



**POLSKI
TELEFON
ZAUFANIA**

DLA OFIAR PRZEMOCY W RODZINIE

GETTING AND PAYING FOR HOUSING

A GUIDE FOR THOSE ADVISING POLISH
VICTIMS OF DOMESTIC ABUSE

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FOREWORD

We are very pleased to present this guide to all professionals working with Polish families affected by domestic abuse. It aims to provide them with knowledge and understanding of complex areas of housing entitlement of Polish and other European Economic Area (EEA) nationals in the context of domestic violence. Being homeless in a foreign country as a result of domestic abuse is a devastating experience for victims and their children. We must ensure that the response of support agencies effectively tackles this problem and foreign nationals get help that they are entitled to receive to be safe.

We know from our work with Polish victims of domestic violence that they not only face a lot of barriers in reporting abuse to statutory and voluntary agencies but also face problems preventing them from leaving abusive partners. One of them is financial abuse. Victims who do not receive appropriate support with housing are very likely to go back to perpetrators and cycle of abuse starts again and escalates over time. We can break this cycle by giving victims adequate advice and support so they and their children can feel safe.

Ewa Wilcock
Polish Domestic Violence Helpline Manager

Crewe, 8th March 2018

Gosia

has just arrived at the refuge with her two children. She arrived in the UK in 2010 to join her husband, who was working on a building site then. He has "always been a drinker" and his employment history seems very irregular and complicated, but he has worked on and off, sometimes self-employed, sometimes on contracts. The older daughter, was born in Poland in 2008, the younger was born in the UK in 2013. Both were in school, but after the last attack (there have been several), three months ago, Gosia fled their rented flat and went to stay with a friend in another city. She has not worked since arriving in the UK but did attend a local college to learn English and do a dressmaking class.

Teresa

works as an administrator in a local commercial office and has been there since 2012. Her ex-boyfriend arrived at her workplace and threatened her and colleagues two days ago. He then broke into her flat and smashed it up. She has stayed with a colleague since then, frightened to go home.

Ewelina

arrived in the UK with her parents in 2005, when she was 10. She went to school, her parents both worked, but her mother died in 2015 and her father returned to Poland. She started living with her British partner in 2015 in his flat but he has become violent since she became pregnant: the baby is due in spring 2018.

Ilona

arrived in the UK in 2009, to live with her daughter, who was working in the UK. She helped look after her two grandchildren and then took on some cleaning work, self-employed, once the children were older. She now has 15 hours cleaning a week. However, her son in law has developed mental health problems and the marriage is in trouble. Yesterday while her daughter was at work he started accusing her of breaking up his marriage and threatened her with a knife.

Natalia

came to the UK with her boyfriend in 2018 and has now been in the country for 3 weeks. She hoped to find work but her boyfriend has just stolen all her money, and punched her so hard he broke her jaw.



see what they can do on page 11

WHAT CAN THESE WOMEN DO?

- ✓ Can they find and pay for a safe place to live?
- ✓ Can they get housing benefit?
- ✓ Should the local council offer them temporary or longer term accommodation?

For most Polish citizens that will depend on their right to reside. So this guide explains about rights to reside and how those fleeing domestic violence may be able to claim benefits and get housing from the council.

At the **end of this guide** you will find what options these women may have.

I. RIGHTS TO RESIDE

EU law is designed to encourage “freedom of movement”. Citizens of EU countries (and the European Economic Area which includes three extra countries and Switzerland which has a special treaty with the EU) can travel freely between countries. They can also live in any EU country: this is called the “right to reside”. The rules on the right to reside are designed to encourage people to go where the work is or where they can set up businesses. The current EU directive that sets out the terms for this is known as the Citizens Directive 2004/38/EC: you can find the full text at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0038>

Each EU country has its own regulations implementing the directive. The current UK regulations are the Immigration (European Economic Area) Regulations 2016 No. 1052: you can find them here <http://www.legislation.gov.uk/uksi/2016/1052/made>

The EU allows each country to apply special rules to some new member countries, known as “accession states”. Poland joined the EU in 2004 and the UK did apply such rules to newly arrived Polish citizens between 2004 and 2011 (although in November 2017, the UK Court of Appeal found that the UK had acted unlawfully in extending these rules in 2009, so unless this judgment is appealed, the rules only applied between May 1st 2004 and April 30th 2009). This guide does not cover the detail of these rules, because they are no longer relevant, but generally Polish citizens had to register on the Worker Registration Scheme for the first year of work in the UK. Polish citizens who came to the UK before 2004 had rights to live in the UK defined by their immigration status. They arrived as workers, family members and refugees, and settled in the UK over many years. Some became UK citizens. Their rights and options are generally not covered in this guidance.

