Fighting Domestic Violence - United Kingdom

2. Introduction: framework guiding domestic violence law

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# 2.1 Are there civil and criminal legal remedies for domestic violence victims?

In the UK, victims of domestic abuse have both criminal and civil legal remedies available to them. Both criminal and civil legal remedies offer protection to victims and, in addition to this, some criminal legal remedies (which are aimed at punishing the perpetrator) may result in long-term consequences for the perpetrator (i.e., custodial sentence, criminal record).

**Criminal legal remedies**

Most forms of domestic abuse are criminal offenses.[4] Whilst there is currently no specific statutory definition of "domestic violence" or "domestic abuse," these terms are applied to a number of offenses committed within a domestic setting.

The CPS, the authority responsible for prosecuting crimes in England and Wales,[5] has published guidance and examples of where domestic abuse will constitute a criminal offense.[6]

A detailed list of the types of criminal offenses that can be attributed to domestic abuse is included in Section 1 of this guide. These offenses are regarded as particularly serious by the CPS (or, where the crime is committed and prosecuted in Scotland, the Crown Office and Procurator Fiscal Service; or Northern Ireland, the Public Prosecution Service) as they include a violation of trust and security that would normally exist between two people in an intimate or family setting. Further details on the sentencing of and potential penalties for a perpetrator can be found in Section 5.5 of this guide.

The Bill is currently in the process of progressing through the UK Parliament[7] and under the Bill, a new statutory offense for domestic abuse will be introduced. The Bill defines "domestic abuse" as the behavior of one person (A) to another person (B) where A and B are over 16 and personally connected to each other and that behavior is abusive, which consists of physical or sexual abuse, violent or threatening behavior, controlling or coercive behavior, economic abuse, psychological emotional or other abuse, and it does not matter whether this behavior is a single event or a course of conduct.[8]

**Criminal procedure prior to obtaining legal remedy**

In an emergency situation or if the victim of domestic abuse is in immediate danger, the first point of contact should be the police.[9] An emergency situation would be where a crime is taking place, where there is a danger to life or where violence is being used or threatened.[10] Where there is not an emergency or any immediate danger to the victim, domestic abuse can still be reported to the police, either by the victim themselves or by a relative, friend or support worker, and may also be reported anonymously.[11] Many victims may not feel comfortable or able to approach the police due to their circumstances; however, third-party reports are still valuable to the police as they can alert them to possible criminal offenses taking place in the area.

The first contact with the police is the initial report or complaint, which allows the police to assess whether a criminal offense has been committed and also enables them to start their investigation. At this stage, the victim will be asked to give their initial account and will be asked some questions, primarily to ascertain whether they are at risk or in any danger. Notes will be taken of the account so that if the case proceeds to trial, these can be used to support the prosecution's case. These notes can also be used in family court proceedings. When the domestic abuse is reported to the police in the initial report, it will be allocated a reference number within the police system. This should also be issued to the victim to help identify their case within the police system and should also be quoted if the victim contacts the police. When the domestic abuse is reported over the phone, a 'CAD' or 'ICAD' number should also be given to the victim, as this reference number identifies the related police dispatch and any activity recorded against it, such as the time of the 999 (emergency) call and the time the police arrived at the scene.[12]

The police will then take a formal statement from the victim about what has happened. For domestic abuse victims, it is most common that the police officer will write down the victim's experience and then draft this into a witness statement. The victim will then be asked to read and confirm the witness statement is correct before signing it. The victim may instead record an Achieving Best Evidence video ("**ABE Video**"),[13] after which a brief written statement should be prepared for the witness immediately after the interview to confirm the information they have given is accurate.[14] In both cases, it is important that the witness statement be taken in a way that is most appropriate to the victim. For example, if the victim's first language is not English, it may be more appropriate for them to be able to communicate in their first language and an interpreter should be provided. The police should not ask children or family members to interpret in domestic abuse cases. After making the initial report and providing a formal statement (or ABE Video), the victim should request the crime reference number (if this has not already been provided) from the police as this can be useful if contacting other agencies for support.

Where the police have been called to an emergency situation, each police officer is able to use their powers to intervene, arrest, caution or charge the perpetrator. If the police consider that there are "reasonable grounds" for justifying an arrest, they should do this without asking the victim's "permission" or insisting on taking the victim's statement before doing so. The police do not need a warrant to arrest someone they suspect is about to commit an arrestable offense nor do they need to see the abuse take place.

