

## **Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1898](#): Make entering someone's home without their permission or warrant a crime, lodged by Julia Gow**

### **Background**

The petition seeks the creation of a specific criminal offence dealing with situations where a stranger enters a person's home without permission or a warrant.

It highlights an experience the petitioner had of someone breaking into their home whilst they were out. It states that the intruder was apprehended by the police but that there were no criminal charges because nothing had been stolen and there was no evidence of an intention to steal anything.

### **Existing criminal offences**

The petition refers to advice received from the police that "breaking into someone's home is not a crime". In cases where a person breaks into a house (or some other building), the evidence may support a charge of theft by housebreaking or housebreaking with intent to steal. However, these common law offences do not cover an act of breaking into a house without theft or an intention to steal.

Various other offences may be relevant in some situations, but do not necessarily cover all the circumstances the petitioner may have in mind.

Where the act of breaking into a house causes damage, charges of vandalism or malicious mischief may be relevant. Vandalism is a statutory offence under [section 52 of the Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#):

"any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another shall be guilty of the offence of vandalism".

Malicious mischief is a common law offence dealing with behaviour which damages or destroys the property of another. Most of what it covers may also be charged under the statutory offence of vandalism.

[Section 38 of the Criminal Justice and Licensing \(Scotland\) Act 2010](#) sets out an offence of threatening or abusive behaviour which might cover some situations where a person enters someone's house without permission:

“A person (“A”) commits an offence if –

(a) A behaves in a threatening or abusive manner,

(b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and

(c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.”

## **Key organisations and relevant links**

- Crown Office & Procurator Fiscal Service
- Police Scotland
- Scottish Government

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