I.1. WHY ARE RIGHTS TO RESIDE IMPORTANT?

As you can tell from the name, the right to reside is what gives Polish citizens the right to live in the UK. If the right to reside is lost, then it becomes possible for the Polish citizen to be removed or deported, although this is unlikely unless there has been criminal activity.

The EU rights to reside also determine eligibility for some welfare benefits for people who are unemployed or unable to work and housing from local authorities. Some rights to reside are “qualifying” rights and some are not.

I.2. WHAT RIGHTS TO RESIDE ARE THERE?

The table below is a quick guide to the different types of right to reside. Some are explained in more detail below. It covers just the basic “means tested” welfare benefits which are available to people who are on low incomes or have no money coming in, such as Income Based Jobseekers Allowance (for the unemployed), Employment Support Allowance (for those too ill to work), Income Support (for people who cannot work because they are ill or caring for a child), Housing Benefit (for people on a low income or benefits to help pay the rent) and Universal Credit (which is being introduced to replace some of these benefits).

scan it!



RIGHT TO RESIDE	HOW DO YOU GET THIS RIGHT TO RESIDE?	HOUSING AND BENEFITS: IS THIS A QUALIFYING RIGHT TO RESIDE?
THREE MONTH	All EEA citizens have this right automatically for the first three months after they arrive in the UK.	No: no housing or benefits
WORKSEEKER	By signing on as available for work at the JobCentre.	Not for housing Workseekers are eligible for Income Based Job Seekers Allowance but not for Housing Benefit or Universal Credit.
SELF SUFFICIENT	By having enough money available to support yourself to at least the level of means tested benefits and having “comprehensive sickness insurance”.	Eligible for housing as long as you can pass the habitual residence test and also technically eligible for benefits. But of course if you have enough money then you cannot claim means tested benefits.
STUDENT	Register to study on a relevant course and signing a declaration that you can support yourself without needing benefits. Then if your circumstances change and you can no longer support yourself then you still have a student right to reside	Eligible for housing and benefits as long as you can pass the habitual residence test .
PERMANENT RIGHT TO RESIDE	Having other rights to reside for 5 years and in some other circumstances *see below for more on this	Benefits and housing if you can pass the habitual residence test or if you got the permanent right to reside through work or self employment
SELF-EMPLOYED PERSON	Being in genuine and effective self-employment	Eligible for housing and benefits
WORKER	Being in genuine and effective work that is not marginal	Eligible for housing and benefits
“RUIZ ZAMBRANO” right to reside for carer/s of British child or vulnerable adult	Be the only person/people available to care for a British citizen child or vulnerable adult and have no other right to live in UK	Not eligible for housing or means tested benefits

I.3. IMPORTANT TO NOTE ABOUT RIGHTS TO RESIDE

- The law on them is complicated and key aspects of it are explained below
- These rights to reside may also cover family members (see below)
- The rights are determined by the facts, not by papers or documents. So a worker has a right to reside because she is working, the husband of a worker has the right to reside because he is the husband and because the worker is working.
- So people can apply for residence permits or cards, as “proof” they have a right to reside, but if the facts change they may no longer have a right to reside.
- There are some specific cases where permits or cards may be needed and some of these are explained below

1.4. THE HABITUAL RESIDENCE TEST

- The Habitual Residence Test is used in benefits and housing applications by the Department for Work and Pensions (DWP: who pay benefits) and housing authorities
- It is a test of whether you have a “centre of interest” in the UK, in other words, how settled you are. So the DWP or local authority look at
 - How long you have been in the UK
 - Why you came
 - How long you hope to stay
 - Whether you have possessions or property in the UK and where you have bank accounts
 - If you have family here
 - If you have registered with a doctor or dentist, or your children are attending school
 - Are you involved with local communities: have you joined a church, club, or similar
- When the DWP apply the HRT they start by checking whether you have a right to reside. So sometimes they say you have “failed the HRT” when they mean “you have no right to reside”.
- The HRT is not applied to workers and the self-employed
- The HRT is applied to British citizens (unless they have been deported back to the UK).