Arrest of the perpetrator may act as a deterrent against reoffending and may demonstrate that police take domestic violence seriously; however, it does not necessarily lead to a charge. Police will consult with the CPS about the charge, as ultimately, (in England and Wales) it is the CPS who decide whether or not the perpetrator will be charged. In order for the CPS to proceed with a prosecution, a two-stage test must be met. This requires that the CPS must be satisfied that there is enough evidence to provide a realistic prospect of conviction of the perpetrator on the charge (the "evidential" stage) and bringing the prosecution must be in the public interest (the "public interest" stage).[15] It is important to note that a victim does not have to support the prosecution of a criminal offense for the police/CPS to proceed with charging and prosecuting the perpetrator. Where the victim withdraws their support for a prosecution, the CPS will require details on why this is.[16] Where the victim decides that they do not want to attend court or make another statement, the CPS may still continue if they consider that they have enough evidence to proceed without relying on the witness.[17] In certain circumstances, such as where the victim has been intimidated, the victim's statement can still be used as evidence in court without the victim being identified. Equally, where the victim wishes to withdraw their witness statement, the CPS and the police may continue with a prosecution, where the "public interest" supports doing so.[18]

When the CPS decides to charge and proceed with a prosecution of domestic abuse (for example, under a criminal offense such as stalking, harassment, rape or sexual assault, as further detailed in Section 5), the perpetrator will first appear before a magistrates' court. Here the perpetrator will be either remanded into custody or released on bail (often with conditions attached and also depending on the seriousness of the charge). It may then be several months before the full case is heard. Prior to this, the victim may also make a "victim personal statement" in which they are able to provide more detail on how the abuse or violence has affected them and whether they wish to claim compensation, such as from the Criminal Injuries Compensation Authority (see further details below).

If the perpetrator is found guilty of a domestic abuse offense, sentencing will depend on the seriousness of the offense and whether the abuser has had any previous convictions, and can range from a conditional discharge to a prison sentence. See Section 5.5 for further information about penalties and sentencing. Whilst criminal remedies can offer some protection to the victim (i.e., when the perpetrator is given a prison sentence), they are primarily aimed at punishing the perpetrator.

A restraining order can also be granted against the perpetrator, either on conviction or on acquittal of a criminal offense, if the court believes that the victim is at risk. This means that the perpetrator is prohibited from doing certain things, such as contacting the victim or visiting their home or place of work. Restraining orders can take effect for a specific period or until a further order is made. It is a serious criminal offense[19] if the perpetrator breaches the restraining order, which is punishable by up to five years in prison and/or fine.[20]

**Domestic violence protection notices (DVPNs) and domestic violence protection orders (DVPOs)**

In England and Wales, a DVPN is a notice given to the perpetrator by the police, in order to provide the victim with emergency protection. The notice will contain conditions, such as barring the perpetrator from contacting the victim or returning to their home. Within 48 hours of a DVPN being issued, the police must apply to the magistrates' court for a DVPO.[21] DVPOs, which are different to restraining orders, are also available in England and Wales and can be put in place by the police and magistrates. The effect of a DVPO is that the perpetrator is prohibited from having contact with the victim and from returning to their home for up to 28 days. However, a breach of a DVPO is not a criminal offense. See Section 4 for further detail about these orders and their equivalents in Scotland and Northern Ireland.

**Criminal injuries compensation**

Victims of a violent crime can also consider applying for compensation from the Criminal Injuries Compensation Authority. In order to be eligible for compensation, the crime needs to have been reported to the police and a claim can only be made within two years of the crime. Victims may be eligible for compensation when: (i) they were injured; (ii) a close relative died; (iii) they saw the crime happen to a loved one or were there immediately afterwards; or (iv) they paid for the funeral of the person that died. Victims may be able to get compensation for physical injuries and sexual or physical abuse, as well as other injuries and expense.[22] The crime must have taken place in England, Wales or Scotland.

For sexual offenses such as sexual assault or rape, it is not necessary to prove any mental or physical injury as the experience inflicted on the victim of these crimes is automatically seen as injury.

For crimes that occurred in Northern Ireland, victims may be entitled to compensation under the 2009 criminal injuries compensation scheme instead. Under this scheme, victims also need to make a claim within two years.[23]

For historic crimes that occurred in Northern Ireland between 1 March 1969 and 30 June 1988, following amendments to the existing legislation, which came into force 9 June 2020, victims may now be able to make a claim for compensation that they were previously denied (or discouraged from applying for) due to the 'same household' rule. The "same household" rule prevented claims where the injuries had been inflicted on victims living in the same household as their perpetrator.[24] This was amended in 1988 but, at that time, was not made retrospective. Applicants will still need to meet the eligibility criteria set out under the 2009 Criminal Injuries Compensation Scheme. As above, the time limit for receipt of applications for compensation is two years, running from 9 June 2020.

