



Women, Families and Article 8 - Update October 2014

Please read this legal update alongside Rights of Women's legal guide 'Women, families and Article 8'.

In summary, there have been some changes to the suitability and eligibility guidance. The paragraph on 'Suitability and Eligibility' at Page 10 of our legal guide **Women, families and Article 8** should be read in light of the changes mentioned in this update.

At page 5, of our previous legal guide, under the section headed **Family Life: Women In A Relationship** it states that you could make an application under the immigration rules to stay in the UK with your partner. It also stated that you would need to show that you have a genuine and subsisting relationship with your partner. It also mentioned that you would need to show that there are insurmountable obstacles to family life continuing with that partner outside the UK. It then went on to explain what the Courts understand by the term 'insurmountable obstacles'.

The Home Office have now explained what they mean by 'insurmountable obstacles' and have included the phrase in the immigration rules at paragraphs EX2.

The Home Office have said that 'insurmountable obstacles' could include your partner not being able to return to his country because he is a refugee or because there would be severe hardship because you or your partner have physical or mental health problems and require support from each other.

At page 7 of our legal guide under the paragraph 'Applying Under Article 8' we stated that application form FLR(FP) should be used for an application under the rules and application form FLR(O) outside the rules.

The Home Office have now said that any application based on your private or family life should be made on form FLR(FP) even if it is bound to fail under the rules and you may be granted permission to stay here outside the rules. This means that if you are asserting that to remove you to your country of origin will mean that you are unable to continue your family life with your partner and or child or you are asserting that you have integrated into the UK - perhaps because you have been in the UK for a long time and/or that you have formed long-term friendships then you should use form FLR(FP), in all other cases you should complete FLR(O).

The Home Office will continue to balance the public interest with your interest to have a private and family life. They will also now look at whether you can support yourself financially and whether you speak English.

If your relationship with your partner was established at a time when you were here without permission, your relationship will be considered, but given little importance. This will also be the case even if you have permission to be in the UK but it is for a limited time which means that you will need to leave the UK at some point in the future.

It also states that where a person is not liable to deportation the public interest will not require removal where the person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK. A qualifying child is a child who is under 18 and is British or has lived in the UK for 7 years or more.

The Government have also introduced new rules for the Courts to consider when deciding whether you are required to leave the UK because you have committed a criminal offence.

These new rules are beyond the scope of this update.

Please note that this update does not constitute legal advice and you should seek legal advice if you or your partner are subject to deportation proceedings.

Please note that the law relating to article 8 and families is complex; in this update we have only provided a basic overview of the law and procedure. The law and procedure referred to in this update is as it stood at the date of publication. The relevant law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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