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Domestic abuse and civil law in Scotland

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This briefing sets out the civil law in Scotland which is relevant in the context of domestic abuse.



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Contents

Summary	6
Scope of the briefing and policy context	8
Terminology	9
Perpetrators	9
Victims and complainers	9
Victims/survivors	9
Persons at risk	9
The role of civil law within the overall legal framework relating to domestic abuse	10
The criminal justice system	10
Criminal offences	10
Police and criminal court powers	11
Policy background	11
Release on an undertaking	11
Investigative liberation	11
Remand of a suspect in custody prior to trial	12
Special bail conditions	12
Civil protection orders	12
Overlaps between the two systems	14
Criminal offences and powers of arrest	14
The role of the police in issuing or applying for orders under the Domestic Abuse (Protection) (Scotland) Act 2021	15
Key policy issues with the current system	16
Scope and complexity	16
A multitude of statutory terms	16
A split in terms of protective function	16
Understanding the different enforcement powers	17
Arguments for reform	17
The person at risk has to start the court action	18
Not suited to emergency protection	18
The threshold tests and prospects of success	19
A definition of domestic abuse/abusive behaviour	19
The existing civil law system in more detail	21
Non-harassment orders (NHOs)	21
Criminal cases	22

Section 234A: 'misconduct' cases	23
Section 234AZA: domestic abuse cases	23
Civil cases	24
The definition of harassment: including for domestic abuse cases	24
Criminal offence when an NHO is disobeyed	25
Interdicts	25
Interim interdicts	25
The Protection from Harassment Act 1997	26
Matrimonial, relevant and domestic interdicts	26
Protection from Abuse (Scotland) Act 2001	27
The purpose of the 2001 Act: legislative history	27
The current scheme in the 2001 Act	27
Domestic abuse interdicts	29
The couple's home	29
Occupancy rights	30
The role of property law	30
Statutory occupancy rights: an overview	31
Married or in a civil partnership	31
Cohabiting couples	34
Protective orders relating to the home	37
Exclusion orders	37
The purpose of an exclusion order	38
Who can apply for an exclusion order	38
The test which the court must apply in reaching its decision	39
Duration of exclusion orders	39
Ancillary orders	40
Transfer of a tenancy	41
Warrants for ejection	42
Disputes between parents about the care of their children, where domestic abuse is alleged	42
The role of legal aid	44
How the system works	44
Challenges with the current system	44
The policy arguments around automatic legal aid	44
Accessing a legal aid solicitor	45
Domestic Abuse (Protection) (Scotland) Act 2021	46

What Part 1 does: domestic abuse protection notices and domestic abuse protect orders _____	46
Definition of abusive behaviour _____	47
Against whom can a DAPN/DAPO be imposed _____	47
Duration of a DAPN/DAPO _____	48
Content of a DAPN/DAPO _____	48
Breach of a DAPN/DAPO _____	48
Non-implementation of Part 1: the work of the Equalities, Human Rights and Civil Justice Committee _____	48
The case for implementation of Part 1 _____	49
Operational challenges with the implementation of Part 1 _____	49
The Scottish Government's subsequent work in 2025 and 2026 _____	49
What Part 2 does: social housing tenancies _____	50
Other key policy developments in Session 6 of the Scottish Parliament _____	52
The work of the Scottish Law Commission on domestic abuse _____	52
Occupancy rights, including those of cohabitants _____	53
'Division and sale' - cohabitants _____	53
Exclusion orders: domestic abuse offences _____	53
A new civil law wrong ('a delict') _____	53
The definition of domestic abuse or abusive behaviour _____	53
Children affected by domestic abuse _____	54
Legal remedies for domestic abuse _____	54
The range of civil protection orders remaining _____	55
The Victims, Witnesses and Justice Reform (Scotland) Act 2025 _____	55
Special measures (Part 5) _____	55
Non-harassment orders in the criminal courts (sections 107 and 108) _____	56
Enforcement of civil protection orders made outside Scotland (Part 11) _____	57
Criminal/civil justice interface in relation to domestic abuse _____	57
Unsuccessful amendments at Stages 2 and 3 _____	57
Review of domestic abuse cases (Part 12) _____	57
Other developments relating to the civil–criminal interface in domestic abuse law _____	58
Possible court rules _____	58
Integrated Domestic Abuse Courts _____	58
Regulation of Legal Services (Scotland) Act 2025 _____	59
Housing (Scotland) Act 2025 _____	59
Definitions in housing legislation _____	59
Domestic abuse policy _____	59

Social housing tenants affected by domestic abuse	60
Prevention of Domestic Abuse (Scotland) Bill	60
Scottish Government 2026 consultation: Strengthening protections for women and girls	60
UK Government 2026 consultation: A fairer end to relationships	61
Sources of legal advice, information and support	62
Checking if someone has a history of domestic abuse	62
Information and support for victim/survivors	62
Finding legal advice	63
Bibliography	65

Summary

Domestic abuse in Scotland, as in other countries, has wide-ranging, often interconnected impacts, requiring a coordinated policy response across sectors including health, social work, housing and law.

When considering the law on domestic abuse, attention is often focused on criminal offences. In Scotland, such offences may be investigated by the police and prosecuted in the public interest through the criminal courts by the [Crown Office and Procurator Fiscal Service](#) (COPFS). However, **civil law** - the focus of this briefing - can also play an important role.

In cases of domestic abuse, as well as other forms of abuse and harassment, civil law provides a range of court orders, commonly referred to as **civil protection orders**. These aim to prevent harm and distress by prohibiting certain behaviour, such as repeated contact, approaching the person at risk, or attending their workplace or their child's school.

There are several types of civil protection orders relevant to domestic abuse, including **non-harassment orders** and **interdicts**, as well as **exclusion orders**, which relate to the family home. A key feature of many (although not all) of these orders is that they must be sought by the person at risk through the civil courts. There is no equivalent body to perform the role of COPFS in aiming to protect the person at risk.

The consequences of **breaching** (disobeying) a civil protection order vary. Drawing on criminal justice enforcement methods, a breach of some orders, such as non-harassment orders, is a criminal offence punishable by a fine, imprisonment (up to five years), or both.

Breach of an interdict or exclusion order is not, of itself, a criminal offence. However, an interdict may have a power of arrest attached, allowing detention of a person until they appear in court and possible court-ordered detention of up to two days. Furthermore, if an interdict is classified by the court as a **domestic abuse interdict**, a breach is then a criminal offence.

Part 1 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), **not yet in force**, would introduce two new protective orders: **domestic abuse protection notices** (DAPNs) and **domestic abuse protection orders** (DAPOs). These are intended to provide short-term emergency protection. In a significant overlap with the criminal justice system, the police can issue a DAPN and apply for a DAPO. Breach of a DAPN or DAPO would constitute a criminal offence. However, implementation of Part 1 has been delayed, and it remains unclear when it will come into force.

During **Session 6 of the Scottish Parliament (2021–26)**, various other policy developments have influenced, or may yet influence, the civil law relating to domestic abuse:

- **Scottish Law Commission:** the [Scottish Law Commission](#), which makes recommendations for the reform of Scots law, is [currently reviewing civil law remedies for domestic abuse](#) - it has proposed a further civil protection order, provisionally called the 'domestic abuse civil protection and redress order'
- **special measures:** the [Victims, Witnesses and Justice Reform \(Scotland\) Act 2025](#) introduced some civil law reforms, including Part 5, which aims to strengthen the use

of 'special measures' to support vulnerable witnesses and parties in court

- **housing:** provisions were also included in the [Housing \(Scotland\) Act 2025](#) designed to improve social housing law's handling of domestic abuse
- **civil/criminal coordination:** [draft proposals were put forward by the Scottish Government aiming to improve coordination between related civil and criminal court domestic abuse proceedings](#)
- **Integrated Domestic Abuse Courts:** separately, [a government paper exploring the concept of Integrated Domestic Abuse Courts was published](#), with these courts designed to address both criminal and civil aspects of domestic abuse
- **non-harassment orders:** [possible reforms to non-harassment orders as an alternative to prosecution](#) were also consulted on by the Scottish Government.

Scope of the briefing and policy context

Experiencing domestic abuse can have wide-ranging and long-lasting impacts across many aspects of a person's life. These impacts are often interconnected, particularly in relation to housing, finances, health, safety, and social wellbeing.^{1 2}

Addressing domestic abuse therefore requires a coordinated response across multiple policy areas, including health, social work, housing, and the legal system.³

This briefing provides an overview of the **civil law** in Scotland relevant to domestic abuse. A key focus is the system of **civil protection orders** - also referred to as **civil protective orders** or simply **protective orders** - which are intended to safeguard individuals at risk.

In **2023–24**, the most recent year for which Scottish Government statistics are available, there were **63,867 police-recorded incidents** of domestic abuse in Scotland. **Eighty per cent** of these incidents involved a female victim and a male suspected perpetrator, where this information was known.⁴

This briefing is divided into the following sections:

- **position of civil law in the domestic abuse framework:** [the role of civil law in the domestic abuse framework, including its relationship with the criminal justice system](#)
- **policy issues in the current system:** [some key policy issues associated with the existing system of civil protection orders](#)
- **civil protection orders and family home measures:** [a much more detailed, specialist look at the current system, including the law on the couple's home](#)
- **access to legal aid:** [a description of the role of legal aid in supporting individuals affected by domestic abuse, and some policy challenges with the current legal aid system](#)
- **Domestic Abuse (Protection) (Scotland) Act 2021:** [an overview of the Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#)
- **policy developments in Session 6:** [a discussion of other key policy developments in Session 6 of the Scottish Parliament \(2021-26\)](#)
- **advice, information and support:** [signposting to sources of legal advice, information and support for those affected by domestic abuse.](#)

The briefing provides [a brief overview of the criminal justice system's role in addressing domestic abuse in Scotland](#), but readers should consult other sources for a fuller discussion.

On any legal issue, SPICe cannot give legal advice on individual cases, and a solicitor should be consulted. As noted earlier, [the final section of the briefing highlights sources of legal advice and support.](#)

Terminology

As a preliminary point, it is important to think about **the terminology used** to describe those carrying out, and those affected by, domestic abuse.

Perpetrators

In criminal proceedings, the person charged is referred to as the **accused** prior to conviction and as the **offender** following a conviction.

In policy and practice, however, the term **perpetrator** (or alleged perpetrator) is increasingly used to describe the individual said to have committed the wrongful act, and it also appears in some civil law contexts in this sense.^{5 6}

For brevity, this briefing uses **perpetrator** as a neutral shorthand to describe the person responsible for, or alleged to be responsible for, wrongdoing in both civil and criminal contexts.

Victims and complainers

The criminal law, and the criminal justice system more generally, commonly use the term **victim** to describe people affected by criminal conduct. This briefing uses the same terminology where directly referring to law that does so.

The **complainer** is the specific term used for the alleged victim named in a criminal charge.

Victims/survivors

However, individuals affected by domestic abuse may use different language to describe their experiences. Some prefer the term **victim**, others identify as **survivors** to reflect healing and resilience, and some use both terms depending on context.

This briefing uses **victim/survivor** to acknowledge and include these varied preferences.

Persons at risk

The term **person at risk** is also used in this briefing when discussing civil protection orders.

This reflects, in part, that the conduct sufficient to justify such an order will not always meet the evidential threshold required for the prosecution of a criminal offence; civil protection orders are intentionally broader in scope.

The term also reflects the preventative and forward-looking nature of these orders, which are designed to prevent harm - or further harm - from occurring.

The role of civil law within the overall legal framework relating to domestic abuse

Scotland's legal response to domestic abuse has two main strands: [the criminal justice system](#) and, the focus of this briefing, [civil law](#). This section introduces both and [explains how they interact](#).

Note that both legislation and the **common law** - that is, the body of rules developed through judges' decisions - play important roles in shaping the criminal and civil legal frameworks.

The criminal justice system

A description of the approach of the criminal justice system to domestic abuse can be divided into:

- **criminal offences:** [relevant criminal offences in relation to domestic abuse](#)
- **police and criminal court powers:** [police and criminal court powers to remove an alleged perpetrator from the complainer's home and prohibit their return](#).

Criminal offences

The [Domestic Abuse \(Scotland\) Act 2018](#) ('the 2018 Act', also called DASA) is a significant piece of legislation in the Scottish context.⁷

Part 1 of the 2018 Act created a **new offence of domestic abuse against a partner or ex-partner**. It was designed to enable effective prosecution of behaviour, taking place on at least two occasions, which is physically and/or psychologically abusive – including coercive and controlling behaviour.ⁱ

The offence may be **aggravated** where a child under 18 is involved, such as where a child is cared for by the victim or perpetrator (or both).ⁱⁱ

An **aggravated offence** is a crime rendered more serious by specific factors defined in legislation, allowing the court to impose higher penalties.

The new offence was not intended to displace the prosecution of domestic abuse using existing criminal offences. For example, the common law has **the offence of assault**. The [Criminal Justice and Licensing \(Scotland\) Act 2010](#) has **the offence of threatening and abusive behaviour**.ⁱⁱⁱ

i [Domestic Abuse \(Scotland\) Act 2018](#), sections 1, 2, 10 and 11.

ii [Domestic Abuse \(Scotland\) Act 2018](#), section 5.

