults/nrpf_network/policy_guidance.asp.

Maternity Action has a range of information sheets about accessing health care and other services for pregnant women and mothers; you can read it here: www.maternityaction.org.uk.

One Stop Services are run by charities who assist asylum seekers and who are independent of the UK Border Agency. They do not make decisions about who is given protection in the UK but they can give you information and support. If you want to discuss a problem with someone contact your local **One Stop Service** such as:

- Refugee Action www.refugee-action.org.uk
- Refugee Council www.refugeecouncil.org.uk
- North of England Refugee Service www.refugee.org.uk/welcome.htm
- Migrant Helpline www.migranthelpline.org.uk
- Welsh Refugee Council www.welshrefugeecouncil.org

You can find your local One Stop Service by looking here www.ukba.homeoffice.gov.uk/asylum/helpandadvice/onestopservices/.

For information about asylum support law and appeals at the Asylum Support Tribunal see the **Asylum Support Appeal Project’s** website at <http://www.asaproject.org/web/index.php>. The Asylum Support Appeals Project can provide representation and assistance with appeals before the Asylum Support Tribunal. They can also provide telephone advice to advisors or those who are supporting asylum seekers. For information about their advice line visit www.asaproject.org/web/index.php?option=com_content&view=article&id=50&Itemid=60.

⁵“Not gone but forgotten”, British Red Cross, 2010 Page 6. The report can be downloaded from here www.redcross.org.uk/uploads/documents/Not-gone-but-forgotten-British-Red-Cross-destitution-report.pdf

The law relating to immigration and domestic violence is complex and we have provided a basic overview of the law and terminology. We would strongly advise you to seek legal advice if you are affected by any of the issues in this briefing. The law explained in this briefing is as it stood at the date of publication. The law may have changed since then so you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this briefing. This briefing is designed to give general information only.

For free confidential legal advice on family law including domestic violence, divorce and relationship breakdown, children and contact issues call **020 7251 6577 (telephone) or 020 7490 2562 (textphone)**. The advice line is open on **Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm and Friday 12noon – 2pm**

For free legal advice on sexual violence, the criminal law and immigration and asylum issues please call **020 7251 8887 (telephone) or 020 7490 2562 (textphone)**. The advice line is open on **Mondays 11am-1pm and Tuesdays 10am-12 noon**

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The law as represented in this presentation is accurate to July 2010.