

# Minister for Community Safety submission of 6 October 2022

## PE1973/A: End the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets

The Committee has asked for a response by the Scottish Government to Public Petition PE 1973. The Petition is “Calling on the Scottish Parliament to urge the Scottish Government to review the Family Law (Scotland) Act 2006 and provide greater clarity on the division of assets in cases of cohabiting couples who are separating.”

The 2006 Act introduced legal protections for cohabiting couples should their relationship come to an end by separation or death.

Under section 28 of the 2006 Act, where a cohabiting couple separate one of them can ask the court for an order for financial provision. Any application to the court must be made within a year. The [Explanatory Notes](#) for section 28 summarise what the court considers in assessing the application.

The court can order payment of a capital sum and/or such amount as the court specifies in respect of the financial implications of caring for a child.

The Scottish Law Commission are already carrying out a review of the law in this area. Information on the Commission’s work is on their website at [Scottish Law Commission: Aspects of family law \(scotlawcom.gov.uk\)](https://www.scotlawcom.gov.uk). This weblink includes:

- Their Discussion Paper [equivalent to a consultation paper] issued on 26 February 2020.
- A summary by the Commission of their Discussion Paper.
- The responses to the Discussion Paper.

The Commission are currently working on their Report, which will include a draft Bill. I understand this Report will be finalised shortly and will be published by the end of 2022.

The Scottish Government will consider the outcomes of the Commission’s work carefully once the Report is published.