2. WORKER RIGHT TO RESIDE

- A person with a worker right to reside is eligible for benefits and housing from the day they start work. There is no minimum period and no habitual residence test.
- To count as work, the work must be **genuine, effective and not “marginal”**
 - Effective work means that there is an employer, an employee, a job to be done and a payment for it. A contract is not needed but some evidence of the work will be needed.
 - Payment for work does not have to be in money but it should be something that has a monetary value (like accommodation for example)
 - If the work is for at least 10 hours a week and at least at minimum wage levels on average then it will not be marginal.
 - BUT the DWP has guidance that means that any claim based on work that earns less than £156 average per week (in 2017/8) for the last three months will be subject to special checks as to whether it is marginal so these claims are often refused. This can be challenged
- When a worker is on leave s/he is still a worker. This includes maternity leave.
 - If a woman has to stop work altogether because of the demands of pregnancy (maybe because she has no rights to maternity leave) she keeps her worker right to reside as long as she confirms that she will return to the labour market in a reasonable time. A year is a reasonable time.
- Workers can keep their right to reside sometimes even when they are no longer employed.
 - A worker who cannot work temporarily because of illness or accident keeps their right to reside as a worker. There is no time limit on this: in one case the doctors involved confirmed that they expected the man to be able to work eventually even though he had been unable to work for four years, and he kept his right to reside.
 - In some cases the worker may keep their right to reside because they have left work to temporarily look after a spouse or child who is ill or injured.
- If a worker loses their job through no fault of their own (redundancy or a contract coming to an end) they keep their worker right to reside for a time as long as they sign on at the job centre as available for work
 - If the worker has worked for less than a year, the worker keeps their right to reside for a maximum of six months. After that, if they have not found a job, they become a workseeker.
 - If the worker has worked for at least a year, they will keep their right to reside for a minimum of six months. After that, the DWP may test them to see if they have a **“genuine prospect of work”**, and if they do not they may be demoted to workseeker right to reside
- Workers may have other rights to reside e.g. as family members or the carer of a child in education (see below)

3. SELF-EMPLOYED RIGHT TO RESIDE

- A person with a self-employed right to reside is eligible for benefits and housing from the day they start self-employment. There is no minimum period and no habitual residence test.
- To qualify for this right to reside, the self-employment must be effective and genuine, which means that the person must be actively engaged in carrying on their business.
 - Self-employed people do not have to earn any minimum amount but they do need to be spending a reasonable amount of time on their business. Not all of this will earn them money: activities like looking for work, doing accounts, maintaining equipment also count
 - BUT the DWP has guidance that means that any claim based on self-employment that earns less than £156 average per week (in 2017/8) for the last three months will be subject to special checks as to whether it is genuine and effective self-employment so these claims are often refused. This can be challenged
- Self-employed people do not lose their right to reside if they are temporarily unable to work due to illness or accident. This may include having to look after a spouse or child who is ill or has had an accident
- A self-employed person can take maternity leave for the usual period allowed by law

