

Briefing for the Public Petitions Committee on petition [PE2241](#): Introduce Legal Services Payment Orders to improve access to justice in Scottish family law, lodged by Dr Jurgita Koechlin

Brief overview of issues raised by the petition

- The petitioner is concerned about access to legal representation for victims of economic abuse when they face family law proceedings. These include things like divorce or child contact disputes. Where someone is in – or has been in – an economically abusive relationship, they may not have access to their financial assets. They may not even have information about what financial assets exist.
- The charity Surviving Economic Abuse has a definition of economic abuse:

“Economic abuse can include exerting control over income, spending, bank accounts, bills and borrowing. It can also include controlling access to and use of things like transport and technology, which allow us to work and stay connected, as well as property and daily essentials like food and clothing. It can include destroying items and refusing to contribute to household costs.

“This type of abuse is a form of coercive and controlling behaviour. It can continue long after leaving and can have lifelong effects.”
- Session 6’s Social Justice and Social Security Committee carried out an inquiry into [financial considerations when leaving an abusive relationship](#). This specifically considered [access to legal representation for victims of abuse](#) as well as [how legal proceedings could be manipulated as a form of controlling behaviour](#).
- [Legal aid](#) is the primary tool available to people in Scotland who cannot afford legal advice or representation themselves. Civil Legal Aid – for representation in court – has more generous financial eligibility requirements. However, people seeking initial advice may need to access Advice and Assistance (for legal advice only), which has more restrictive financial eligibility criteria. The SPICe briefing [Legal aid – how it works](#) explains how legal aid operates in more detail.
- The Financial Considerations inquiry heard that the Scottish Legal Aid Board can [apply financial eligibility criteria flexibly in situations involving domestic – including economic – abuse](#). However, there appeared to be little awareness of this flexibility among solicitors.

- There are also well-documented concerns about being able to access legal aid on a practical level. It has been suggested that fewer solicitors are prepared to offer legal aid, especially for complex or urgent cases. Session 6's Equalities, Human Rights and Civil Justice Committee's [inquiry into civil legal assistance](#) explored this issue and [concluded that there were "legal aid deserts"](#) based on subject matter or geography in Scotland.
- In addition, the petitioner raises the question of whether public funds should be used to support legal representation when assets do exist to cover the costs privately but are being controlled by an abusive partner.
- Legal Services Payment Orders (LSPOs) are a type of court order available in England and Wales. They direct one party to a marriage or civil partnership to make payments to the other party so they can access legal advice and representation. LSPOs are only available in relation to disputes about the end of a relationship or related financial proceedings.
- The courts must take a range of factors into account when deciding whether to make an order. These include the financial circumstances of the other party, whether they have legal representation and the wider financial circumstances of the relationship. The court will not make an order unless the party seeking it would not be able to access legal services otherwise. This includes consideration of whether they can take out a loan or mortgage to pay for this. The charity Rights of Women provides [detailed information about applying for a Legal Services Payment Order](#).
- It is possible to apply for interim financial assistance from the other party during proceedings for divorce in Scotland. This could result in one party making payments to the other to provide financial support. In a recent case, an application was made – and granted by the courts – which specifically included a sum to cover legal representation. However, the law in this area is still being developed. An article in [Scottish Legal News discusses the opportunities this may present](#) to people without access to assets at the end of a relationship.

Key Organisations and relevant links

- Scottish Government
- [Scottish Legal Aid Board](#)
- [Scottish Women's Aid](#)
- [Family Law Association](#)
- The Financial considerations when leaving an abusive relationship inquiry [heard from a range of organisations with expertise in economic abuse](#).

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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