Those offences are still used in conjunction with the **domestic abuse aggravator** set out in section 1 of the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#).

Police and criminal court powers

There are various police and criminal court powers that can be used when there is an ongoing criminal investigation or court case.

Policy background

These powers overlap to some extent with civil protection orders in their shared aim of preventing further harm.

However, one advantage they have over (victim-initiated) civil protection orders is that the protections can be obtained at no financial cost to the alleged victim/survivor.

On the other hand, the use of each of these powers depends on a particular stage of the criminal justice process being reached.

In practice, however, an investigation or prosecution may not proceed for a range of reasons: the behaviour may not be reported; the police may consider that there is insufficient evidence to charge and therefore not refer the case to COPFS; or COPFS may decide not to prosecute.⁸ A victim/survivor may also report the abuse primarily to obtain protection but later withdraw from the process if they feel unable to act as the principal witness in any prosecution.⁹

These factors point to a potentially distinct role for civil protection orders within the civil courts and, as some stakeholders contend, reinforce the case for developing more robust civil law alternatives to police and criminal justice powers.^{9 10}

The different types of protection available via the police and the criminal courts are now considered in more detail.

Release on an undertaking

If a suspected perpetrator is **charged with a criminal offence** at the time of the incident, the police may release them on an **undertaking** until their first court appearance. This can include conditions such as not approaching the complainer or returning to their shared home.

Breaching these conditions is a criminal offence.^{iv}

Investigative liberation

Another option available to the police at the time of the incident is to arrest the perpetrator

iii [Criminal Justice and Licensing \(Scotland\) Act 2010](#), section 38.

iv [Criminal Justice \(Scotland\) Act 2016](#), section 26 and schedule.

and remove them to a police station.

Where further investigation is then needed, the individual may be released on **investigative liberation** for **up to 28 days**, subject to conditions such as not approaching the alleged victim, witnesses or specified locations.¹¹ Breach of these conditions is a criminal offence.^v

Remand of a suspect in custody prior to trial

Once an accused person appears in court, either immediately after being charged, or [following release on an undertaking](#), the court can remand a suspect in custody prior to trial.

Generally, there is a **statutory presumption in favour of bail** for an accused person, but it can be refused where specified criteria are met, such as concerns about witness interference or the risk of further offending before trial.^{vi}

Special bail conditions

Where bail is granted by a criminal court, the court imposes standard conditions and may add **special conditions**, such as prohibiting contact with the complainer or returning to a shared home. Breach of any bail condition is a criminal offence.^{vii}

Civil protection orders

The briefing now turns to civil law, focusing on civil protection orders.

Unlike with England and Wales, there is no civil protection order called a **restraining order**. The main types of civil protection order in Scotland are:

- [non-harassment orders](#)
- [interdicts](#)
- [exclusion orders](#), which relate to a couple's home.

These orders are mainly focused on the **medium to long-term protection** of a person at risk.

Separately, [the Domestic Abuse \(Protection\) \(Scotland\) Act 2021 is significant](#), with Part 1 (**not yet in force**) introducing two **new short-term emergency civil protection orders** for domestic abuse.

v [Criminal Justice \(Scotland\) Act 2016](#), section 16 and schedule.

vi [Criminal Procedure \(Scotland\) Act 1995](#), sections 23B-C.

vii [Criminal Procedure \(Scotland\) Act 1995](#), sections 24 and 27.

Orders targeting specific harms

There are also civil protection orders covering specific harms, such as the **forced marriage protection order** (introduced in 2011) and **female genital mutilation protection order** (introduced in 2020, with most provisions not yet in force).^{viii}

Although not explored further in this briefing, they offer illustrative examples of modern civil protection orders, with the potential to shape the future of domestic abuse protections in Scotland.

Most civil protection orders can only be applied for by the person at risk through **the civil courts**.

As one **exception** to the general position, a non-harassment order can also be imposed by a criminal court following conviction for a relevant offence (see the box below, [and later in the briefing](#), for more details). However, a non-harassment order being imposed by a criminal court is dependent on the offence being proven beyond reasonable doubt.

Where a civil protection order is sought through the civil courts, the relevant conduct need only be established on the lower test of on **the balance of probabilities** (the civil 'standard of proof'). In other words, the court must be satisfied that something is more likely than not to be true.

A civil protection order may be granted by the civil courts even where a related criminal prosecution has been, or would be, unsuccessful.

In the civil courts, an application for a civil protection order can be sought as a **standalone application**, or as **part of other court proceedings**.

For instance, a civil protection order might be sought in proceedings relating to divorce or dissolution of a civil partnership. Such an order might also be applied for [where there is a court dispute between parents about some aspect of parental responsibilities and rights](#) (PRRs), such as whether a parent should have contact with a child.^{5 12}

In **2022 to 2023** (the last year for which there are detailed statistics available), [there were at least 1,200 applications for civil protection orders in family cases in Scotland](#).⁵

^{viii} Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011; Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020.

The role of the criminal court in relation to non-harassment orders

As mentioned above, a [non-harassment order can be made](#) by a **criminal court** at the conclusion of a successful prosecution. This is an important route to such an order in practice.

The criminal court may make the non-harassment order on its own initiative or on the prosecutor's request.

When determining whether an order is necessary for the future protection of the victim, the criminal court must be satisfied 'on the balance of probabilities', the standard of proof also applying in civil court cases.^{ix}

Overlaps between the two systems

There are several other overlaps between the criminal justice system and the system of civil protection orders and it is also important to highlight these upfront.

Criminal offences and powers of arrest

First, breaching a civil protection order may, in some cases, be a criminal offence, which can be investigated by the police and prosecuted through the criminal courts.

This applies automatically to certain orders, such as [non-harassment orders](#), as well as [the short-term emergency orders](#) created by the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) (once in force).

For other orders, including [interdicts](#) and [exclusion orders](#), breach is not, of itself, a criminal offence. However, an interdict to protect against abuse may have [a power of arrest attached](#). This allows arrest on reasonable suspicion of a breach, detention of a person until they appear in court and possible court-ordered detention of up to two days.^x

In addition, if an interdict with a power of arrest attached is classified by a court as a [domestic abuse interdict](#), a breach is then a criminal offence.^{xi}

In this way the police, who typically act to enforce the criminal law, can again become involved in the enforcement of an order created under the civil law.

ix [Criminal Procedure \(Scotland\) Act 1995](#), section 234A(2).

x [Protection from Abuse \(Scotland\) Act 2001](#), section 5.

xi [Domestic Abuse \(Scotland\) Act 2011](#), sections 2 and 3.

The role of the police in issuing or applying for orders under the Domestic Abuse (Protection) (Scotland) Act 2021

Finally, Part 1 of [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) (**not yet in force**) gives the police a crucial role in domestic abuse protection measures.

The police can issue a **domestic abuse protection notice** themselves and they (rather than the person at risk) can apply to the civil court for a **domestic abuse protection order**.

[Part 1 of the 2021 Act is covered in detail later in the briefing.](#)

Key policy issues with the current system

This section highlights key policy issues with the current system of civil protection orders, [before examining the different types of order in more detail later in the briefing](#).

Scope and complexity

The existing system of civil protection orders has evolved piecemeal through successive reforms over a period of 45 years. The end result is arguably very complex, with numerous pieces of legislation to be navigated.¹³

A multitude of statutory terms

One issue is that some recognised classifications of court order still focus on one specific category of person at risk. This has resulted in a proliferation of different legal terms.

For example, [an interdict is possible under the common law](#). However, [legislation also refers to, for example, matrimonial interdicts, relevant interdicts, and domestic interdicts](#).^{xii} The terminology used here simply reflects whether the parties are married, in a civil partnership, or cohabiting.

The evolution of family law

This legislative complexity partly reflects the gradual evolution of family law: statutory measures initially centred on marriage and later extended to other relationships, without any consolidation of the law.

Against that backdrop, the [Scottish Law Commission](#) recently proposed that the legal terminology be simplified, where possible, to remove distinctions based on the type of intimate relationship.¹⁴

Additionally, [as noted earlier](#), under the current law, an interdict that satisfies certain statutory criteria may be classified by the court as a **domestic abuse interdict**, adding a further statutory category and associated layer of complexity.^{xiii}

Although it is a very similar term to a **domestic interdict** (referred to above), the classification of **domestic abuse interdict** [carries specific consequences in terms of how the order is enforced](#).

A split in terms of protective function

There is also something of a split in existing civil protection orders, in terms of what they can do. For example, an **exclusion order** [suspends the perpetrator's legal right to occupy](#)

xii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 14, 18A and 18B; [Civil Partnership Act 2004](#), section 113.

xiii [Domestic Abuse \(Scotland\) Act 2011](#), sections 2 and 3.

the home. Other civil protection orders, [such as interdicts](#), focus more broadly on preventing contact and harm to the person at risk.

Accordingly, **to achieve both protective functions**, the court has to grant more than one order in the same case.

However, even an exclusion order cannot offer complete protection relating to the home. Accordingly, [as discussed later](#), it must be granted by the court with additional court orders relating to the property, including **ancillary interdicts**.^{xiv}

Understanding the different enforcement powers

[As already explained](#), some civil protection orders may have a power of arrest attached for enforcement if breached. However, [as discussed later](#), **this is not automatic for all orders** and, in some circumstances, must be specifically requested from the court.^{xv}

In practice, this can create difficulties where legal representatives lack specialist experience. There is a potential risk that a power of arrest is not sought, requiring the person at risk to pursue a separate civil court action to address any breach.¹⁵

Arguments for reform

The overall effect is a complex system, which has the potential to be bewildering for victim/survivors and their supporters. [As alluded to in the previous section](#), even legal practitioners working in the area might struggle at times to successfully operate within it.¹⁵

As far back as 2005, the Justice 1 Committee of the Scottish Parliament recommended that the consolidation of the law relating to interdicts for protection from abuse should be explored “as a matter of urgency.”¹⁶

More recently, the [Scottish Law Commission](#), in 2024, commented on civil protection orders:

“ in order to achieve the most effective protection in law, a victim/survivor of domestic abuse needs to rely on multiple statutes, cumulatively building up the protective measures in place. The level of protection available also varies depending on the relationship between the victim/survivor and the perpetrator. The picture that emerges is of a complex and fragmented legal regime for victim/survivors and their advisors to navigate.”

Scottish Law Commission, 2024¹⁷

xiv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 4(4) and 18(3); [Civil Partnership Act 2004](#), section 104(4).

xv [Protection from Abuse \(Scotland\) Act 2001](#), section 1(2).

The person at risk has to start the court action

Another issue is that civil protection orders often must be obtained through the civil courts at the initiative of the person at risk. There is no equivalent of the [Crown Office and Procurator Fiscal Service](#) (COPFS) acting in the public interest for criminal cases.

The advantage of the person at risk initiating the action is that it gives them autonomy in their choice as to whether or not to make an application. People faced with the same situation may have different wishes in this regard.

However, the court application itself has the potential to be very expensive for the person at risk. Costs may be covered (fully or partly) by legal aid, but, [as discussed later](#), this system is currently under significant pressure, with an acute shortage of legal aid solicitors in some parts of Scotland.

A process initiated by a person at risk can be highly stressful, and if civil courts fail to meet vulnerable individuals' needs, encountering a perpetrator in the courtroom may be re-traumatising.¹⁸ Although criminal proceedings can also be distressing, the criminal courts can appear more responsive than civil courts, where victim/survivors may face a less supportive experience.¹⁹

Not suited to emergency protection

Another key issue is the argument - advanced [both in Scotland](#) and [internationally](#) - that a system of civil protection orders relying entirely on the courts, and therefore involving inherent delay, cannot respond effectively to emergency situations.^{20 21}

In this regard, in 2022, the UK **ratified** (agreed to be bound by) [the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#), usually referred to as **the Istanbul Convention**.

Article 52 of the Convention (with the full text in the box below) requires the availability of short-term emergency protection, enabling a perpetrator to be removed from a home and prevented from returning.

[As discussed earlier](#), there are police and criminal court powers which can be used in this regard, but only in the context of an ongoing investigation or prosecution relating to a criminal charge. In other circumstances, the person at risk must apply for a civil protection order through the civil courts against the perpetrator.

On the use of the courts for emergency protection, a [2017 paper published by the Council of Europe on the Istanbul Convention comments](#):

“ The protection can hardly be provided immediately, unless courts are accessible around the clock, which is rarely the case. Even if the law requires a court to make the decision within 24 hours, as in Bulgaria, victims or persons at risk have to wait to get protection, which can be dangerous because during this time the perpetrator has full access to them... If the victim has to wait ... even for 24 hours, it may be too long in cases of immediate danger ...”

Logar, 2017²¹

As discussed more fully later, a person at risk in Scotland can apply for an **interim interdict** through the civil courts - a temporary order pending a final decision. However, where even a delay of hours may expose the person to serious harm or death, this can offer limited reassurance.

Overall, the current system is arguably better suited to medium- and long-term protection.

