

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



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## **Executive Summary**

The Domestic Violence Coalition recommends that the Minister for Justice and Equality should amend the draft provisions of Part 5 (residence permissions) of the Immigration Residence and Protection Bill 2010 (or any newly published draft 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.

Two specific issues 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
- 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.

The Domestic Violence Coalition have formulated **suggested wording amendments to the current draft Immigration, Residence and Protection Bill 2010 and are outlined on pages 4-5 in this Briefing.**

### **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.

Positive steps to be taken include publishing information on the INIS about the possibility to apply for an independent permit where domestic violence has been experienced and setting out guidelines for the making of such an application.

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.

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 Immigration Residence and Protection Bill and/or secondary regulations made there under are an obvious place for addressing this issue.

**Part 5 of the current draft Immigration, Residence and Protection Bill 2010** is concerned with residence permission.

**Article 35** gives the Minister power to grant residence permissions to different categories and subject to different circumstances. The nature and content of the permissions is left to

regulations at some later date. Pursuant to s. 141 the Minister has wide powers to make regulations governing the grant of, *inter alia*, residence permissions.

Under s. 37 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, under section 39, a person may apply for renewal of the residence permission, provided that this is done not later than 21 days before their current permission expires.

Section 39(3) provides that the Minister is not obliged to consider an application to renew residence that is not made within time, the Minister may nonetheless consider such an application and is required to have regard to any reason given or known to the Minister as to why the application was not made in time. An application to renew that is not made within 3 months of the expiry of residence permission may still be considered if the Minister is satisfied that the failure to submit the application within that time due to a number of reasons, including, "exceptional circumstances by virtue of which, through no fault of the foreign national, his or her application could not have been made within that period".

**The members of the DV Coalition would like to acknowledge that taking these various draft statutory provisions together it is arguable that the Minister has the power as the Bill stands to make regulations to achieve the outcome sought by the Coalition – namely the granting of independent residence permission to migrants experiencing domestic violence.**

However, there are nonetheless a number of difficulties with the legislation as currently drafted, including:

- Presently, there is no outline of the type of permissions that the Government envisages will be legislated for under future Regulations.
- There is no definition or guidance as to what is deemed to qualify as "exceptional circumstances".
- It is very unclear how the draft provisions sit alongside other provisions of the Bill, specifically section 6 (known as the 'summary removal' provisions) which provides explicitly that a person without a residence permission is unlawfully present and under an immediate and continuing obligation to leave the State, and may be arrested and detained for the purpose of securing their removal.

In the absence of real ***clarity as to what may actually qualify for consideration*** under the Bill or future secondary regulations, what is required, how long applications may take to be processed, the likely outcome (i.e. what 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, if any, is really available to them to address their situation.

### **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.**

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.

**Suggested worded amendments to the current draft Immigration, Residence and Protection Bill 2010:**

The DV coalition would be of the opinion that "here are a number of difficulties" with the current draft wording of the Immigration, Residence and Protection Bill 2010, which affects

the task of drafting a suitable proposed amendment. Some suggested worded amendments to consider include:

**Suggestion 1:**

**Section 37**

In page 46, between lines 16 and 17, to insert the following:

“(2) 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 (1)* on an individual and personal basis in particularly difficult circumstances.

(3) 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 (1)*.

(4) For the purposes of *section 37* “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 35**

In page 45, between lines 7 and 8, to insert the following:

“(10) Without prejudice to the generality of *subsection (1)* 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.

(11) 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 (10)*.

(12) For the purposes of *section 35* “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):**

In page 169, between lines 24 and 25, to insert the following:

“**139.**– (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 (1)* 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”.

**Section 141**

In page 173, between lines 17 and 18, to insert the following:

“(xiii) specifying eligibility requirements for applications referred to in *section 139*,”.

**ENDS**