





Domestic Abuse, Housing and The Istanbul Convention

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The Domestic Abuse Act 2021: what it did....

S.1 DAA

(b) the behaviour is abusive.

(3) Behaviour is “abusive” if it consists of any of the following—

(a) physical or sexual abuse;

(b) violent or threatening behaviour;

(c) controlling or coercive behaviour;

(d) economic abuse (see subsection (4));

(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—

(a) acquire, use or maintain money or other property, or

(b) obtain goods or services.

(5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).

S.2 DAA: recognised children as victims of domestic abuse if they ‘see or hear, or experience the effects of domestic abuse...’



Continued

- In respect of housing:
 - **Section 78** of the DAA amended s.177 and s,189 of the Housing Act 1996.

“(e) a person who is homeless as a result of that person being a victim of domestic abuse.
 - **Section 79** of the DAA inserted s.81ZA after s.81 of the Housing Act 1985. In some instances, survivors of domestic abuse will be granted ‘old style’ secure tenancies where they require housing for reasons connected with that abuse.
 - **Section 57** of the DAA requires each relevant local authority to “assess, or make arrangements for the assessment of, the need for accommodation-based support in its area...” Accommodation based support means “support, in relation to domestic abuse, provided to victims of domestic abuse, or their children, who reside in the relevant accommodation”.



Continued...

What it does **not** do:

- Ensure that housing is provided for survivors of DA with no recourse to public funds (NRPF). The condition is attached to visas for around 1.5 million people preventing them from accessing state support (such as universal credit, other benefits or housing if homeless). NRPF are attached to those that are ‘subject to immigration control’ (as defined by s.115 Immigration and Asylum Act 1999).
- This means that, in respect of accessing support for housing from local authorities (which includes survivors fleeing DA), those with a NRPF condition attached to their visa are not (subject to some exceptions) eligible for housing (pursuant to s.185 of the Housing Act 1996).
- Despite campaigns calling for a change to the NRPF conditions for victims of DA, the DAA did not deliver in this respect.



The Istanbul Convention

- Does the Convention fill in the ‘gaps’ or extend the UK’s obligations towards survivors of DA?

What is it?

- The Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence (The Istanbul Convention)
 - International Treaty
 - Signed by the UK on 8 June 2012, ratified on 21 July 2022 and came into force on 1 November 2022
 - UK was the 37th State to ratify. Only one State has ratified and since denounced
 - It is divided into four pillars: Prevention, Protection, Prosecution, and Integrated Policies. It comprises 81 Articles across 12 Chapters and is accompanied by an Explanatory Report
 - The (then) Home Secretary Priti Patel described it a “gold standard” international charter for the protection of women and girls, and with good reason:



Continued...

Its preamble includes statements about the understanding and commitment of the States who ratify it:

Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women;

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

Recognising the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

Recognising that women and girls are exposed to a higher risk of gender-based violence than men;

Recognising that domestic violence affects women disproportionately, and that men may also be victims of domestic violence;

Recognising that children are victims of domestic violence, including as witnesses of violence in the family;

Aspiring to create a Europe free from violence against women and domestic violence...”



Does the IC have any impact on domestic law...?

Starting point:

- When the UK ratifies an international treaty, the international treaty does not automatically become part of domestic law, unless Parliament chooses to incorporate all or part of the treaty into domestic law via primary or secondary legislation (a dualist model).
- Generally, where there is no wholesale implementation, if there is a provision of an unincorporated treaty with no counter provision in the domestic legislation it cannot be said that the treaty gives rise to a free-standing duty in domestic law, see *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26. Treaties must be ‘incorporated’ into domestic law before they can have any direct effect. Accordingly, as the IC is an unincorporated treaty, it does not give rise to free standing rights and obligations.
- There are some instances where it can be said that international treaties have been incorporated into domestic law by way of non-statutory administrative policy (where such a policy is clearly intended to give effect to an international treaty) and such a policy may be challenged on the basis that it fails to reflect the requirements of the treaty (amounts to an error of law), see *R (MS Pakistan) V SSHD* [2020] UKSC 9 (beyond this paper).



How does the UK see their obligations under the IC....?

The UK passed the **Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017**. The purpose of the Act was to prepare the UK for ratification and set out the reporting process (namely, annual progress reports laid before Parliament). At the end of each progress report is a list of legislation that identifies the administrative and legislative measures the UK has adopted that complies with the IC. The progress report does not cross reference the domestic legislation that directly corresponds with the Articles in the IC but the Home Office Explanatory Memorandum on the IC, and laid before Parliament as an ‘unnumbered Act Paper’ states “*Existing UK legislation satisfied the requirements of the Convention, primarily through the legislation set out below...*”. It then lists legislation inc, the Equality Act 2010 and the Domestic Abuse Act 2021.

In the 2020 progress report, the UK stated that it already complied with, or went further than, almost all the Convention’s articles; In the 5th and final Progress Report 2021, the UK stated that it passed the “*landmark Domestic Abuse Act 2021*” which meant that it was “*fully compliant with Article 44*” of the IC and referred to other sections of the DAA that also complied with IC (such as the definition of Domestic Abuse in s.1 of the DAA).

On 17 May 2022, Priti Patel announced that the UK’s laws were now compliant with the treaty and the government intended to ratify. The House of Lords International Agreements Committee has welcomed the ratification, but has expressed concern about two reservations the UK wishes to make from the treaty. <https://lordslibrary.parliament.uk/istanbul-convention-preventing-and-combating-violence-against-women-and-domestic-violence/>



The Articles...