Helping achieve the objectives of the Istanbul Convention was one of the policy aims associated the short-term emergency civil protection powers introduced via [Part 1 of the Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) - but it is not yet in force.²²

Article 52 of the Istanbul Convention

"Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk."

The threshold tests and prospects of success

Additionally, each type of civil protection order is subject to a different threshold test that must be met. Some of these tests may be overly onerous, offering insufficient prospects of success for the person at risk.

One example which has been cited is the **test of necessity** applied to exclusion orders, [discussed in more detail later in this briefing](#). In connection with this, the [Scottish Law Commission](#) has recently consulted on whether this test should be reformed.²³

Similarly, it has also been argued by some stakeholders that, [where a power of arrest is not attached automatically](#), the threshold test for attaching one to an interdict may be too high - an issue on which, again, the [Scottish Law Commission](#) has again recently consulted.²⁴

A definition of domestic abuse/abusive behaviour

Finally in relation to current issues, the [Scottish Law Commission](#) has highlighted that relevant legislation often does not clearly define or even refer to domestic abuse.⁵

To some extent, this reflects the fact that civil protection orders were not designed exclusively to address domestic abuse. For example, [the deliberately broad definition of harassment](#) in the [Protection from Harassment Act 1997](#) ('the 1997 Act') extends to conduct such as stalking by strangers, and other forms of abuse than domestic abuse.

The 1997 Act was later amended by [the Domestic Abuse \(Scotland\) Act 2011](#) to include [a specific provision on domestic abuse \(section 8A\)](#). However, the term **domestic abuse**

was still not defined at that point via the 2011 Act.

For context, the bill that became the 2011 Act did originally include a statutory definition of domestic abuse when first introduced to Parliament;²⁵ however, this definition was removed by amendment at a later stage of the parliamentary process.²⁶

The ultimate approach in the 2011 Act contrasts with the [more detailed and modern definition](#) of **abusive behaviour** in the flagship criminal law legislation, the [Domestic Abuse \(Scotland\) Act 2018](#).

More recently, Part 1 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) provides a [comprehensive definition of abusive behaviour](#) for its new short-term, emergency orders.^{xvi} This is largely modelled on the 2018 Act and, in terms of the scope of the definitions across the two pieces of legislation, there is a high degree of consistency.

Against this background, [the Scottish Law Commission has proposed wider reforms to clarify and modernise definitions in civil law](#), including as part of its proposal for a new domestic abuse civil protection and redress order.²⁷

xvi [Domestic Abuse \(Scotland\) Act 2018](#), section 2; [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), sections 2 and 3.

The existing civil law system in more detail

This section explores the current civil law system in more detail, for those wishing to gain a more detailed understanding of the relevant law.

As a reminder, [only a solicitor can advise according to the circumstances of an individual case](#).

This section of the briefing is divided into the following topics:

- [non-harassment orders](#)
- [interdicts](#)
- [the home belonging to a couple](#)
- [disputes between parents about the care of their children involving allegations of domestic abuse](#).

Lawburrows Act 1429

For interest, note that **lawburrows** is one of the oldest surviving civil law protections in Scotland. It allows a person who fears harm from someone else to ask the court for protection. The court can require the perpetrator to deposit money or provide a financial guarantee as a safeguard against causing harm. If they refuse, they can be imprisoned for up to six months.

Although lawburrows still exists, it is now very rarely used and so it is not considered further in this briefing.²⁸

Non-harassment orders (NHOs)

A **non-harassment order** ('NHO') requires the named person to refrain, for the period specified in the order - which may be indefinite - from engaging in conduct towards the victim or person at risk as set out in the order.^{xvii}

This section looks at:

- [NHOs in criminal cases](#)
- [NHOs in civil cases](#).

xvii [Criminal Procedure \(Scotland\) Act 1995](#), section 234A (1B); [Protection from Harassment Act 1997](#), section 8(5)(b)(ii).

Statistics on NHOs in civil and criminal cases

The number of NHOs applied for in family cases in the civil courts is thought to be **very low** compared to the overall number of civil protection orders applied for in such cases.

For example, in **2022–23**, the latest year for which detailed civil statistics are available, only **44 NHOs** were applied for, representing **around 3%** of total applications for civil protection orders in family cases.²⁹

For further comparison, in the same year, **3,534 NHOs** were granted by the criminal courts following convictions for domestic abuse offences.³⁰

Criminal cases

The possibility of imposing an NHO in a criminal case is covered by the [Criminal Procedure \(Scotland\) Act 1995](#) ('the 1995 Act').^{xviii}

A key point is that a victim cannot apply directly to the criminal court for an NHO.

Instead, the system depends on the prosecutor requesting one when appropriate, or on the court to issue one on its own initiative, where the law permits this.

[As a reminder](#), when determining whether an order is necessary for the future protection of the victim, the criminal court must be satisfied 'on the balance of probabilities' (the standard of proof also used in the civil courts).^{xix}

Breach of an NHO imposed in a criminal case is, of itself, a criminal offence that can be investigated as such by the police.^{xx}

The penalties for the relevant offence are:

- **on summary conviction** (relating to the procedure used for most criminal cases): up to six months' imprisonment, a fine up to the statutory maximum (currently £10,000), or both
- **on indictment** (relating to the procedure reserved for the more serious criminal cases): up to five years' imprisonment, a fine, or both.^{xxi}

As explored in more detail in the next sections of the briefing, there are actually two provisions relating to non-harassment orders in criminal cases under the 1995 Act:

- section 234A, [on 'misconduct' cases](#), added by the [Protection from Harassment Act 1997](#)

xviii [Criminal Procedure \(Scotland\) Act 1995](#), sections 234A and 234AZA.

xix [Criminal Procedure \(Scotland\) Act 1995](#), section 234A(2).

xx [Criminal Procedure \(Scotland\) Act 1995](#), section 234A(4).

xxi [Criminal Procedure \(Scotland\) Act 1995](#), sections 225(8) and 234A(4); [Interpretation Act 1978](#), schedule 1.

- section 234AZA, [on domestic abuse cases](#), added by the [Domestic Abuse \(Scotland\) Act 2018](#).

Section 234A: 'misconduct' cases

Under section 234A of the 1995 Act, **misconduct** is defined - in a non-exhaustive way - to include conduct that causes alarm or distress.^{xxii}

Under section 234A, the prosecution may ask the court to make a NHO when disposing of a relevant criminal case in three circumstances:

- **conviction**: the person has been found guilty of an offence involving misconduct towards a victim
- **acquittal on a special defence**: the person was acquitted of such an offence because they successfully relied on a special defence based on a 'mental disorder', that prevented them from understanding the nature or wrongfulness of their conduct
- **unfitness for trial**: the person was found unfit to stand trial because of a 'mental disorder', but the court has nevertheless determined that they carried out the conduct that would otherwise have constituted the offence.^{xxiii}

Note that **mental disorder** is the term still used in the legislation although it has been recognised as an outdated term in the wider policy setting.³¹

Section 234AZA: domestic abuse cases

Section 234AZA is an important provision which was inserted into the 1995 Act by provisions in the [Domestic Abuse \(Scotland\) Act 2018](#) ('the 2018 Act').

Section 234AZA applies when the offence in question is the specific domestic abuse offence set out in the 2018 Act, or another relevant offence is aggravated according to the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#).^{xxiv} [See earlier in the briefing on those offences](#).

Where section 234AZA applies:

- the court **must** consider whether to make an NHO without any need for the prosecutor to apply for one
- there is what may be described as a **presumption** in favour of making an NHO, in that the court is to make one unless it concludes that the protection one would provide is not needed^{xxv}

xxii [Criminal Procedure \(Scotland\) Act 1995](#), section 234A(7).

xxiii [Criminal Procedure \(Scotland\) Act 1995](#), sections 234A, 51A and 53.

xxiv [Domestic Abuse \(Scotland\) Act 2018](#), section 1(1); [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#), section 1(1)(a).

xxv [Criminal Procedure \(Scotland\) Act 1995](#), section 234AZA(4) & (5).

- in addition to seeking to protect the victim, an NHO may also contain provisions in favour of a child involved in the case.^{xxvi}

In **2023-24** and in **2024-25**, NHOs were granted in **around 40% of cases** involving domestic abuse offences. In **2021-22** and **2022-23**, the comparable figure was closer to **30%**.³⁰

Civil cases

NHOs in civil cases are covered by sections 8-11 of the [Protection from Harassment Act 1997](#) ('the 1997 Act').

The 1997 Act is a UK piece of legislation, with sections 8-11 applying to Scotland only. The 1997 Act has been amended by Acts of the Scottish Parliament, including, for example, the [Domestic Abuse \(Scotland\) Act 2011](#) ('the 2011 Act').

[As noted earlier](#), applications for an NHO must be made by the person at risk through the civil courts, as no public body can apply on their behalf. An NHO - like other civil protection orders - may be sought as a standalone action or within existing civil proceedings, such as divorce.

Alternative remedies under the 1997 Act

For context, note that an alternative remedy to an NHO under the 1997 Act is an **interdict**, [another type of court order preventing someone from doing something](#).

It is also possible for the court to award **damages**, that is, financial compensation.^{xxvii}

The definition of harassment: including for domestic abuse cases

Section 8 of the 1997 Act is the main provision governing NHOs granted by the civil courts. It defines **harassment** as causing alarm or distress. It requires a **course of conduct**, meaning behaviour on at least two occasions.^{xxviii}

Section 8A, inserted by the [Domestic Abuse \(Scotland\) Act 2011](#), applies where **the conduct amounts to domestic abuse** (a term not further defined).^{xxix} Where section 8A applies, only **conduct** is required - rather than a 'course of conduct' - and, significantly, this may consist of behaviour on a single occasion.^{xxx}

xxvi [Criminal Procedure \(Scotland\) Act 1995](#), section 234AZA(3).

xxvii [Protection from Harassment Act 1997](#), section 8(5).

xxviii [Protection from Harassment Act 1997](#), section 8(1) and 8(3).

xxix [Protection from Harassment Act 1997](#), section 8A(2).

xxx [Protection from Harassment Act 1997](#), section 8A(3).

Criminal offence when an NHO is disobeyed

Section 9 of the 1997 Act makes breach of a civil court NHO, without reasonable excuse, a criminal offence. [Penalties mirror those for breaching a criminal court NHO.](#)^{xxxi}

Interdicts

Another important type of civil protection order is **an interdict**. This order prevents someone from a particular act or requires them to stop an ongoing action. It is the broad equivalent of an **injunction** available under the legal system of England and Wales.

In **2022-23**, there were **1,142 applications** for interdicts in family cases in Scotland, **around 90%** of the total applications for civil protection orders in such cases.²⁹ This figure excludes **interim interdicts** (temporary ones) considered separately [in the next section](#).

Common law interdicts

Interdicts are available under the common law. Here the court can impose them without limit of time, and they have a wide scope beyond domestic abuse.³²

In domestic abuse cases, common law interdicts are particularly important where partners have never cohabited, as other forms of protective order may not apply.

Similarly, [because of the way the relevant statutes are framed](#), a common law interdict may be the only option where the parties are already divorced or their civil partnership has been dissolved.³³

Separately from the common law, there are **numerous pieces of legislation** to navigate relating to interdicts, making this an especially complex area of law.

This section of the briefing explores this legal framework and its complexity in more detail.

Interim interdicts

As a preliminary point, a court may grant an **interim interdict** - distinct from a final interdict - under common law or statute. An interim interdict is a temporary measure, usually in force until the case is decided.

In **2022-23**, there were **63 applications** for interim interdicts in family cases in Scotland, **around 6%** of the total applications for civil protection orders in such cases.²⁹

To obtain an interim interdict, the person at risk must show that the inconvenience to them of refusal outweighs the inconvenience to the other person of the order being granted.

xxxi [Protection from Harassment Act 1997](#), section 9; [Criminal Procedure \(Scotland\) Act 1995](#), sections 225(8); [Interpretation Act 1978](#), schedule 1.

In some circumstances, including under common law, it is possible to seek an interim interdict on **an 'ex parte' basis**, which means that the defender is not given notice of the court hearing, and will only be notified about the interim interdict if the order is granted.³⁴

Unlike many other civil protection orders, an interim interdict is more suited to short-term protection, as it can be obtained relatively quickly. However, [the policy concerns discussed earlier about whether court-based remedies can ever respond quickly enough in an emergency still apply](#).

The Protection from Harassment Act 1997

[As mentioned earlier](#), [the Protection from Harassment Act 1997](#) is also relevant. It says that an interdict can be granted as a direct alternative to an NHO.