4. FAMILY MEMBERS’ RIGHTS TO RESIDE

- Rights to reside also cover family members
 - For workers and self-employed people the right to reside also covers husbands, wives and civil partners and children up to the age of 21 PLUS dependent children and grandchildren over 21 and dependent parents and grandparents
 - **“dependent”** means that the person shares a household OR is financially dependent OR depends on the worker or self-employed person for physical care and/or case management
 - For self-sufficient people and students the right to reside covers children up to the age of 18 and husbands, wives and civil partners
 - Workers and self-employed people may also have others as family members, but they will need to apply for a residence permit or certificate: cohabitants in a **“durable relationship”** and adult family members who need personal care because of long term illness or disability
 - These family members do not need themselves to be EEA citizens. But if they are not then they need to apply for a residence permit
- The right to reside of a wife, husband or civil partner continues even if the couple no longer live together
 - If the couple divorce then the right to reside may continue if the wife, husband or civil partner has been married/partnered for at least 3 years, one of which is in the UK, and they are working or self employed
 - If there is domestic violence then the three year/one year may not apply
- Generally the right to reside of a cohabitee ends when the relationship ends.
 - The cohabitee may have other rights to reside (as the carer for a child, or as a worker for example)
 - Other options for ex cohabitants may be available but will need skilled legal representation
- There is a special right to reside for the children of workers: they have a right to reside to complete their education in the country where their parent works or has worked
 - This right is triggered when the child starts education in a school, college or university. There is no minimum age. The right ends when the child finishes their education
 - For the right to exist, the child must have been in the UK at some time when the parent was a worker
 - Once that has happened, the child has that right. It does not matter what the worker parent does then. Even if they die or leave the country, the child still has the right.
 - Because this is based on a worker’s right to reside, the child is eligible for benefits and housing
 - The child’s carer/s also have the same right to reside and the same eligibility for benefits.
- There is a special right to reside for the parent of a British child who has no-one else to care for them, or for the sole carer of a British adult who needs care.
 - However people with this right (sometimes called Zambrano parents, after the case that established the right) are NOT eligible for housing and means tested benefits. They have the right to work and can get contributions based benefits but will need to apply to social services for help if they cannot afford basic housing and food (see below)

5. PERMANENT RIGHT TO RESIDE

- EEA citizens and their family members who have had a right to reside for a five years automatically have the permanent right to reside
 - The five years do not have to be with one right to reside throughout. For example, a woman may have worked for two years then had three years as the wife of another worker and would then get the permanent right to reside
 - Rights to reside as the carer for a British child or adult with care needs or as the parent or carer of a worker's child in education do not count towards the permanent right to reside
 - Gaps of up to six months do not count towards the permanent right to reside but are disregarded for building up the five years
 - In some circumstances, longer gaps for visits to the home country may also be disregarded: get advice on this
- Workers who have worked for two years and then become permanently unable to work because of illness or accident get the permanent right to reside
 - Their family members also get the permanent right to reside if this happens
 - If a worker dies after two years' work, the family members get the permanent right to reside
 - If the worker becomes permanently unable to work, or dies, as a result of an industrial injury or occupational disease then there is no two year qualifying period
- People with the permanent right to reside are eligible for housing and benefits
- People with the permanent right to reside can apply for UK citizenship.
 - For this they will need a residence permit or certificate confirming they have the permanent right to reside. The [UK Government website](#) explains how to do this.
 - Children born in the UK to a parent (mother, father if married to mother or on the birth certificate, adoptive parent) with the permanent right to reside are automatically British citizens.

6. APPLYING FOR BENEFITS

- This pamphlet does not cover the general rules about benefits and how to apply for them but just eligibility for benefits for Polish citizens. The benefits covered here are
 - Income Based Jobseekers Allowance (IBJSA: for the unemployed)
 - Employment Support Allowance (ESA: for those too ill to work)
 - Income Support (IS: for people who cannot work because they are ill or caring for a child)
 - Housing Benefit (HB: for people on a low income or benefits to help pay the rent)
 - Universal Credit (UC: which is being introduced to replace some of these benefits)
- You can find general information about these benefits on the [government website](#). The [Citizens Advice](#) website also has a lot of useful information about how to claim and how much you may get.
- European citizens with most rights to reside are eligible for IBJSA, ESA, IS, HB and Universal Credit. You can see which rights to reside make you eligible in the sections above.
 - Workseekers are only eligible for IBJSA and not ESA, IS, HB or UC
 - If you get IBJSA (unless you are a workseeker), ESA or IS you will be referred to get HB. But you can also apply for HB separately and the housing benefit department must make their own decision on this claim. This may be useful if the DWP are claiming, for example, that your work is marginal, and you need to challenge that decision.
- To apply for benefits you will need proof of your right to reside. This will include:
 - Proof of your citizenship (passport or ID card)
 - Proof of the right to reside you have or have had. This may include
 - Evidence of work or self employment
 - Evidence of family relationship
 - Evidence of time spent that counts towards the permanent right to reside
 - Residence cards or permits
- IBJSA, UC and some child benefits cannot be paid in the first three months after arrival in the UK unless the claimant is a worker or self-employed.