In its 5th progress report (Annex 5), UK states that it is compliant in England, Wales, Northern Ireland and Scotland with the following articles:

Article 3 – Definition domestic violence

“violence against women” is understood 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;

“domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

“gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

“gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

Article 20 – General support services

1 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.

2 Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services

Article 23 Shelters - Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.

<https://www.gov.uk/government/publications/istanbul-convention-implementation-progress-report-2021/istanbul-convention-5th-progress-report-2021-accessible-web-version#annex-a-compliance>

Previous slides refer to the relevant provisions of the DAA.

Article 4 (3)...

Article 4

4. Fundamental rights, equality and non-discrimination

....

3. ***The implementation*** of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

The UK states that it is “Compliant, other than section 3 in relation to the migrant or refugee status element, which is under review”. There is no reservation in respect of Article 4, but there is a reservation in respect of Article 59 and, because of this reservation, the UK accept that there is no compliance with Article 4 (3).

The reservation....Article 59 (!)

59. Residence status

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
 - a. where the competent authority considers that their stay is necessary owing to their personal situation
 - b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings
4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.



Points to note

- There is no ambiguity about this Article, the UK's reservation to it or the fact that in most instances people with NRPF are not entitled to state funded support.
- In March 2022, the Council of Europe published a collection of papers on ensuring the non-discriminatory implementation of measures and Article 4 (3). It concludes that discrimination and inequality should not be considered exclusively in connection with one of the grounds in Article 4 (3). It encourages States to consider the intersectionality of discrimination and warns that “...*women tend to experience multiple forms of discrimination as may be the case of women with disabilities, or/and women of ethnic minorities, Roma, or women with HIV/AIDS infection...migrant women, including undocumented migrant women, and women asylum seekers...are particularly vulnerable to gender based violence*”.

<https://rm.coe.int/paper-on-article-4-paragraph-3-of-the-istanbul-convention/1680a5d92e>



The Government's response to the reservation...

- See Home Office statutory guidance 'Domestic Abuse July 2022', updated on 5 September 2022 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089015/Domestic_Abuse_Act_2021_Statutory_Guidance.pdf, the 5th progress report and the Explanatory Memorandum on Council of Europe laid before Parliament (Command Paper No CP 674).
 - National Referral Mechanism – which assists potential victims of modern slavery
 - Destitution Domestic Violence Concession (DDVC) (where there is domestic abuse and victim is destitute, leave may be granted for 3 months whilst an application to settle is made)
 - Support for Migrant Victims Scheme, April 2021: more information can be found on the Southall Black Sister's website, who are operating the scheme together with its partners across the UK.



Monitoring...

- The convention mandates an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (see Chapter 9).
- GREVIO monitors the implementation of the convention and its members are elected by the state parties; depending on the number of state parties the body consists of between ten and fifteen members. GREVIO prepare evaluation reports and make findings on the State Party's compliance.
- The timetable for the UK's evaluation has been set with the baseline evaluation report due in November 2024. <https://rm.coe.int/provisional-timetable-for-the-baseline-evaluation-procedure-2016-2028/1680a8f03b>



Thank you

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International Women's Day: Domestic Abuse and Housing

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Outline of presentation

1. How do domestic abuse and housing intersect?
2. The Domestic Abuse Act 2021.
3. Istanbul Convention: Reservation and effect.
4. Immigration abuse as domestic abuse.
5. The Domestic Abuse Commissioner's recommendations to Government and looking forward.



How do housing and domestic abuse intersect?



Intersection

Pandemic – increase in domestic abuse and subsequent impact on housing.

Accessing help – what help victims and survivors need in situations of domestic abuse and what can be accessed.

Domestic Abuse Commissioner – role, remit and research



Domestic Abuse Act 2021



Domestic Abuse Act 2021

The Commissioner's role is independent of government, and an important function of the Commissioner's Office is to hold the Government to account with regards to the national policy response to domestic abuse.

The Act also provides certain powers, including to request information from a range of public authorities and to formally lay reports before Parliament, which must then be responded to by Government Ministers within 56 days.



Housing Provisions within the Act

- Part 4 of the Domestic Abuse
- Part 7 of the Act amends homelessness
- Limitations of Destitute Domestic Violence Concession
- Does not allow time for holistic engagement.



Safety Before Status

Summary report: policy findings and recommendations. Available in BSL, Easy Read, Welsh, Polish, Arabic, French, Spanish, Portuguese, Urdu, Gujarati and Chinese.

Policy report: detailed policy findings and recommendations.

Technical report: Method, samples, limitations, detailed analysis of qualitative and quantitative data.

Specific issues: Immigration abuse.

<https://domesticabusecommissioner.uk/national-mapping-of-domestic-abuse-services/>



The effect of the Istanbul Convention Reservation



Istanbul Convention: Article 59

Immigration abuse – a form of coercive control which can be used post-separation.

Compounds abuse – intensifies an abusive situation.

Cost effective? Commissioned research by LSE and Oxford Migration Observatory found this was far from the case



Immigration Abuse



Immigration Abuse

Immigration abuse: a form of coercive control which can be used post-separation.

Centres around migration status and leverages control.

Far reaching implications: children, work, health



**domestic
abuse
commissioner**

The Commissioner's Recommendations



Recommendations

Firewall and extension of services to migrant survivors of domestic abuse.

Support for those who also have Family Court proceedings.

Higher levels of care for all victims and survivors of domestic abuse.



Thank you

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