Under the 1997 Act, it is not possible to apply for an NHO and an interdict in respect of the same conduct.^{xxxii} However, it is thought that, in practice, the person at risk will typically apply for an interim interdict [without notice to the perpetrator](#) under the 1997 Act. The aim here is to obtain protection relatively quickly until an NHO can be imposed.³⁵

Matrimonial, relevant and domestic interdicts

Next, there are the statutory provisions originating in the [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), and later revised and expanded in legislation in 2004 and 2006.^{xxxiii}

These state that a person at risk can apply for an (interim or final) interdict classified as:

- a **matrimonial interdict**, if the perpetrator and person at risk are married^{xxxiv}
- a **relevant interdict**, if the perpetrator and person at risk are in a civil partnership^{xxxv}
- a **domestic interdict**, if the perpetrator and person at risk are (or were) living together as a couple.^{xxxvi}

In addition to the relationship-based criteria, an interdict will only fall within one of the statutory categories listed above if the interdict either:

- restrains or prohibits any conduct of the perpetrator towards the person at risk or towards a child of the family

xxxii [Protection from Harassment Act 1997](#), section 8(5).

xxxiii [Civil Partnership Act 2004](#), Part 3, chapter 4; [Family Law \(Scotland\) Act 2006](#), section 31(3), adding [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 14, 18A and 18B.

xxxiv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 14.

xxxv [Civil Partnership Act 2004](#), section 113.

xxxvi [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 18A and 18B, added by the [Family Law \(Scotland\) Act 2006](#), section 31(3).

- bars the perpetrator from entering or remaining in certain places, including the person at risk's workplace or a child's school.^{xxxvii}

The couple's home and ancillary interdicts

The relevant legislation generally prevents the court from granting a matrimonial, relevant or domestic interdict in relation to the family home - unless the interdict is also an **ancillary interdict**.^{xxxviii}

An **ancillary interdict**, in this context, is one granted in conjunction with an **exclusion order** - an important type of order relating to the couple's home. These orders are discussed later.

Protection from Abuse (Scotland) Act 2001

As a reminder, unlike some civil protection orders, breach of an interdict is not, of itself, a criminal offence.

However, one of the early measures of the Scottish Parliament, the **Protection from Abuse (Scotland) Act 2001** ('the 2001 Act') sought to strengthen enforcement powers for interdicts in abuse cases.

The 2001 Act is noteworthy for being a rare example of legislation initiated by a Scottish Parliament committee, under **the Committee Bill procedure**.

The purpose of the 2001 Act: legislative history

At the time that the 2001 Act was contemplated, a key policy concern in the context of domestic abuse was that the 1981 Act provided strong protections for spouses. In particular, courts could attach powers of arrest to matrimonial interdicts.^{xxxix} However, these protections did not extend to individuals in other intimate relationships.

For other intimate relationships, the 2001 Act closed this gap by enabling powers of arrest to be attached to any interdict granted for protection against abuse, marking a significant expansion of legal protection beyond marriage.

The current scheme in the 2001 Act

The 2001 Act, as amended by **Family Law (Scotland) Act 2006**,^{xl} now consolidates the law

xxxvii **Matrimonial Homes (Family Protection) (Scotland) Act 1981**, sections 14 (2)(a) & (b) and 18A(2)(a) & (b); **Civil Partnership Act 2004**, section 113(2)(a) & (b).

xxxviii **Matrimonial Homes (Family Protection) (Scotland) Act 1981**, sections 4(3)(4)(b) & (c) and (5); **Civil Partnership Act 2004**, section 104 (4)(b) & (c) and (5).

xxxix **Matrimonial Homes (Family Protection) (Scotland) Act 1981**, sections 15-17 (now repealed and re-enacted in section 1 of the **Protection from Abuse (Scotland) Act 2001**).

xl **Family Law (Scotland) Act 2006**, sections 32 and 33.

by bringing all powers of arrest into a single statutory scheme governing breaches of **any** interdict granted to protect from abuse (including, for example, matrimonial interdicts).

Police and criminal court powers

As noted earlier, under the 2001 Act, a breach of an interdict with a power of arrest allows the police to arrest the perpetrator on reasonable suspicion of a breach and detain them until they are brought before the court. The court may then order that the person be detained for a further period of up to two days.^{xli}

Mandatory powers of arrest

For certain interdicts, the 2001 Act says that the court **must** attach the power of arrest to an interdict, on application to the court for this purpose.

These are interdicts classified as interim or final **matrimonial interdicts** (for spouses) or interim or final **relevant interdicts** (for civil partners). However, in both instances, the mandatory power of arrest only applies where such orders are also **ancillary interdicts** - that is, interdicts granted along with **exclusion orders** relating to the couple's home.^{xlii}

It is probably helpful to note at this stage that the number of exclusion orders applied for annually is thought to be very low.^{29 36} As a result, the number of interdict applications in which the court must attach a power of arrest - without any discretion in its decision - is also likely to be very low.

The classifications of **matrimonial**, **relevant**, and **ancillary interdicts** are explained earlier in this briefing and **ancillary interdicts**, along with **exclusion orders**, are also discussed later.

Discretionary powers of arrest

In the case of **any other interdict**, including a domestic interdict in relation to cohabitants, the court has some discretion as to whether to attach the power of arrest (on application to it).

The court must grant it **if considered necessary** to protect the applicant from a risk of abuse in breach of the interdict.

The court must also give the person who would be subject to the power of arrest the opportunity to make representations to the court.^{xliii}

xli [Protection from Abuse \(Scotland\) Act 2001](#), sections 4 and 5.

xlii [Protection from Abuse \(Scotland\) Act 2001](#), section 1(1A).

xliii [Protection from Abuse \(Scotland\) Act 2001](#), section 1(2).

Domestic abuse interdicts

The [Domestic Abuse \(Scotland\) Act 2011](#) ('the 2011 Act') marked a further significant statutory development, again aimed at strengthening the enforcement of interdicts following breach.

A person applying for, or already having, an interdict in their favour may apply to the court for a determination that it is a **domestic abuse interdict**.^{xliv}

The court can make this determination that an interdict (whether statutory or common law) is a domestic abuse interdict if the interdict protects the applicant from someone who is or was:

- their spouse
- their civil partner
- cohabiting with them as if married or in a civil partnership
- in an intimate personal relationship with them.^{xliv}

Before deciding, the court must give the other party an opportunity to make representations.^{xlvi}

The 2011 Act says that breaching an interdict earlier determined to be a domestic abuse interdict is a **criminal offence**, where certain conditions are satisfied. A key requirement is that [the interdict also has a power of arrest attached to it](#) under the [Protection from Abuse \(Scotland\) Act 2001](#).^{xlvi}

The penalties for the relevant offence (where a domestic abuse interdict is breached) are:

- **on summary conviction:** up to twelve months' imprisonment, a fine up to the statutory maximum (currently £10,000), or both
- **on indictment:** up to five years' imprisonment, a fine, or both.^{xlvi}

The couple's home

The [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#) ('the 1981 Act') for married and cohabiting couples, and the [Civil Partnership Act 2004](#) ('the 2004 Act') for those couples in a civil partnership, sets out the main rules relating to the couple's home. This includes important protections for individuals at risk.

xliv [Domestic Abuse \(Scotland\) Act 2011](#), section 3.

xlvi [Domestic Abuse \(Scotland\) Act 2011](#), section 3(2).

xlvi [Domestic Abuse \(Scotland\) Act 2011](#), section 3(3).

xlvi [Domestic Abuse \(Scotland\) Act 2011](#), section 2.

xlvi [Domestic Abuse \(Scotland\) Act 2011](#), section 2(3); [Criminal Procedure \(Scotland\) Act 1995](#), section 225(8); [Interpretation Act 1978](#), schedule 1.

The couple's home

That home is described as the **matrimonial home** for spouses, the **family home** for civil partners and simply **the house** for cohabitants.^{xlix} However, the underlying legal concept is consistent across all three forms of relationship.

Again, the legal regime is very complex. When considering a couple's situation, there are two main aspects:

- **occupancy rights:** it is first necessary to think who has legally recognised occupancy rights in respect of the property. Different scenarios are possible.
- **protective orders:** once occupancy rights have been established, a person at risk can then consider applying for an **exclusion order**, or other property-related orders, to protect that person if their spouse or partner still lives in the home or might return to it.

A key policy challenge for legislation in this area is responding to the needs of two groups that may overlap: individuals facing homelessness after relationship breakdown, and those experiencing domestic abuse. For the latter group, crucially, vulnerability may stem both from remaining in an abusive home **and** from the risk of homelessness if they leave.

This briefing now considers [occupancy rights](#) and then the range of [protective orders](#).

Occupancy rights

On **occupancy rights**, the briefing looks at the following topics:

- [the role of property law](#) - applying unless displaced by statute
- [an introduction to statutory occupancy rights](#) - before looking at how they apply to different types of legally recognised relationship
- [statutory occupancy rights for those married or in a civil partnership](#)
- [statutory occupancy rights for cohabitants](#).

The role of property law

Property law plays an important role and, [as noted earlier](#), applies unless overridden by statute.

Regardless of relationship status, a person has automatic occupancy rights where they own the property or are named on the tenancy.

While it is increasingly common for these rights to be shared by both partners as **co-owners** or **joint tenants**, situations still arise where only one partner holds the legal right to occupy the home, as **sole owner** or **sole tenant**.

^{xlix} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#) ('the 1981 Act'), sections 18(3) & (6) and 22(1); [Civil Partnership Act 2004](#), section 135.

Statutory occupancy rights: an overview

Sole ownership or tenancy was once much more common. This was a key driver behind the creation of **statutory occupancy rights** to protect individuals without property law rights because they do not own the property or are not named on the tenancy agreement.

For married couples, these protections were introduced by the 1981 Act,ⁱ and were later mirrored for civil partners in the 2004 Act.ⁱⁱ More limited statutory protections for cohabitants are also set out in the 1981 Act.ⁱⁱⁱ

The policy goal here was to give the person who was not an owner or a tenant the security of knowing that they have a right to live in the home regardless of the ownership of, or tenancy of, the home.³⁷ As Professor Sutherland comments:

“ It would be all too easy, some four decades after the 1981 Act was passed, not to grasp the magnitude of what it achieved. By creating these occupancy rights, it placed the very basic human need to have somewhere to live above property rights.”

Sutherland, 2023³⁸ Scottish Law Commission, 2024³⁹

Different scenarios covered by the legislation are now discussed in more detail.

Married or in a civil partnership

The position for spouses and civil partners is explained in this section. There are three scenarios considered in turn:

- [one spouse or civil partner is the sole owner, or tenant](#)
- [the couple co-own the property](#)
- [the couple are joint tenants.](#)

Protections for joint tenants are also considered later in the briefing in more detail under [transfer of tenancy](#).

Sole owner or tenant

With **sole ownership or tenancy by one spouse or civil partner**, there are two statutory concepts under the 1981 and 2004 Acts which are key:

- the '**entitled**' **spouse or civil partner**, who has a legal right to occupy the property as the owner or the tenant
- the '**non-entitled**' **spouse or civil partner**, who has no such legal right to occupy the

ⁱ [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 1-12.

ⁱⁱ [Civil Partnership Act 2004](#), sections 101-111A.

ⁱⁱⁱ [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 18.

property.

Some people find the terminology here confusing as the 'entitled' person is not the person being given rights by the relevant legislation.

Occupancy rights

The legislation achieves security for the non-entitled spouse or civil partner by stating that:

- **the non-entitled spouse or civil partner in occupation** of the home has a right to continue to occupy it^{liii}
- **the non-entitled spouse or civil partner not in occupation** has a right to enter and occupy the home.^{liv}

Protection from sale or lease to a third party

Significantly, the non-entitled spouse or civil partner is also protected against any loss - or, in the statutory language, **prejudice** - arising from what the legislation terms **dealings**, such as the sale or leasing of the property to a third party.

Occupancy rights survive any such third party transaction, accordingly making the property, or any tenancy in it, unmarketable in practice.^{lv}

How occupancy rights end

As a result of changes made via the [Family Law \(Scotland\) Act 2006](#), occupancy rights under the 1981 and 2004 Acts end after:

- there has been no cohabitation between the entitled and non-entitled spouse or civil partner for **two years**
- the non-entitled spouse or civil partner has not occupied the property during that time.^{lvi}

Separately, a spouse or civil partner can **renounce** (give up) their occupancy rights, which enables, for example, the sale of the property on the open market, where both parties agree that this is a good course of action.^{lvii}

liii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 1(1)(a); [Civil Partnership Act 2004](#), section 101(1)(a).

liv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 1(1)(b); [Civil Partnership Act 2004](#), section 101(1)(b).

lv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 6; [Civil Partnership Act 2004](#), section 106.

lvi [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 1(7) & (8), added by the [Family Law \(Scotland\) Act 2006](#), section 5; [Civil Partnership Act 2004](#), section 101(6A) & (6B), added by the [Family Law \(Scotland\) Act 2006](#), schedule 1, para 3(a).

lvii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 1(5) & (6); [Civil Partnership Act 2004](#), section 101(5) & (6).

Occupancy rights also end on **divorce or dissolution of the civil partnership**, but court orders relating to the couple's home are separately available on divorce or dissolution.⁴⁰

Transfer of tenancy

Finally, where a spouse or civil partner is a sole tenant, the court (on application to it) may [order the transfer of the tenancy from that tenant to the other spouse or civil partner](#).^{lviii}

Co-owners

This briefing next considers the position of spouses and civil partners who are co-owners.

Sale of a share

The starting point in property law is that if a property is co-owned, the relationship between the co-owners is governed by **the law of common property**. Under associated rules, each of them is generally entitled to sell, gift, or mortgage their own share of the property.

