

# Citizen Participation and Public Petitions Committee

2nd Meeting, 2022 (Session 6), Wednesday 2  
February 2022

PE1898: Make entering someone's home  
without their permission or warrant a crime

## Note by the Clerk

**Lodged** 27 September 2021

**Petitioner** Julia Gow

**Petition  
summary** Calling on the Scottish Parliament to urge the Scottish Government  
to make it a crime for a stranger to enter your home without  
permission or a warrant.

**Webpage** <https://petitions.parliament.scot/petitions/PE1898>

## Introduction

1. The Committee last considered this petition at its meeting on [3 November 2021](#). At that meeting, the Committee agreed to write to the Crown Office and Procurator Fiscal Service and Police Scotland.
2. A summary of past consideration of the petition and responses to information requests are provided for the Committee's consideration.

## Background

3. During its consideration of this petition, the Committee received 5 written submissions.
4. The Scottish Government confirmed in its initial response that whilst entering someone's home without their permission is not a crime in and of itself, housebreaking with intent to steal is an aggravated form of the common law offence of theft in Scots law, with the essential elements being that a person (1) overcomes the security of the premises and (2) does so with the intention of

stealing. However, it is important to note that the housebreaking must be with the intention of stealing, not for some other purpose, such as finding a place to sleep.

5. The SPICe briefing also highlights Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 as it 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.

## Crown Office and Procurator Fiscal Service submission

6. The Committee wrote to the Crown Office and Procurator Fiscal Service (COPFS) seeking its views on this petition. The response highlighted that the individual facts and circumstances of each case are considered when assessing prosecutorial action.
7. It is noted that factors such as the nature of the offence, previous offending history and circumstances of victims or witnesses (including vulnerabilities) and the circumstances of the accused person are taken into account as part of this assessment process.
8. COPFS provide a non-exhaustive list of various offences which may be relevant in circumstances where a person enters the home of another without permission—
  - Section 57 of the Civic Government (Scotland) Act 1982 which makes it an offence for any person, without lawful authority to be there, to be found in or on a building or other premises, whether enclosed or not, or in its curtilage or in a vehicle or vessel so that, in all the circumstances, it may reasonably be inferred that he intended to commit theft there;
  - Section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 (vandalism) or malicious mischief (common law) may be appropriate where damage is caused deliberately;
  - Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 makes it an offence to act in a threatening or abusive manner; and
  - Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (stalking) makes it an offence to engage in a course of conduct which is intended to cause fear or alarm, or is reckless as to whether it

causes fear or alarm, and actually causes a person fear or alarm. This may be appropriate if the behaviour is repeated.

## Police Scotland submission

9. The Committee wrote to Police Scotland seeking its views on this petition. The submission states that—

‘There are situations when individuals are found to be within an address and it appears they are not entitled to be there. These are dealt with according to the circumstances and evidence presented. Where criminality is established this is dealt with accordingly.

Police Scotland are unaware of any scenarios where the existing law was insufficient to deal with matters criminally if required.’

## Petitioner submission

10. The petitioner reiterates the key points of her petition stating that ‘I wanted to make it a criminal offence for a stranger to enter your home without permission. This would exclude emergency services or emergency situations. This law would cover whether the house was occupied or empty. Whether there was security in place or the door unlocked. Where the occupants were attacked or not. Whether anything was stolen or not.’
11. The submission makes reference to correspondence with Police Scotland which indicated that if someone were simply to enter your home, sit on the sofa and watch TV, the Police may struggle to find a crime under which this behaviour could be prosecuted.
12. The petitioner recognises that there are offences which may cover specific circumstances but emphasises throughout her submission that no law currently exists for the specific circumstance outlined in her petition. She states that this is ‘frustrating’.

## Action

The Committee is invited to consider what action it wishes to take.

### Clerk to the Committee

## Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting –

- [PE1898/C: Crown Office & Procurator Fiscal Service submission of 25 November 2021](#)

- [PE1898/D: Police Scotland submission of 30 November 2021](#)
- [PE1898/E: Petitioner submission of 25 January 2022](#)

All written submissions received on the petition can be viewed on the [petition webpage](#).