**Civil legal remedies**

As noted above, civil legal remedies are also available, which are aimed more at the protection of the victim than at punishing the perpetrator.

In England and Wales, there are two main types of civil remedies (in the form of orders) available for domestic abuse victims: (i) non-molestation orders and (ii) occupation orders. A non-molestation order will prevent the perpetrator from using or threatening violence, intimidating, harassing or pestering the victim. An occupation order can exclude the perpetrator from the home shared with the victim. Both orders can be obtained at once, but there is a higher threshold for an occupation order to be granted. A victim can apply for either a non-molestation order or an occupation order where they are associated with their perpetrator (i.e., married, engaged, in a civil partnership, living together, relatives, have a child together or are in an intimate personal relationship of a significant duration).

Both orders will be granted by civil court. If the perpetrator breaches the non-molestation order, this is a criminal offense that can be punishable by a fine or up to five years in prison. If an occupation order has a power of arrest attached to it, the police will be able to arrest the perpetrator for breach of the order. If it does not have a power of arrest attached, the victim may apply to the court to have the perpetrator arrested or punished.[25]

Civil action can also be taken by the victim of harassment offenses committed by the perpetrator. Harassment is where the perpetrator causes alarm or distress to the victim or puts them in the fear of violence, and the victim must have experienced more than one incident of harassment by the same person.[26] A claim needs to be made within six years of the harassment having occurred and can be made even when the perpetrator has not been found guilty of the criminal offense of harassment. A court can make an order or impose an injunction against the perpetrator (breach of which would constitute a criminal offense, as above) and the victim may also ask the court to award compensation where they have suffered financial or emotional loss.[27]

Further information on available orders and the process for obtaining them is provided below in Section 4.2.

# 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Domestic abuse (or, protection from it) is not specifically identified under national law as a human right. The rights contained in the European Convention on Human Rights (ECHR and the "**Convention Rights**") were implemented in the UK by the Human Rights Act 1998 ("**HRA 1998**"). Protection from domestic abuse is not recognized as a human right under the HRA 1998, but several of the Convention Rights may be relevant in a domestic abuse context. The Convention Rights that are in force in the UK, by means of the HRA 1998, include the right to life (Article 2 ECHR); the right to protection from torture, inhumane and degrading treatment (Article 3 ECHR); the right to a fair trial (Article 6); the right to respect for private and family life (Article 8); and the right to protection from discrimination (Article 14). The European Court of Human Rights, which is responsible for overseeing the implementation of the ECHR, has indicated that domestic abuse may be within the scope of Articles 2, 3, 8 and 14 and that the relevant state can be held accountable where the steps they have taken are not sufficient to protect the victim from further abuse.[28] In the context of the UK's withdrawal from the European Union ("**Brexit**"), whilst the UK is no longer an EU member state, during the "transition period" (i.e., the period from the UK's withdrawal from the EU on 31 January 2020 up until the UK's departure date of 31 December 2020) EU law will continue to apply to the UK. As noted above, the Convention Rights are in force in the UK by virtue of the HRA 1998, although at the time of writing, the impact on human rights protection and its interaction with domestic abuse offenses post-Brexit is still uncertain.

# 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

The United Kingdom signed the Istanbul Convention on 8 June 2012, but has yet to ratify it. It is anticipated that the passing of the Bill will pave the way for the UK to ratify the Istanbul Convention. However, as the Bill does not contain provisions to ensure support for migrant women experiencing domestic abuse, it is considered by some to fall short of compliance with the Convention.[29]

In 2017, the Preventing and Combating Violence Against Women and Domestic Violence (ratification of convention) Act 2017 came into force across the UK ("**Ratification Act**"). The Ratification Act provided that the government has to report on progress toward ratification of the Istanbul Convention every year, and produce a timetable as to when the UK would be expected to be able to ratify the Convention.[30] Once the government has determined that the UK is compliant with the Istanbul Convention, Parliament will be notified of this and the date by which the Convention is expected to be ratified.[31]

In October 2019, the Home Office published its most recent report on progress ("**2019 Report on Progress**").[32] The 2019 Report on Progress is the third annual report on the ratification of the Istanbul Convention to be laid before Parliament.[33] The 2019 Report on Progress contained an update on progress made toward ratification of the Istanbul Convention by the UK, both since the previous report was laid before Parliament (on 30 October 2018) and since the UK signed the Istanbul Convention in June 2012.

