

Scottish Government submission of 1 November 2022

PE1981/A: Ensure perpetrators of domestic abuse, who have been excluded from the matrimonial home, cannot force the sale of the property

The Committee has asked for a response by the Scottish Government to Public Petition PE1981. The Petition is “Calling on the Scottish Parliament to urge the Scottish Government to strengthen legislation to stop perpetrators of domestic abuse, who have been excluded from the matrimonial home by a court order, being able to cause further trauma and distress to their victims by trying to force the sale of the property”.

Under [section 1](#) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (the 1981 Act), where one spouse is entitled as an owner or tenant to occupy a matrimonial home (the entitled spouse) and the other is not (the non-entitled spouse), the non-entitled spouse has occupancy rights. (The Civil Partnership Act 2004 sets out equivalent arrangements to the 1981 Act for civil partners). A non-entitled cohabitant will only have occupancy rights if granted by the court.

The 1981 Act also provides protection to a spouse or to children who are at risk of physical or mental injury because of the other spouse’s conduct. Under [section 4](#), either spouse (whether entitled or not) may apply to the court for an exclusion order to suspend the rights of the other to occupy the matrimonial home. A non-entitled cohabitant granted occupancy rights by a court can also seek an exclusion order.

An exclusion order is temporary and will end, for example, when a married couple divorce: [section 5](#). The order does not affect who owns or tenants the home, or prohibit future transactions with the property.

Under [section 4\(4\)](#), the applicant for an exclusion order can also ask the court to make certain ancillary orders, including interdicts. An interdict is an order prohibiting or restraining specified behaviour or conduct. An example of an interdict ancillary to an exclusion order is an order prohibiting the non-applicant from entering the matrimonial home without the express permission of the applicant ([section 4\(4\)\(b\)](#)).

Ms Gourlay should seek legal advice if she has questions regarding the conduct that her interdict is capable of restraining.

If a couple, married or cohabiting, own a home together, both must agree to a sale. Otherwise, the party who wants to sell the property will need to raise a court action, seeking an order for division and sale. Under [section 19 of the 1981 Act](#), where a spouse has raised an action of division and sale involving their matrimonial home, the court may refuse to grant the decree, or postpone doing so for a period it considers reasonable, or may grant the decree subject to conditions.

Provision is made in the 1981 Act for the occupancy rights of a non-entitled spouse not to be prejudiced by reason only of any dealing of the entitled spouse with the matrimonial home, such as a sale, except in certain circumstances: [section 6\(1\) and \(3\)](#). This does not apply where the couple are cohabiting and not married.

Typically, this means that if a non-entitled spouse has not renounced their occupancy rights, the non-entitled spouse's written consent will be required for the sale to proceed: [section 6\(3\)\(a\)](#). The entitled spouse can also ask a court to dispense with the non-entitled spouse's consent: [section 6\(3\)\(b\)](#).

Ms Gourlay should seek legal advice to identify if there is any further action she should take to protect her interests.

The Scottish Government remains committed to the prevention and eradication of violence against women and girls. We also want to ensure that the right supports are in place for those affected by violence and abuse.

We have no plans at present to reform the 1981 Act or the equivalent provisions for civil partners.

The Scottish Law Commission are considering carrying out a review of civil remedies in relation to domestic abuse. Information on the Commission's work on aspects of family law is at [Scottish Law Commission: Aspects of family law \(scotlawcom.gov.uk\): please see in particular Phase Two](#).