7. APPLYING FOR HOUSING

- In the UK, local councils are responsible for housing. Some provide longer term housing or have arrangements with Housing Associations to provide it. They have a legal duty to
 - Make sure that housing advice is available for anyone in their area who is homeless or in housing need
 - Assess anyone who asks for help because they are homeless
 - Provide temporary accommodation for some homeless people
 - Provide longer term housing for some homeless people
 - Make sure that any housing they own or control access to is allocated fairly, via a system that they publicise and which people who are entitled to it can use.
- Other organisations provide housing to people in need. Housing Associations are charitable organisations offering housing, usually in cooperation with local councils. Refuges provide emergency housing and support to women fleeing domestic violence.
- If you are homeless because of domestic violence the local council should assess your case and may provide you with temporary or longer term accommodation. The temporary accommodation may be in a refuge, a council hostel, a bed and breakfast hotel or a private flat. The longer term accommodation may be owned by the council, a housing association or a private landlord.
- The council will assess your case to find out whether you are:
 - **Eligible:** do you have a right to reside, and is it a qualifying right to reside for housing?
 - **Homeless:** do you have a right to live anywhere, and if you do, can you access it safely? If not, then you are homeless.
 - **In “priority need”:** a person is in priority need if she is pregnant, under 18, has a child as part of her household or if she is vulnerable because of illness, disability or other special reason. Being a victim of domestic violence can make you vulnerable if it makes you more at risk of harm or less able to get and keep your own accommodation. Government guidance encourages local councils to consider that victims of domestic violence may be vulnerable and need temporary accommodation.
 - If the council has **“reason to believe”** that you are eligible, homeless and in priority need” it should provide temporary accommodation while it continues to assess your case. It will then look for proof that you are eligible, homeless and in priority need and go on to check whether you are
 - **“intentionally homeless”:** because you did or failed to do something that meant you lost your accommodation. Leaving in fear of violence does not make you intentionally homeless. If you are intentionally homeless, the council will just provide temporary accommodation. If you are not it will then look at whether you have a
 - **Local connection** with their area. This may be through having lived there before, working there, or having family members who have lived there. If you have no local connection with the area the council can send you to an area where you do have one but not if you would be at risk of violence there.
- So you do not need all your documents when you apply to the council for emergency help, but you will need to produce them later. The council should help you with this.
- Many women fleeing violence prefer to go to refuges: these are safe places where women and their children can stay. Refuges can help women sort out their longer term plans and housing. The easiest way to access a refuge is via the [National Domestic Violence Helpline](#) on 0808 2000 247.
- There are other options for those fleeing violence. Sometimes councils will help them apply for injunctions to keep the perpetrator away from them and their homes. Some councils will do building work to make the home safe or provide them with a safe space within it, a “sanctuary”.



8. HELP IF YOU CANNOT GET BENEFITS OR COUNCIL HOUSING

- If you have no right to reside, or your right to reside does not make you eligible for housing or benefits you may be able to get help from the council social services department.
- Social services provide help for people with children in their household and people with care needs. This help may include accommodation and money or vouchers for food and other necessities.
- However, social services do not have to provide accommodation and support if there are any other options for the family. This may include them simply offering to pay the fare home and making travel arrangements. This should not be offered to families who have a right to reside (for example, caring for a British child), who should be able to get support from social services.
- Social services are also responsible for child protection, and sometimes women are afraid to seek help from them because they are worried that they may be blamed for failing to provide a home and food for their child, or that social services may try to take their children away. Homelessness alone is not enough reason for social services to remove a child from their mother.
- However, the law on social services support is complicated and it is a good idea to get advice and help before approaching them.

9. THE RIGHT TO RENT

- Since February 2017, landlords have to check whether any new tenants (or other adults moving in) have the “right to rent”.
- Polish citizens have the “right to rent” because of their nationality but will still need to provide evidence of this. This can be a passport or an ID card showing that they are a Polish citizen, or a residence card showing they have the permanent right to reside.
- The landlord will check the documents and take copies which are kept until 12 months after the tenant has left.
- Local councils do not have to check the right to rent of people they house, and if they send people to be housed by private landlords or housing associations then they do not have to check documents.
- Housing associations do have to check documents if they are renting directly to a new tenant
- Refugees are exempted from the “right to rent” rules.