The Istanbul Convention consists of 81 articles that aim to address violence against women and girls through focusing on prevention, protection, prosecution and integrated policies. The UK government believes that it is already compliant with the majority of the Istanbul Convention's articles and is working toward compliance with the following remaining articles:[34]

Article 4: Fundamental rights, equality and nondiscrimination. This is currently under review in England, Scotland, Wales and Northern Ireland in relation to protecting the rights of victims without discrimination on the ground of migrant or refugee status.[35] This had previously been marked as compliant, but concerns were raised by the Joint Committee on the Draft Domestic Abuse Bill (comprised of cross-party Members of Parliament Peers) ("**Joint Committee**") following its scrutiny of the draft Bill, and the UK government is now reviewing the UK's compliance with Article 4(3). As noted above, there are some concerns that the current draft of the Bill fails to protect adequately the rights of those with migrant or refugee status.

Article 33: Psychological violence. This article requires that state parties to the Istanbul Convention criminalize the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats. The passing of the Bill will lead to compliance in Northern Ireland.[36] England, Wales and Scotland are already compliant.[37]

Article 44: Jurisdiction. State parties must be able to prosecute, amongst other things, national law offenses committed overseas by their nationals or residents. In the UK, this requires the introduction and enactment of legislation to grant 'extraterritorial jurisdiction' over some offenses (i.e., to allow prosecution in the UK of offenses committed overseas). These legislative measures are contained within the Bill.

Article 59: Residence status. The Istanbul Convention requires that state parties implement legislation that protects victims whose resident status is dependent on their spouse or partner, and that in the event of the dissolution of the marriage or relationship, the victim is granted an autonomous residence permit. The Istanbul Convention also requires that the victim may obtain suspension of expulsion orders in order to apply for an autonomous residence order; reinstatement of residence for victims of forced marriages (in circumstances where they have lost it by being taken into another country); and a renewable residence permit in certain circumstances. This had previously been marked as compliant, but concerns were raised by the Joint Committee following their scrutiny of the draft Bill and the UK government is now reviewing the UK's compliance with Article 59.

Since the 2018 report on progress ("**2018 Report on Progress**"), the UK has also continued to address violence against women and girls by means of other initiatives.[38] In 2019, the Home Office published a refreshed strategy on ending violence against women and girls (following the initial 2016 cross-governmental strategy ("**VAWG Strategy**")), setting out the UK government's approach to addressing and challenging all forms of violence against women and girls, including domestic abuse.[39] Alongside this, an action plan delivery update was published, the Ending Violence Against Women and Girls 2016-2020: Progress Update ("**Action Plan Update**"),[40] setting out progress on the 95 actions to which the government committed in the VAWG Strategy. The Action Plan Update includes details of action items that have been completed, are on track to be completed, and are currently a work in progress, across several key areas. This includes action items in relation to school and education (i.e., developing new guidance for lessons in schools about gender equality), raising awareness (i.e., developing government communication resources and national campaigns), tackling perpetrators (i.e., by considering criminalizing the breach of a DVPO), broader safeguarding measures, actions for the health service, international actions, the prevention of online abuse and exploitation (i.e., through ensuring support for victims of revenge pornography) and reviewing the response of the police and the CPS. In addition to this, the first cross-government Male Victims Position Statement was published in order to clearly state and enhance the UK's response to male victims of crimes covered by the VAWG Strategy.

# 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

Please refer to section 2.3.

# 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

Please refer to section 2.3.

# 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

The UK signed the 1979 Convention in 1981 and ratified it in 1986.[41] By ratifying the 1979 Convention, the UK has agreed to ensure that measures are implemented that ensure that women enjoy human rights on an equal basis with men, including eradicating stereotypical roles for both men and women, ensuring that women equally participate in public life, ensuring equality for women before the law and eliminating the discrimination of women in employment.[42]

The implementation of the 1979 Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). Under the 1979 Convention,[43] State Parties are expected to submit a national report to CEDAW at least every four years providing details on the measures they have adopted to give effect to Convention provisions.[44]

The latest report produced by the UK was its eighth periodic report to CEDAW ("**Eighth Report**"),[45] which was considered by CEDAW in February 2019.