For spouses and civil partners, however, statutory protections introduced by the 1981 and 2004 Acts modify these common property rules. Crucially, if one co-owner sells their share to a third party, the purchaser of that share cannot occupy the home and the other person's occupancy rights remain intact.^{lix}

'Division and sale': proceeds of sale of the whole property

Under property law, a co-owner can also apply to the court for the legal remedy of **'division and sale'**.

In practice, despite the name of the remedy, this usually allows the whole property to be sold and the proceeds divided, rather than a physical subdivision of the property. Significantly, the court generally has no discretion to refuse an order for division and sale.⁴¹

However, the 1981 and the 2004 Acts have changed the position for spouses and civil partners. It gives the court a **discretion to refuse**.

The court must take account of a range of factors here in reaching its decision. This includes:

- **conduct of the parties:** the conduct of the parties in relation to each other and otherwise
- **needs and financial resources:** the respective needs and financial resources of the

lviii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 13(1); [Civil Partnership Act 2004](#), section 112(1).

lix [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 9(1); [Civil Partnership Act 2004](#), section 109(1).

parties

- **needs of any child:** the needs of any child of the family
- **business premises:** the extent (if any) to which the home is used in connection with a trade, business or profession of either person
- **alternative accommodation:** whether the applicant is offering, or has offered, to make available to the other person any suitable alternative accommodation.^{lx 41}

A recent example of a case where the relevant law was applied is set out in the box below.

F v T (2026) ⁴²

The parties were divorcing and agreed most issues, with the only dispute being the jointly owned matrimonial home. The husband sought its sale with equal division of proceeds, while the wife wished to remain for the child's stability.

The court found no strong evidence that a sale would harm the child or justify delay, and noted the wife had no viable alternative, such as funds to buy out the husband.

The court therefore ordered that the home be sold, with proceeds divided equally (50/50) between the parties.

Joint tenants

As mentioned earlier in the briefing, where both spouses or civil partners are joint tenants each has a legal right to occupy the home under the terms of their tenancy agreement.

However, the court (on application to it) [may order the transfer of the tenancy into the name of one tenant alone](#).^{lxi}

Cohabiting couples

Cohabiting couples have some statutory protections, but weaker than those afforded to spouses and civil partners.

Again, there are three scenarios considered in turn:

- [one cohabitant is the sole owner, or tenant](#)
- [the couple co-own the property](#)
- [the couple are joint tenants](#).

lx [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 19, with reference to section 3(3); [Civil Partnership Act 2004](#), section 112, with reference to section 103(3).

lxi [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 13(9); [Civil Partnership Act 2004](#), section 112(10).

Protections for joint tenants are also considered later in the briefing under [transfer of tenancy](#).

Sole owner or tenant

This briefing first considers the position of cohabitants where there is a sole owner or tenant.

Here the relevant statutory terms are **entitled partner** and **non-entitled partner**.^{lxii}

Occupancy rights

A non-entitled partner has the possibility of **occupancy rights** under the 1981 Act but with certain important differences, including:

- **occupancy rights are not automatic** - the couple must qualify as a 'cohabiting couple' (something which the court must decide according to certain factors set out in the legislation) and, significantly, the non-entitled partner must make an application to the court for occupancy rights
- **occupancy rights can only be awarded for a period of up to six months initially**, although they can be extended by the court for further periods of up to six months at a time^{lxiii}
- **an order relating to interim occupancy rights is not possible** - unlike the position for spouses and civil partners, where - if one party challenges the other's automatic occupancy rights - the court can make interim orders to recognise or enforce those rights.^{lxiv 43}

On whether a couple qualify as a **cohabiting couple**, the court is directed under the 1981 Act to consider factors including the length of time the couple have been living together, and whether they are parents of a child together, or of a child treated as a child of the family.^{lxv}

lxii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 18.

lxiii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 18(1) & (2).

lxiv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 3(4); [Civil Protection Act 2004](#), section 103(4).

lxv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 18(2).

McBride v McInnes (2024) ⁴³

This recent case was significant for establishing the following in relation to occupancy rights for cohabitants:

- **no interim orders:** as alluded to above, orders for interim occupancy rights are not competent, however, the court can expedite the timetable for the hearing relating to full occupancy rights
- **cohabitation at the time of application:** [where no protective orders are sought](#), and there are no allegations of domestic abuse, the couple must be cohabiting at the time of the court application for occupancy rights for the application to be competent
- **cohabitation at the time of conduct:** on the other hand, [where protective orders are sought](#), and there are allegations of domestic abuse, the couple are only required to be cohabiting at the time of the conduct giving rise to the court application for occupancy rights.

No protection from sale or lease to a third party

Another key distinction between the rights of spouses and civil partners, on the one hand, and cohabitants, on the other, is that a non-entitled partner with occupancy rights is **not** protected against **dealings**. For example, they are not protected from the other cohabitant selling or leasing the property.^{lxvi}

Transfer of tenancy

Finally, where one partner is sole tenant, it is possible in some circumstances to apply to the court for [the transfer of the tenancy from that tenant to the other partner](#).

However, significantly, to make an application for transfer of the tenancy, the applicant partner must have [statutory occupancy rights granted by the court](#).^{lxvii}

Co-owners

This briefing now looks at the position of cohabitants where they are co-owners.

Their legal position depends far more heavily on the general law of **common property** than is the case for spouses or civil partners.

Each co-owner may sell, gift, or mortgage their individual share. However, in practice, an individual share would be difficult to sell and very unlikely to be accepted as security for a

lxvi [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 18(5).

lxvii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 13(1) and section 18(3).

mortgage.⁴⁴

More significantly, a co-owner can apply to the court for **division and sale** - with the relevant order usually allowing the whole property to be sold and the proceeds divided.

The court has no discretion in relation to cohabitants to refuse an order for division and sale.

Joint tenants

[As mentioned earlier](#), where both partners are joint tenants each has a legal right to occupy the home under the terms of their tenancy agreement.

However, [as explored again later](#), the court may order the transfer of the tenancy into the name of one tenant alone.^{lxviii}

Protective orders relating to the home

This section of the briefing considers the possible court orders relating to a couple's home.

Exclusion orders

The 1981 Act, for spouses and cohabitants, and the 2004 Act, for civil partners, makes provision for an **exclusion order**, a type of civil protection order relating to the couple's home.^{lxix}

The number of exclusion orders applied for in family cases in the civil courts is thought to be **very low** compared to the overall number of civil protection orders applied for in family cases. In **2022–23**, only **34 NHOs** were applied for, representing **around 3%** of total applications.²⁹

lxviii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 13(9) and section 18(3).

lxix [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 3(3), 4, 5 and 18(3); [Civil Partnership Act 2004](#), sections 103(3), 104 and 105.

Proposals for reform in 2018 and 2024

Note that, following a series of related research projects,^{45 46 47} the Scottish Government [consulted on reform of the law on exclusion orders in 2018](#).³⁶

Areas explored on consultation included [the test the court must apply in relation to making an exclusion order](#) and whether [exclusion orders for cohabitants](#) should be available in the same circumstances as for spouses and civil partners.

[While the Scottish Government did subsequently publish online material to raise awareness of exclusion orders](#), ultimately, **no legislative proposals were taken forwards following the consultation.**

In addition, **in 2024**, the [Scottish Law Commission](#) also put forward some reforms to exclusion orders as part of its wider domestic abuse project.

The Commission consulted on [exclusion orders as they applied to cohabitants](#) and potential changes to [the test for making an exclusion order](#). It also considered [the duration of exclusion orders](#) and [their possible imposition following a domestic abuse offence](#), both touched on again later.²³

The purpose of an exclusion order

An exclusion order temporarily suspends the occupancy rights - whether arising under property law or statute - of the person at risk's spouse, civil partner or cohabitant.

For as long as the order is in force, this takes away the person's right to live in the family home, if they are still there, or the right to return to live in it if they have already left. An exclusion order does not otherwise affect the person's ownership or tenancy rights.

To maximise the effectiveness of an exclusion order, the court must grant an exclusion order with additional **ancillary orders**, [a topic returned to in more detail later](#).

Who can apply for an exclusion order

The following individuals can apply for an exclusion order:

- a spouse^{lxx}
- a civil partner^{lxxi}
- where [court-ordered occupancy rights are in force](#), or the cohabitants are co-owners or joint tenants, a cohabitant who continues to live with their partner^{lxxii}
- where [court-ordered occupancy rights are in force](#), or the cohabitants are co-owners

lxx [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 4(1).

lxxi [Civil Partnership Act 2004](#), section 104(1).

lxxii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 4 and 18(3).

or joint tenants, a person who has stopped cohabiting but was cohabiting at the time of the conduct giving rise to the application.^{lxxiii 43 48 49}

The test which the court must apply in reaching its decision

An exclusion order may be granted by the court where it decides this is **necessary to protect the applicant or any child of the family**.

The protection must be from actual conduct, threatened conduct, or conduct that could reasonably be feared. The conduct must be likely to harm the physical or mental health of the applicant or a child.^{lxxiv}

The court shall **not** make an exclusion order if it appears to the court that the making of the order would be **unjustified or unreasonable in all the circumstances of the case**. This includes:

- **conduct of the parties:** the conduct of the parties in relation to each other and otherwise
- **needs and financial resources:** the respective needs and financial resources of the parties
- **needs of any child:** the needs of any child of the family
- **business premises:** the extent (if any) to which the home is used in connection with a trade, business or profession of either person
- **alternative accommodation:** whether the applicant is offering, or has offered, to make available to the other person any suitable alternative accommodation.^{lxxv}

Duration of exclusion orders

Under the 1981 and 2004 Acts, an exclusion order (and associated [ancillary orders](#)) can last until:

- the end of a marriage or civil partnership - where there are spouses or civil partners
- the tenancy ends
- the home is sold - although, as discussed earlier, [statutory occupancy rights can affect saleability for spouses and civil partners \(but not for cohabitants\)](#)
- one or both people apply for the order to be ended.^{lxxvi}

lxxiii [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 4 and 18(3).

lxxiv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 4(2) and 18(3); [Civil Partnership Act 2004](#), section 104(2).

lxxv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), sections 4(3) and 3(3); [Civil Partnership Act 2004](#), sections 103(3) and 104(3).

lxxvi [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 5 and 18(3); [Civil Partnership Act 2004](#), section 105.

Termination on divorce or dissolution

The [Scottish Law Commission](#) has suggested that the automatic termination of an exclusion order ([and associated ancillary orders](#)) on divorce or dissolution of a civil partnership risks leaving a victim/survivor unprotected at this point, and sought views on consultation.⁵⁰

The argument is that it can be one of the most dangerous points for the victim/survivor, and there is evidence that the nature and intensity of the abuse tends to increase at this point.⁵¹

Ancillary orders

The 1981 Act, for spouses and cohabitants, and the 2004 Act, for civil partners, require - or, in some cases, empower - the court to grant various **ancillary orders**, [along with an exclusion order](#). These are additional orders that aim to support the effectiveness of an exclusion order.^{lxxvii}

For example, one mandatory order is a **warrant for ejection**, which authorises the person's removal from the home.^{lxxviii}

If the person is still living there and does not then leave voluntarily, a solicitor can advise on the use of **sheriff officers** to physically remove the person. Sheriff officers are court-appointed officials used to enforce court orders in Scotland.

Ancillary interdicts have already been [touched on earlier in this briefing](#). In more detail, the court must also, along with an exclusion order, grant the following when an application is made:

- **prevention of entry:** an interdict prohibiting the perpetrator from entering the home without the express permission of the applicant
- **removal of contents:** an interdict prohibiting the removal by the perpetrator, except with the written consent of the applicant or by a further order of the court, of any of the contents of the home.^{lxxix}

As an example of an optional ancillary order, the court can grant an interdict prohibiting the non-applicant spouse from entering or remaining in a specified area in the **vicinity of the home**.^{lxxx}

^{lxxvii} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 4(4) and 18(3); [Civil Partnership Act 2004](#), section 104(4).

^{lxxviii} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 4(4)(a) and 18(3); [Civil Partnership Act 2004](#), section 104(4)(a).

^{lxxix} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 4(4) and 18(3); [Civil Partnership Act 2004](#), section 104(4).

^{lxxx} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 4(5) and 18(3); [Civil Partnership Act 2004](#), section

As already mentioned, ancillary orders last for as long as the associated exclusion order lasts.^{lxxx}

Transfer of a tenancy

Where the property is rented, other possible orders are available under the 1981 and 2004 Acts for spouses, civil partners, and - where they hold occupancy rights - cohabitants.

These relate to the possible transfer of a tenancy:

- **sole tenancies:** where one person is the sole tenant, the court may order a transfer of the tenancy to the non-entitled spouse, civil partner, or partner
- **joint tenancies:** where the tenancy is held jointly, the court may order its transfer into the name of one tenant alone.^{lxxxii}

The court must, in deciding whether to grant a transfer order, have regard to a range of factors:

- **applicant's suitability:** the suitability of the applicant to become the tenant
- **lease obligations:** the applicant's capacity to perform the obligations under the lease of the matrimonial home
- **conduct of the parties:** the conduct of the individuals in relation to each other and otherwise
- **needs and financial resources:** the respective needs and financial resources of the individuals
- **needs of any child:** the needs of any child of the family
- **business premises:** the extent (if any) to which the home is used in connection with a trade, business or profession of either person
- **alternative accommodation:** whether the applicant has received, or has previously received, an offer of any suitable alternative accommodation from the other person.^{lxxxiii} 52

Significantly, the court may order payment by the person acquiring the tenancy to the person being deprived of the tenancy such **compensation** as is just and reasonable in the circumstances.^{lxxxiv}

104(5).