SO WHAT ABOUT: GOSIA, TERESA, EWELINA, ILONA AND NATALIA?

What can these women do about their housing and benefits?

Gosia

Gosia has just arrived at the refuge with her two children. She arrived in the UK in 2010 to join her husband, who was working on a building site then. He has “always been a drinker” and his employment history seems very irregular and complicated, but he has worked on and off, sometimes self-employed, sometimes on contracts. The older daughter, was born in Poland in 2008, the younger was born in the UK in 2013. Both were in school, but after the last attack (there have been several), three months ago, Gosia fled their rented flat and went to stay with a friend in another city. She has not worked since arriving in the UK but did attend a local college to learn English and do a dressmaking class.

Gosia has several rights to reside that make her eligible for benefits and housing

- She is the family member of a worker or a self employed man
- She probably has the permanent right to reside because she has been a family member since 2010 which is more than 5 years
- Her children are both in school and their father is and was a worker

So Gosia can apply for benefits and housing. If she goes to the council they may say she does not have a local connection but she cannot be sent back to an area where she is unsafe.

Teresa

Teresa works as an administrator in a local commercial office and has been there since 2012. Her ex-boyfriend arrived at her workplace and threatened her and colleagues two days ago. He then broke into her flat and smashed it up. She has stayed with a colleague since then, frightened to go home.

Teresa has a right to reside as a worker so she can get help from the council. She may want to ask for rehousing since she is clearly homeless now, and the council may decide she is vulnerable and help her. She may want to get an injunction if she thinks her ex-boyfriend will obey it and go home to her flat.

Ewelina

Ewelina arrived in the UK with her parents in 2005, when she was 10. She went to school, her parents both worked, but her mother died in 2015 and her father returned to Poland. She started living with her British partner in 2015 in his flat but he has become violent since she became pregnant: the baby is due in spring 2018.

Ewelina has the permanent right to reside because she was her father’s family member when he got it. So she is eligible for housing and benefits and can ask the council for help. She is in priority need because she is pregnant.

Ilona

Ilona arrived in the UK in 2009, to live with her daughter, who was working in the UK. She helped look after her two grandchildren and then took on some cleaning work, self-employed, once the children were older. She now has 15 hours cleaning a week. However, her son in law has developed mental health problems and the marriage is in trouble. Yesterday while her daughter was at work he started accusing her of breaking up his marriage and threatened her with a knife.

Ilona seems to have two or three rights to reside

- As a self employed person
- As the family member of her daughter who is a worker
- A permanent right to reside which she gained as a family member

So she can get benefits and apply for housing. The local council may consider that she is vulnerable because of the domestic violence, or they may not.

Natalia

Natalia came to the UK with her boyfriend in 2018 and has now been in the country for 3 weeks. She hoped to find work but her boyfriend has just stolen all her money, and punched her so hard he broke her jaw.

Natalia has a right to reside, but it is the “three month” right to reside which does not make her eligible for benefits or housing. She may be able to get emergency housing from the council social services department if they think she has care needs, but this is unlikely. If she can get work or become self-employed she will become eligible. After three months she can sign on at the JobCentre as available for work, but will only then be able to get IBJSA.



GETTING HELP

There are places to get advice and help for those fleeing domestic violence including Women's Aid who run the **National Domestic Violence Helpline**.

- **The Polish Domestic Violence Helpline** - 0800 061 4004
- The website www.housing-rights.info provides information about housing options for migrants and those who advise them. There is a specific section for those fleeing domestic violence
- The **AIRE centre** "promotes awareness of European law rights and assists marginalised individuals and those in vulnerable circumstances to assert those rights" and has some specific projects and services for those fleeing domestic violence
- **Project 17** works to end destitution among migrant children and offers information advice and advocacy about getting accommodation and support from social services from their London office.

ABOUT THE AUTHOR:

Sue Lukes has worked in housing aid and refugee resettlement but has been freelance since 1996 as an expert in housing and migration and how local regional and national authorities and NGOs can make migration work for the benefit of all communities involved. She co-edits the Chartered Institute of Housing website www.housing-rights.info, trains many local authorities and others, does academic research and develops, facilitates, advises and evaluates projects. She is chair of Music in Detention www.musicindetention.org.uk



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