The Eighth Report covers the period from 2011 to 2017 and was prepared in response to CEDAW's 2013 recommendations ("**2013 Recommendations**"). The Eighth Report sets out the UK government's approach to advancing gender equality and eliminating discrimination. In response to the 2013 Recommendations, the UK government implemented measures, such as in relation to tackling discrimination and advancing gender equality by implementing provisions in the Equality Act 2010 to prohibit direct and indirect discrimination, victimization and other specific conduct, and also by introducing gender pay gap reporting.

In response to the Eighth Report, CEDAW provided recommendations to the UK government in March 2019 ("**2019 Recommendations**").[46] These included, amongst others, recommendations that the UK should:

incorporate the 1979 Convention into domestic law and create a national mechanism to oversee this implementation

ensure that women's rights are protected during the UK's withdrawal from the European Union

assess the impact of public spending, tax and welfare reforms on women's rights and take appropriate steps to limit any negative effects

address and end negative gender stereotypes and promote positive and diverse representations of gender in schools, public campaigns and in the media

require employees to protect women against sexual harassment in the workplace

CEDAW's General Recommendation No. 35 on gender-based violence against women ("**General Recommendation No. 35**")

In the 2019 Recommendations and specifically in relation to General Recommendation No. 35, CEDAW recommended that the UK:

ratify the Istanbul Convention

adopt legislation and comprehensive policy measures to ensure women are protected from all forms of gender-based violence in the UK, including in Northern Ireland

ensure asylum-seekers, migrant women and women with unstable immigration statuses can seek protection and support without fear of their immigration status being reported to the UK authorities

ensure that all laws and policies protect women with disabilities from all forms of gender-based violence, in particular where the perpetrator is their caregiver

ensure that the policy of commissioning services (i.e., the process of planning, prioritizing and assessing healthcare needs and services) does not undermine the provision of any specialized services for women who are victims of gender-based violence

These recommendations are yet to be implemented into national law, but the UK has until March 2023 to address the 2019 Recommendations and submit its ninth periodic report. CEDAW has also asked that the UK provide within two years (by 2021) written information on steps taken to implement four of the 2019 Recommendations, these being for the UK to:

fully incorporate the provisions of the 1979 Convention into UK legislation throughout all territories under its jurisdiction (specifically including Northern Ireland), and extend the UK's ratification to all UK overseas territories and the Crown dependencies of Jersey and Guernsey[47]

undertake a thorough assessment of how its withdrawal from the European Union will impact the rights of women, including women in Northern Ireland, and adopt effective measures to mitigate any possible negative effects[48]

ensure provisions of the 1979 Convention, the European Convention on Human rights and European Union legislation, legal acts and court decisions are included in national legislation[49]

consider creating a national mechanism to oversee the coordination and monitoring of the implementation of the 1979 Convention[50]

**Ongoing progress**

Many of the 2019 Recommendations have not been reflected specifically in the Bill, although the UK government has made some progress in addressing the required changes, including through nonlegislative measures. Prior to the publication of the 2019 Recommendations, the UK government conducted a consultation on the Bill and published its consultation response in January 2019 ("**Consultation Response**").[51] In the Consultation Response, the government stated that it has committed funds to specialist needs, for example in order to expand the capacity within the women's sector to improve the response to disabled victims and to help build long-term capacity and expertise around immigration rights and increase the current protections available to migrant victims under the destitute domestic violence concession. The Bill does not currently provide legislative protection for disabled domestic abuse victims, especially protection against abuse from their carers, as specified in the 2019 Recommendations.

The current draft of the Bill also does not specifically address the recommended inclusion of existing European legislation or case law. The UK government has not yet released an assessment of the impact of Brexit on women's rights, though the Scottish government published an impact report in January 2020.[52]

Equally, the Bill does not introduce a national mechanism to specifically oversee the implementation of the 1979 Convention, but does introduce a Domestic Abuse Commissioner who is responsible for encouraging good practice in the prevention of domestic abuse; the prevention, detection, investigation and prosecution of offenses involving domestic abuse; the identification of people who carry out domestic abuse, victims of domestic abuse and children affected by domestic abuse; and, the provision of protection and support to people affected by domestic abuse.

Other nongovernment organizations are also involved in monitoring the UK government's progress and in ensuring the UK's compliance with the 1979 Convention, such as the Equality and Human Rights Commission and the Women's Resource Centre. The work of these organizations has so far included monitoring the UK's progress by producing a shadow report to CEDAW (following a consultation of hundreds of women's rights organizations) and writing to the Minister for Women asking the UK government to specify exactly how it will comply with the 1979 Convention.

# 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.