^{lxxxi} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 5 and 18(3); [Civil Partnership Act 2004](#), section 105.

^{lxxxii} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 13(1) and (9), and section 18(3); [Civil Partnership Act 2004](#), section 112(1) and (10).

^{lxxxiii} [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 13, with reference to section 3(3), and section 18(3); [Civil Partnership Act 2004](#), section 112, with reference to section 103(3).

Domestic Abuse (Protection) (Scotland) Act 2021

There is also a separate transfer of tenancy regime, introduced by Part 2 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#). Part 2 amended the [Housing \(Scotland\) Act 2001](#), to enable a **registered social landlord** (rather than a tenant) to apply to court to terminate a Scottish secure tenancy where the tenant has been abusive. [It is discussed in more detail later.](#)

Warrants for ejection

Earlier in the briefing, **warrants for ejection** - authorising a person's removal from the home - were described as [ancillary orders](#) linked to [an exclusion order](#). However, an exclusion order is only required where the person concerned has occupancy rights, whether under property law or statute.

A warrant for ejection may instead be granted (without an exclusion order) [to remove a perpetrator who has no occupancy rights](#) and, if required, may be accompanied by [interdicts necessary to fully protect the person at risk](#).

Disputes between parents about the care of their children, where domestic abuse is alleged

This section of the briefing looks in more detail at disputes over the future care of children where there are allegations of domestic abuse by one parent against the other.

The key legislation is the [Children \(Scotland\) Act 1995](#) ('the 1995 Act'), as amended, most recently by the [Children \(Scotland\) Act 2020](#). The 1995 Act sets out a range of parental responsibilities and rights (PRRs) in respect of children living in Scotland (under 16s in this context).

Under Part 1 of the 1995 Act, and in particular section 11, a parent may apply to the civil court for an order resolving a dispute concerning PRRs, including disputes about contact between a parent and their child.

This important area of law is covered in detail in the 2024 SPICe briefing, [Parental responsibilities and rights, including in the section on the factors the courts currently take into account in reaching their decisions](#).¹² The welfare of the child is the paramount consideration, that is, the most important and overriding one.^{lxxxv}

Of particular relevance in the context of this briefing, the [Family Law \(Scotland\) Act 2006](#) amended section 11 of the 1995 Act to require the courts to have regard in particular to:

lxxxiv [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), section 13(1) and (9), and section 18(3); [Civil Partnership Act 2004](#), section 112(1) and (10).

lxxxv [Children \(Scotland\) Act 1995](#), section 11(7).

- the need to protect the child from actual or possible abuse
- the effects of such abuse on children
- the ability of the abuser to care for the child
- the effects of abuse on a person's capacity to fulfil PRRs.^{lxxxvi}

Abuse is defined as including abuse of a person other than the child.^{lxxxvii} Accordingly, the situation where one parent is abusing (or has abused) the other, that is, domestic abuse, is included.

In practice, policy concerns remain about section 11 cases where there are allegations of domestic abuse by one parent in relation to the other, especially in relation to child contact.⁵³

In **2022**, the report of a research study funded by the Scottish Government, [Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings](#), was published.⁵⁴ Drawing on evidence from legal practitioners' experience of child contact proceedings, the report made a series of recommendations intended to improve outcomes for children and their experience of the process.

Since the 2022 research report was published, [the Scottish Law Commission](#) and [the Scottish Government](#) have both carried out relevant policy work in this area, [as described later in the briefing](#).^{55 56 57}

A [recent Scottish Parliament petition](#) (lodged 29 July 2026) also calls for the automatic removal of the parental rights of individuals that are convicted of child sexual or domestic abuse offences.

^{lxxxvi} [Children \(Scotland\) Act 1995](#), section 11(7A)-(7E), inserted by the [Family Law \(Scotland\) Act 2006](#), section 24.

^{lxxxvii} [Children \(Scotland\) Act 1995](#), section 11(7C)(c).

The role of legal aid

This section of the briefing considers the **role of legal aid** in relation to civil cases. It looks first at [how the system works](#) and then [some key challenges with the current system](#).

Separately, note that, as part of [its academic fellowship scheme](#), SPICe has recently published a briefing, [Access to legal aid and advice services in Scotland](#).⁵⁸

How the system works

A person at risk may qualify for legal aid covering all or part of their legal costs for taking legal advice, and applying for a civil protection order.

Legal aid in civil cases (also known as 'civil legal assistance'), is funded by the Scottish Government and administered by the [Scottish Legal Aid Board](#) (SLAB), and aims to enable people on low and moderate incomes to access legal services.

It includes [Advice and Assistance](#) for initial legal advice and [Civil Legal Aid](#) for representation in court.

However, eligibility and the level of support available are subject to [financial assessment](#). This contrasts with certain criminal cases where, in some circumstances, [legal aid may be granted automatically to an accused person without means testing](#).

Challenges with the current system

The current system applied in civil cases is thought to give rise to a number of challenges.

For example, in 2024 the [Scottish Law Commission](#), in the context of [its domestic abuse project](#), reported that stakeholders had said:

“ There is a lack of availability of legal aid. That and the cost of contributions the victim/survivor has to make, and the small number of solicitors offering legal aid services in civil cases, are very practical obstacles to victim/survivors seeking civil protection orders.”

Scottish Law Commission, 2024⁵⁹

These issues are explored in this section.

The policy arguments around automatic legal aid

The question of whether legal aid should be made automatically available, without means testing, for applications for civil protection orders has been debated over the years.^{10 6 60 61}

Proponents argue that means-tested legal aid leaves many people unable to afford representation. It might force them either to incur unmanageable debt or to self-represent

in court, which can be legally complex and potentially re-traumatising for victims/survivors of domestic abuse.¹⁰

Critics of automatic legal aid highlight the potential strain on the legal aid budget. Because civil protection orders may be linked to wider family cases (such as an action for divorce), funding could have to extend to them too, increasing overall costs, while fairness would likely also require legal aid for those opposing such orders, again adding expenditure.⁶¹

Accessing a legal aid solicitor

A further policy issue is growing evidence that people at risk are struggling to access a solicitor willing to undertake legal aid work, even where they are financially eligible.

This issue has been highlighted both in relation to applications for civil protection orders - most recently in [a 2024 report for the Scottish Women's Rights Centre](#) - and more widely in civil cases.^{10 62} Illustrative examples include [a BBC News report](#) (5 February 2025) about a victim/survivor in the Highlands who contacted over 116 law firms without success.

In 2025, the Scottish Parliament's [Equalities, Human Rights and Civil Justice Committee](#) examined access to legal aid solicitors as part of its [civil legal aid inquiry](#). It concluded that "advice deserts" exist in certain geographical areas, and in certain areas of law, notably family law and cases involving domestic abuse.⁶³ Similar concerns were raised by the Scottish Parliament's [Social Justice and Social Security Committee](#) in its [2025 inquiry into the financial considerations when leaving an abusive relationship](#).¹

A key factor put forward by legal practitioners is the low rate of legal aid remuneration, which is seen as making civil legal aid work - particularly complex cases - financially unviable. Against this backdrop, the Scottish Government published [a legal aid reform discussion paper in 2025](#),⁶⁴ although the [Law Society of Scotland](#) has [criticised the proposals as failing to reflect the urgency and scale of the access to justice crisis](#).

See also later in the briefing on one aspect of the [Regulation of Legal Services \(Scotland\) Act 2025](#) which is relevant to the debate around the availability of legal aid solicitors.

Domestic Abuse (Protection) (Scotland) Act 2021

The [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) ('the 2021 Act') aimed to add to the legal remedies available to help protect people at risk of domestic abuse.

This part of the briefing describes:

- [Part 1 of the 2021 Act \(not yet in force\)](#) both what it covers, and [the implementation challenges which have arisen with it](#)
- [Part 2 of the 2021 Act](#) (in force **from 1 August 2026**) which relates to the landlord's powers to evict from social housing.^{lxxxviii}

What Part 1 does: domestic abuse protection notices and domestic abuse protect orders

Part 1, the main part of the Act, introduces two new powers. They do not require the consent of, or application by, a person at risk in order to be exercised.

These powers are:

- the power available to a senior police officer to impose a **domestic abuse protection notice** (DAPN) on a suspected perpetrator of abuse
- the power available to the civil court, on application by the police, to grant a **domestic abuse protection order** (DAPO) in relation to a perpetrator of abuse.^{lxxxix}

The Scottish Ministers can also, by future regulations, widen eligibility to apply for DAPOs to **additional bodies**, including local authorities, registered social landlords, and others they consider appropriate.^{xc}

Although the police have a key role under Part 1, DAPNs and DAPOs may be imposed without the individual having been charged with or convicted of a criminal offence.

The measures in Part 1 aim to provide immediate protection, allow time for further legal action to secure longer-term safety, and give the person at risk space to consider their housing options.

Different aspects of Part 1 are now explored in more detail.

lxxxviii The Domestic Abuse (Protection) (Scotland) Act 2021 (Commencement No. 1) Regulations 2025 SSI 2025/400.

lxxxix [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), sections 4-5 and 8-9.

xc [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 18.

Definition of abusive behaviour

Part 1 of the 2021 Act relates to **abusive behaviour**.^{xc}

Abusive behaviour: in more detail

The key points relating to abusive behaviour are as follows:

- **Likely to cause harm:** It is behaviour a reasonable person would consider is likely to cause physical or psychological harm, including fear, alarm or distress.^{xcii}
- **Single incident or course of conduct:** It may consist of a single incident or course of conduct.^{xciii}
- **Coercive and controlling behaviour:** It includes coercive and controlling behaviour.^{xciv}
- **Behaviour directed at third parties:** It includes behaviour directed at a third party, such as a child, intended to cause physical or psychological harm to the person at risk.^{xcv}
- **Behaviour directed at property:** The behaviour may be directed at property, including pets or other animals, and may involve property owned by a third party (such as the parents of the person at risk).^{xcvi} ⁶⁵
- **Acts and omissions:** The behaviour may consist of deliberately failing to act or communicate, as well as positive acts or statements.^{xcvii}
- **Involvement of third parties:** The behaviour may be carried out by, or with the help of a third party, even where that third party acts unwittingly or unwillingly.^{xcviii}

Against whom can a DAPN/DAPO be imposed

DAPNs and DAPOs can be made against **someone 18 or over** to protect their partner or ex-partner **aged 16 or over**. The people must live together in one or other of their homes, at least some of the time.

^{xc} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), sections 2-3.

^{xcii} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 2(2) and (5).

^{xciii} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 2(6).

^{xciv} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 3(3).

^{xcv} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 3(2)(b).

^{xcvi} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 2(4).

^{xcvii} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 2(3).

^{xcviii} [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 2(4).

Partner includes spouses, civil partners, and other intimate relationships, but **not** family, friends, or colleagues.^{xcix}

Duration of a DAPN/DAPO

The DAPN is intended to be **very short-term in its effect**, lasting until the court reaches a decision about whether to impose a DAPO (or an interim DAPO).

The 2021 Act says that a DAPO can last **up to three months** in total.^c

Content of a DAPN/DAPO

DAPNs and DAPOs may prohibit a suspected perpetrator from contacting or approaching the person at risk or any child living with them, including the perpetrator's own child.

DAPNs and DAPOs may also require the individual to leave and stay away from the home, even where they are the owner or tenant.^{ci}

Breach of a DAPN/DAPO

Breach of a DAPN or a DAPO without reasonable excuse would, of itself, be a criminal offence, and could be investigated as such by the police.^{cii}

Penalties on breach of a DAPN are on summary conviction, and up to twelve months in prison, a level 3 fine (currently £1,000), or both.^{ciii}

Penalties on breach of a DAPO are the same as those applying to breach of a domestic abuse interdict.^{civ}

Non-implementation of Part 1: the work of the Equalities, Human Rights and Civil Justice Committee

[As noted earlier](#), Part 1 of the 2021 Act has not yet been commenced, following apparent practical implementation difficulties. **The timing of commencement remains unknown.**

xcix [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 1.

c [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 5 and 11(9).

ci [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), sections 5 and 9.

cii [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), sections 7 and 17.

ciii [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 7; [Criminal Procedure \(Scotland\) Act 1995](#), section 225(2); [Interpretation Act 1978](#), schedule 1.

civ [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 17.

During Session 6, the [Equalities, Human Rights and Civil Justice Committee](#) of the Scottish Parliament ('the Committee') monitored this issue.

The case for implementation of Part 1

The Committee held [its first evidence session on 10 December 2024](#), having received [written submissions in advance from key stakeholders](#), including [Scottish Women's Aid](#) and [the Scottish Women's Rights Centre](#) (SWRC). These submissions stressed the importance of implementing Part 1.^{66 67}

SWRC highlighted that users are routinely advised by [Police Scotland](#) to seek civil protection orders through the courts. This, it argued, exposes a gap in existing legal protections - particularly given reliance on legal aid.⁶⁶ In this context, SWRC stated:

“ We submit that there is currently a legal aid crisis and that this signifies a change in the legal landscape since the 2021 Act was introduced.”

Scottish Women's Rights Centre, 2024⁶⁶

SWRC also noted that delays between a crime being committed and a civil protection order being granted significantly undermine the effectiveness of such orders.⁶⁶

Operational challenges with the implementation of Part 1

The written submissions - and [the Committee's December 2024 evidence session](#) - shed light on the implementation difficulties faced by the Scottish Government, [with Police Scotland highlighting significant operational challenges](#).⁶⁸

Police Scotland argued that [the broad definition of 'abusive behaviour' in Part 1](#) makes demand difficult to predict. However, it estimated around **4,226 cases per year** in which a DAPN may be issued, creating major resourcing pressures.⁶⁸

Police Scotland also raised concerns about the “extremely tight timescales” required once a DAPN is issued, given that a DAPO must be applied for and determined by a court swiftly. It warned that the combination of tight deadlines and high anticipated volumes would place significant strain on staff and legal services. It noted that its current in-house legal capacity is insufficient and that external solicitors would be required.⁶⁸

Further concerns arose in relation to the requirement for courts to consider the views of any relevant child in DAPO proceedings.^{cv} Police Scotland stated that it is unclear who is responsible for arranging, facilitating, or funding the process of obtaining those views.⁶⁸

While not detailing ongoing work, the Scottish Government acknowledged some of these challenges for Police Scotland [during the December 2024 committee session](#).

The Scottish Government's subsequent work in 2025 and 2026

In [a letter dated 11 March 2025](#), the Scottish Government told the Committee that it was

cv [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), section 8(9)-(11).

planning a late-March workshop of the 'Implementation Advisory Board', bringing together key stakeholders. The workshop was to agree a practical route to commencement without amendment, **or** to conclude that the Act required legislative change and advise on next steps.⁶⁹

In [a subsequent letter dated 18 June 2025](#), the Scottish Government confirmed that stakeholders had unanimously supported the second option, with stakeholders raising "serious concerns" about implementation of Part 1 without changes. The Government had accepted this advice.⁷⁰

The Government also confirmed it would establish a short-life working group to develop recommendations for possible legislative change, **with wider consultation planned in 2026**.⁷⁰

In **March 2026**, the Government reported that the working group was established in **September 2026** and was meeting regularly.⁷¹

No relevant consultation was issued before the end of Session 6 on 26 March 2026. Progressing this work will now be a matter for the Scottish Government formed in Session 7, after the May 2026 election.

What Part 2 does: social housing tenancies

Alongside the existing rules on [transferring tenancies under 1981 Act and 2004 Act](#), a new and separate regime is being introduced by Part 2 of the 2021 Act.

In force from **1 August 2026**,^{cvi} Part 2 amends the [Housing \(Scotland\) Act 2001](#) to allow a local authority, registered social landlord, or Scottish Water (as landlord) to apply to court to terminate a [Scottish secure tenancy](#) where a tenant has been abusive.⁷²

Termination is possible if:

- the tenant or joint tenant has been abusive towards a partner or ex-partner
- the home is the victim/survivor's only or main residence
- the victim/survivor wants to remain living in the property.⁷²

As highlighted by the [Scottish Law Commission](#), this regime is particularly important for cohabitants, because - unlike the 1981 Act - it does not require the victim/survivor to have [statutory occupancy rights](#).⁷³

On **8 June 2026**, the Scottish Government published [Domestic Abuse – Social Housing Tenancy Provisions: Statutory Guidance for Social Landlords](#) on Part 2 of the 2021 Act, with the guidance in force from **1 August 2026**.⁷⁴

cvi The Domestic Abuse (Protection) (Scotland) Act 2021 (Commencement No. 1) Regulations 2025 SSI 2025/400.

See later in the briefing for a discussion of further developments in housing law in the Housing (Scotland) Act 2025.

Other key policy developments in Session 6 of the Scottish Parliament

This section of the briefing provides an overview of **key policy developments** relating to the civil law on domestic abuse, and to domestic abuse more generally. These mainly occurred during Session 6 of the Scottish Parliament (2021–26) but, for one proposal, in the current parliamentary session.

These developments can be divided into the following:

- [the Scottish Law Commission's work on civil law remedies for domestic abuse](#)
- [the Victims, Witnesses and Justice Reform \(Scotland\) Act 2025](#)
- [other developments relating to the civil–criminal interface in domestic abuse law](#)
- [the Regulation of Legal Services \(Scotland\) Act 2025](#)
- [the Housing \(Scotland\) Act 2025](#)
- [the Prevention of Domestic Abuse \(Scotland\) Bill \(not passed\)](#)
- [Scottish Government 2026 consultation: possible reforms relating to non-harassment orders](#)
- [a 2026 UK Government consultation \(for England & Wales\) on finances on divorce and cohabitation breakdown, which highlights domestic abuse protection as a key theme.](#)

The work of the Scottish Law Commission on domestic abuse

The [Scottish Law Commission](#) ('the Commission') is an independent statutory body that makes recommendations to the Scottish and UK governments on reforms to the law of Scotland. It is currently reviewing the civil law applicable to domestic abuse.

The Commission published [a discussion paper](#) (an initial consultation paper), with [an executive summary](#) in **October 2024**, proposing reforms.^{5 75}

The consultation closed in **March 2025**, and the Commission is now considering the responses. Its next step will be to publish a final report with recommendations for the Scottish Ministers. This is expected to be published in 2027.

This section of the briefing examines some of the Commission's key proposals from [the discussion paper](#), with a particular focus on those which have not already been covered elsewhere in the briefing.

Occupancy rights, including those of cohabitants

The Commission asked for views on possible options for the reform of **statutory occupancy rights** associated with a couple's home, [with such rights being described fully earlier in the briefing](#).

One policy topic explored was whether **cohabitants** should have the same statutory occupancy rights as spouses and civil partners.⁷⁶

'Division and sale' - cohabitants

[As discussed earlier](#), where a couple owns property together (in **common ownership**), either co-owner may apply to the court for **division and sale**. For cohabitants, [this will normally result in the entire property being sold and the proceeds divided between them](#). The court generally has no discretion to refuse such an order.

The Commission asked whether a discretion for cohabitants should be introduced, [bringing the position into line with that applicable to spouses and civil partners](#).⁷⁷

Exclusion orders: domestic abuse offences

Another issue on which the Commission asked for views is whether the court should be required to make an [exclusion order](#) suspending a person's occupancy rights, where that person is [convicted of a domestic abuse offence](#).⁷⁸

A new civil law wrong ('a delict')

Significantly, the Commission proposed a specific civil law wrong (**a delict**) related to domestic abuse.⁷⁹

This would be introduced by way of a statute, which would [define domestic abuse or abusive behaviour](#) (depending on the term ultimately chosen), and set out [the legal remedies available to victims/survivors](#).

The definition of domestic abuse or abusive behaviour

The proposed new definition of domestic abuse or abusive behaviour would be based on [the equivalent definition of abusive behaviour](#) in the [Domestic Abuse \(Scotland\) Act 2018](#).^{cvii}

The Commission also asked if the definition of domestic abuse should expressly include forms such as technology-facilitated abuse, threats linked to immigration status, and **economic abuse** - where the perpetrator controls access to resources, financial and

cvii [Domestic Abuse \(Scotland\) Act 2018](#), sections 1 and 2.

otherwise.²⁷

The Commission also asked for views on whether civil remedies should continue to apply only to partners and ex-partners, or be extended to cover wider family and domestic relationships, such as abuse of older people by adult children or abuse between adult siblings.⁸⁰

Children affected by domestic abuse

The Commission devoted a chapter of its discussion paper to children affected by domestic abuse.⁸¹

Notably, the Commission wants to ensure that children of families affected by domestic abuse are better protected when there are disputes about a child's contact with a parent, and about where a child should live.⁸²

[The current legal framework was discussed earlier](#). It is also set out in the [discussion paper](#) (chapter 7, part 3) and in the 2024 SPICe briefing [Parental responsibilities and rights, including a section on the factors the courts currently take into account in reaching their decisions](#).¹²

On the current system, the Commission commented:

“ Despite the clear statutory requirement to take abuse into account when determining the best interests of the child, there is extensive evidence that domestic abuse can be marginalised, overlooked, or dismissed in child contact cases.”

Scottish Law Commission, 2024⁵³

Legal remedies for domestic abuse

The Commission's proposed new civil protection order, is provisionally titled the domestic abuse civil protection and redress order (DACPRO). This would be distinct from the measures introduced by the 2021 Act, [discussed earlier in the briefing](#).

The DACPRO is an umbrella term covering a range of different types of order:

- **a protection order:** [equivalent to a common law interdict](#), this prohibits further abusive behaviour, with scope to protect named others (such as children)
- **a redress order:** provides financial compensation for losses suffered
- **a barring order:** excludes the perpetrator from the home for a fixed period
- **a document delivery order:** requires specified documents to be handed over
- **a property and effects order:** requires delivery of specified property and personal effects
- **a pet-related order:** regulates care of a pet or require its delivery.

The underlying policy idea is that the applicant could ask the court for some or all of the types of protection on offer, depending on their individual circumstances.

The range of civil protection orders remaining

There is a clear intention on the part of the Commission to consolidate and simplify the law.

However, it is worth noting that, even if the Commission's proposals were implemented, the many existing types of civil protection order would remain in force.

One issue here, which the Commission itself highlights in [its discussion paper](#), is that civil protection orders are needed for types of abuse and harassment other than domestic abuse. This, the Commission argues, limits the capacity to repeal the existing law.⁸³

The Victims, Witnesses and Justice Reform (Scotland) Act 2025

The [Victims, Witnesses and Justice Reform \(Scotland\) Act 2025](#) ('the 2025 Act') **most of which is not yet in force**, is an important piece of criminal justice legislation.

However, the 2025 Act also contains a number of reforms that affect the civil law on domestic abuse. These are considered in this section of the briefing.

Special measures (Part 5)

Part 5 (**not yet in force**) aims to strengthen the use of **special measures** in civil cases - practical steps to help vulnerable witnesses and litigants participate, such as appearing by video link or from behind a screen.

Part 5 is expected to affect how people at risk experience civil court proceedings when applying for civil protection orders.

There have been policy concerns about the lack of special measures for victim/survivors in civil cases, with the result that they may be exposed to their abuser when attending court. This can include sitting opposite the alleged abuser in the courtroom, as well as entering, exiting, and waiting in the same spaces.⁹

Building on reforms for certain family cases under the [Children \(Scotland\) Act 2020](#), Part 5 of the 2025 Act introduces the following measures for most civil cases:

- **Deemed vulnerable witnesses:** specified categories of adult witnesses are automatically treated as vulnerable, removing the need for a court assessment of their vulnerability. However, this does not confer an automatic entitlement to special measures, which remain subject to statutory tests.
- **Prohibition on personal conduct:** a key special measure is prohibiting a perpetrator

or alleged perpetrator from conducting their own case. There is a presumption in favour of this prohibition for deemed vulnerable witnesses, though it is not mandatory in all cases.

- **Register of solicitors:** where a party is prohibited from self-representation and fails to instruct a solicitor, the court may appoint one from a register of solicitors.
- **Special measures beyond evidence hearings:** courts may also impose special measures to protect vulnerable parties at hearings where no evidence is being led.

The [SPICe briefing on Stage 1 of the associated Bill](#) contains [a fuller description of the current law](#) and [the changes contained in Part 5](#) (then numbered Part 3).⁸⁴

Non-harassment orders in the criminal courts (sections 107 and 108)

As explained earlier in the briefing, non-harassment orders (NHOs), although civil protection orders, may be imposed by criminal courts under the [Criminal Procedure \(Scotland\) Act 1995](#) following a successful prosecution for certain offences.^{cviii}

In domestic abuse cases, courts **must** consider imposing an NHO and apply a **presumption** in favour of doing so.^{cix}

Section 107, **in force from 1 September 2026**, extends the list of relevant offences here to include certain sexual offences, stalking, and offences involving the disclosure or threat of disclosure of intimate images.

Section 108, **also in force from 1 September 2026**, requires the criminal courts, when deciding whether to impose an NHO in domestic abuse cases, to take account of any previous bail conditions restricting contact with the victim, even where the accused is imprisoned or remanded in custody.

Both provisions were introduced at Stage 3 of the Parliament's legislative process, through non-Government amendments developed in collaboration with the Scottish Government.

cviii [Criminal Procedure \(Scotland\) Act 1995](#), section 234A.

cix [Criminal Procedure \(Scotland\) Act 1995](#), section 234ZA.

Stage 2 of the Victims, Witnesses, and Justice Reform (Scotland) Bill

For context, [related non-Government amendments at Stage 2 of the legislative process](#) (amendments 85, 241-242) were considered by the lead committee on the legislation, the Criminal Justice Committee, [at its meeting on 19 March 2025](#).

These Stage 2 amendments, ultimately withdrawn or not moved, would have introduced a mandatory, or near-mandatory, requirement for courts to impose an NHO following conviction for certain sexual or domestic abuse offences (depending on the specific amendment).

Enforcement of civil protection orders made outside Scotland (Part 11)

Section 109 of the 2025 Act (**not yet in force**) creates a new criminal offence in Scotland of knowingly and without reasonable excuse breaching certain protective orders made in England, Wales or Northern Ireland.

The offence covers both direct breaches and assisting or encouraging a breach, and applies only where the conduct would also be an offence in the jurisdiction that issued the original order.

Criminal/civil justice interface in relation to domestic abuse

Separately, the interaction between the criminal and civil justice systems in domestic abuse cases was a key issue during the parliamentary passage of the legislation that became the 2025 Act. This section of the briefing outlines both unsuccessful amendments and one successful non-Government amendment.

Unsuccessful amendments at Stages 2 and 3

At Stage 2 of the legislative process, a non-Government amendment (amendment 78), [was debated](#) and then withdrawn. It would have required [the Lord President or the sheriff principal](#) to consider allocating the same sheriff or judge to parallel criminal and civil proceedings involving the same individual.

Ahead of Stage 3, on 27 August 2025, the Lord President - Scotland's most senior judge - [raised concerns that such a requirement would cause significant delays](#).

A similar non-Government amendment (amendment 108) [was then debated](#) and [rejected](#) at Stage 3 on 16 September 2025.

Review of domestic abuse cases (Part 12)

Section 110 of the 2025 Act (**not yet in force**), introduced through a successful non-Government amendment, requires the Scottish Ministers to review the interaction between domestic abuse criminal cases and **related or connected court proceedings**

within two years of commencement of section 110.

Related or connected proceedings include family cases [under section 11 of the Children \(Scotland\) Act 1995](#) involving decisions on [parental responsibilities and rights](#) - where the child is linked to the alleged perpetrator.

The review must consider information-sharing between proceedings and whether criminal courts should also have jurisdiction over connected cases. Ministers must then publish a report and lay it before Parliament.

Other developments relating to the civil–criminal interface in domestic abuse law

There are some other developments associated with the relationship between civil and criminal cases worthy of note.

Possible court rules

On **17 September 2025**, and [following on from a Scottish Government funded research report](#),⁵⁴ the Scottish Government published [a draft policy paper](#) for consideration by [the Scottish Civil Justice Council](#) (SCJC).⁵⁶ The SCJC plays a central role in supporting the [Court of Session](#) in developing the court rules that govern procedure in Scotland's civil courts.

The Scottish Government's policy paper proposed court rules intended to ensure that, when considering a civil case, courts have access to full information about any relevant domestic abuse between the parties and any related parallel criminal proceedings.

This paper was later discussed [at a meeting of the SCJC on 8 December 2025](#) and it is thought that work in this area remains under consideration.

Integrated Domestic Abuse Courts

On **18 March 2026**, the Scottish Government published [a literature review on Integrated Domestic Abuse Courts \(IDACs\)](#).⁵⁵

The review describes IDACs as specialist courts intended to deliver a more coordinated and effective response to domestic abuse. This recognises that these cases raise complex issues - including overlapping criminal and family law matters, trauma impacts, and the need for specialist expertise - that are not well addressed by traditional adversarial court models.

The review notes that IDACs operate in the USA, Canada and Australia, and have been piloted in England.⁵⁵

The 2026 Scottish Government review follows [an earlier literature review on the effectiveness of domestic abuse courts published by the Scottish Government in 2019](#).⁸⁵

Regulation of Legal Services (Scotland) Act 2025

[Earlier in the briefing](#) issues with the legal aid system were discussed. This included concerns that civil legal aid work - particularly in complex cases - is not considered financially viable for solicitors working in private practice.

Related to this, section 89 of the [Regulation of Legal Services \(Scotland\) Act 2025](#) (**which is in force**) removed previous regulatory restrictions on solicitors being employed directly by a law centre, a citizens' advice body, or a charity.

[Scottish Women's Aid](#) was one of the organisations who welcomed this measure, commenting:

“ it will assist in securing dedicated and innovative provision of domestic-abuse competent legal services for women, children and young people experiencing domestic abuse.”

Scottish Government, 2024⁸⁶ Scottish Women's Aid, 2023⁸⁷

Housing (Scotland) Act 2025

Following Part 2 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), the [Housing \(Scotland\) Act 2025](#) ('the Housing Act') aims to further strengthen housing law's handling of domestic abuse.

None of the provisions of the Housing Act discussed in this section of the briefing are currently in force.

Definitions in housing legislation

The Housing Act aligns certain definitions in housing legislation to include [the definition of abusive behaviour](#) in the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#).^{cx}

Domestic abuse policy

Importantly, for local authorities as landlords, and [registered social landlords](#), the Housing Act creates a statutory duty to publish and maintain a domestic abuse policy, with a view to preventing homelessness.^{cxⁱ}

cx [Housing \(Scotland\) Act 2025](#), section 55; [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), sections 2-3.

cxⁱ [Housing \(Scotland\) Act 2025](#), section 57.

Social housing tenants affected by domestic abuse

The Housing Act also introduces protections for tenants whose arrears have arisen because of domestic abuse.^{cxii} Practically, this means landlords must treat arrears caused by abuse as a mitigating factor and ensure survivors are not unfairly penalised when seeking housing assistance.⁸⁸

In particular, tenants with arrears caused by abuse must be offered tailored support rather than immediate enforcement action. Arrears directly attributable to another person's abusive conduct should not, in isolation, block a survivor's access to re-housing or to being placed on waiting lists in the normal way.⁸⁸

Prevention of Domestic Abuse (Scotland) Bill

On **7 May 2025**, Pam Gosal MSP introduced [the Prevention of Domestic Abuse \(Scotland\) Bill](#).

This Member's Bill focused mainly on criminal justice measures, and included offender notification requirements, rehabilitation assessments, improved data collection, and domestic abuse education in schools.

The Bill was withdrawn on 16 January 2026.

SPICe published [a research briefing on the Prevention of Domestic Abuse \(Scotland\) Bill](#).⁸⁹

Scottish Government 2026 consultation: Strengthening protections for women and girls

Between **February** and **June 2026**, the Scottish Government [consulted on proposals to strengthen protections for women and girls](#), including [the role of non-harassment orders \(NHOs\) in criminal cases](#).⁹⁰

The consultation considered whether the [Crown Office and Procurator Fiscal Service \(COPFS\)](#) should be given new powers itself to impose NHOs as part of alternatives to prosecution, subject to a right of appeal to the court.

The paper also explored related legal and policy issues, including whether any prosecutor-imposed NHO should be time-limited - for example, **capped at 12 months** - in contrast to court-imposed NHOs, which may be indefinite.^{cxiii}

cxii [Housing \(Scotland\) Act 2025](#), sections 55-56.

cxiii [Criminal Procedure \(Scotland\) Act 1995](#), section 234A (1B); [Protection from Harassment Act 1997](#), section 8(5)(b)(ii).

UK Government 2026 consultation: A fairer end to relationships

In **June 2026**, and for **England and Wales**, the UK Government published a significant consultation document on family law, entitled [A fairer end to relationships](#).⁹¹ It looks at the legal framework for considering a couple's finances at the end of a relationship.

Protection against domestic abuse is flagged as a key theme in this consultation. As part of this, the consultation seeks views on how domestic abuse could be considered by the courts on divorce, and at the end of a cohabiting relationship.

One policy issue being explored is whether domestic abuse should, to any extent, affect the division of the couple's assets.

Scottish proposals on cohabitants' property and finances

Separately, for **Scotland**, between **December 2025** and **April 2026**, the Scottish Government carried out its own [family law consultation, including proposed reforms to the financial arrangements of cohabitants on relationship breakdown](#).⁹²

In addition, [the SNP's 2026 Scottish Parliament election manifesto](#) (at p 71) includes a commitment to reform the law in this area.

While covered relatively briefly in the Scottish Government's consultation,⁹³ it will be interesting to see whether, and to what extent, a possible link between couples' financial arrangements and domestic abuse features as a policy issue in any future debates on these potential reforms.

Sources of legal advice, information and support

This section of the briefing signposts **sources of advice, information and support** on domestic abuse other than this SPICe briefing.

If an individual or their children is in immediate danger and need help, call 999.

Further, practical information on the role of the police under the criminal justice system in relation to domestic abuse [can be found on the gov.scot website](#).

The remainder of this section covers the following:

- [checking if someone has a history of domestic abuse](#)
- [information and support for victim/survivors](#)
- [finding legal advice](#).

Checking if someone has a history of domestic abuse

In Scotland, it is possible to check if someone has a history of perpetrating domestic abuse. This is available under the **Disclosure Scheme for Domestic Abuse Scotland**.

[More information on making an application can be found on the gov.scot website](#).

Information and support for victim/survivors

If a person is experiencing domestic abuse – or has done in the past – they can get confidential information and support from a range of organisations on topics including housing, safety, support for children and, in some circumstances, legal help.

Relevant organisations include:

- [Scotland's Domestic Abuse and Forced Marriage Helpline](#): **0800 027 1234 (24 hour service)** - provides confidential information and support to anyone affected by forced marriage or domestic abuse
- [Victim Support Scotland](#), **phone: 0800 160 1985 (Monday to Friday, 8am to 8pm; Saturday to Sunday, 10am–4pm)** - provides information and support for victims and witnesses of crime
- [Scottish Women's Aid](#), **phone: 0131 226 6606** - provides advice, support and safe accommodation for women (and their children) who have been abused by their partner or ex-partner. They can recommend local groups and also run the [Scotland's Domestic Abuse and Forced Marriage Helpline](#) referred to above

- [Rape Crisis Scotland](#), **phone the national helpline on 08088 01 03 02 (5pm to midnight, 7 days a week)** - provides a rape crisis helpline and email support for anyone affected by sexual violence. The organisation can also put an individual in touch with local rape crisis centres or other services for ongoing support
- [AMIS \(Abused Men in Scotland\)](#), **phone: 03300 949 395** - supports men who are experiencing or have experienced domestic abuse. There is a confidential helpline (it is free to call from landlines and most UK mobiles, and does not appear on itemised phone bills) and the organisation can also signpost to local services
- [Shakti Women's Aid](#), **phone: 0131 475 2399** - help for black minority ethnic (BME) women, children and young people who are experiencing, or who have experienced, domestic abuse
- [Hemat Gryffe Women's Aid](#), **phone: 0141 353 0859** - provides advice, support and safe temporary refuge accommodation for Asian, black and minority ethnic women and young people who are experiencing, or who have experienced, domestic abuse
- [National LGBT Domestic Abuse Helpline](#), **phone: 0800 999 5428** - provides help and support for lesbian, gay, bisexual and transgender people who are experiencing, or who have experienced, domestic abuse
- [Shelter Scotland](#), **phone: 0808 800 4444** - provide free, expert housing advice and legal support to individuals
- [Scottish Women's Rights Centre](#) advocacy and legal helpline: **08088 010 789** - free legal help for women affected by violence, such as domestic abuse, rape, stalking, forced marriage and human trafficking. Phone the helpline or book an appointment for one of the surgeries in Dundee, Edinburgh, Forth Valley, Glasgow, Inverness, Lanarkshire. [See also its range of legal guides and factsheets](#) on a variety of topics.

[Information about call charges can be found on the gov.uk website.](#)

Child protection

Where domestic abuse affects a family, there may also be child protection concerns.

The [gov.scot website](#) has more information on how to **report a concern about a child or young person**, as well as links to online resources offering other support and information about child protection issues.

Finding legal advice

As noted earlier, SPICe cannot give legal advice in individual cases and it is recommended that a solicitor is consulted for this purpose.

To obtain legal advice from a solicitor trained in Scots law and practising in Scotland, see [the SPICe Briefing, Legal Advice - where to go and how to pay](#).⁹⁴

As noted in this briefing, the [Law Society of Scotland](#) offers [an online 'find a solicitor' tool](#) to help locate qualified specialists. You can search by location, by area of work (for example, 'crime', 'family and relationships') and by solicitors offering help via legal aid.

Likewise, the [Scottish Legal Aid Board](#) has [an online search tool](#) to help locate solicitors offering help via legal aid. The [Family Law Association](#) also has [a similar tool](#).

The Scottish Women's Rights Centre

While it does not endorse or recommend individual solicitors, the [Scottish Women's Rights Centre](#) has [an online Solicitor Signposting Network tool](#), allowing a search by location.

The solicitors on this network have undertaken its two day domestic abuse training and have to complete the refresher training every two years to remain on the network.

The Centre's [guide to getting legal representation](#) also has a useful section on finding a solicitor to meet a person's particular needs.

[As noted earlier](#), the [Scottish Women's Rights Centre](#) has a [free legal advice helpline](#). At the time of publication of this briefing, it runs on **Tuesday evenings** by a group of volunteer solicitors, who can provide initial legal advice and information.

Further details of the organisation's range of services are also included in [the preceding section of this briefing](#).

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