

Citizen Participation and Public Petitions Committee

12th Meeting, 2023 (Session 6), Wednesday
6 September 2023

PE2025: Improve the support available to victims of domestic violence, who have been forced to flee their home

Petitioner	Bernadette Foley
Petition summary	<p>Calling on the Scottish Parliament to urge the Scottish Government to improve the support available to victims of domestic violence who have been forced to flee the marital home by:</p> <ul style="list-style-type: none">• ensuring access to legal aid for divorce proceedings where domestic violence is a contributing factor;• ensuring victims are financially compensated for loss of the marital home, including loss of personal possessions and furniture left in the property; and• ensuring that victims are consulted before any changes are made to non-harassment orders.
Webpage	https://petitions.parliament.scot/petitions/PE2025

Introduction

1. This is a new petition that was lodged on 25 April 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 90 signatures have been received on this petition.

5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

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

Clerk to the Committee

Annexe A

PE2025: Improve the support available to victims of domestic violence, who have been forced to flee their home

Petitioner

Bernadette Foley

Date Lodged:

25 April 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to improve the support available to victims of domestic violence who have been forced to flee the marital home by:

- ensuring access to legal aid for divorce proceedings where domestic violence is a contributing factor;
- ensuring victims are financially compensated for loss of the marital home, including loss of personal possessions and furniture left in the property; and
- ensuring that victims are consulted before any changes are made to non-harassment orders.

Previous action

I have written to Humza Yousaf, when he was Cabinet Secretary for Justice.

I have also raised the matter with the Crown Office and Procurator Fiscal Service, and our local MP, Carol Monaghan.

Background information

My sister was abducted, beaten and her estranged husband attempted to kill her after threatening the same. He received a custodial sentence for offences including breach of bail, abduction, assault to injury, and breach of the peace, of which he served half. This was after the attempted murder charge was dropped without discussion with the

victim. Following his release, he began harassing my sister under an assumed name and the police decided they could do nothing.

The perpetrator's family emptied the marital home of all furniture, fixtures and fittings, and again the police could do nothing to prevent this.

Furthermore, my sister had to pay legal costs to divorce him and start over having left the home with only the clothes and possessions on her person.

My sister has now had to give up work due to anxiety, depression, PTSD and deterioration of physical health, and to date has received no benefits whatsoever. She was declined a community care grant and criminal injuries compensation.

Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'SPIC' in a larger font and 'e' in a smaller font. To the right of 'SPICe', the text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' is written in white, stacked vertically.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE2025: Improve the support available to victims of domestic violence, who have been forced to flee their home

An overview of issues raised by the petition

The current system

In Scots law, both the criminal law and the civil law contain legal measures which relate to domestic abuse.

Protections under the criminal justice system

The criminal law sets out various relevant criminal offences in the context of domestic abuse, including an offence under the [Domestic Abuse \(Scotland\) Act 2018](#).

In the context of criminal investigations and prosecutions related to relevant offences, the police and the criminal courts have various powers to remove a suspected perpetrator of domestic abuse from the home of a person at risk and to prevent them from returning to it. For example, special bail conditions may apply to someone accused of an offence relating to domestic abuse.

Civil protection orders

Separately, there are also a range of **civil protection orders**, which can be applied for through the Scottish courts with the aim of protecting a person at risk against abuse or a risk of abuse, including domestic abuse. This application can be as part of other court proceedings (e.g. divorce proceedings) or as a standalone court action.

A **non-harassment order** (NHO), mentioned by the petitioner in the background information to the petition, is one such civil protection order, but there are a range of other ones too.

An NHO, unlike other types of civil protection order, can be applied for by the prosecutor in the **criminal court** at the end of a successful criminal case (as well as through the civil courts at the person at risk's own initiative).

However, most civil protection orders must be applied for through the civil courts, by the person at risk. There are legal costs associated with this, unless that person qualifies to have their expenses wholly met out of the legal aid budget (see later in the briefing on legal aid). There is also typically an element of delay associated with a civil court application, even where it is ultimately successful.

Most civil protection orders (intended to have medium or long-term effect) currently do not address the specific issue of a home which the person at risk and perpetrator co-own or co-occupy. Most civil protection orders are designed to prohibit contact in other settings.

One current exception is the **exclusion order** under the [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#) ('the 1981 Act'). Applications for exclusion orders are not thought to be particularly common in practice.

In 2018, the Scottish Government [consulted on a package of measures aimed at improving legal protections against domestic abuse](#). Part 2 of the consultation paper (which has never been implemented) identified policy issues associated with exclusion orders and proposed a range of measures designed to improve their effectiveness in practice.

Domestic Abuse (Protection) (Scotland) Act 2021

The [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) ('the 2021 Act') is an important recent legislative initiative.

Part 1 of the 2021 Act, **not yet in force**, introduced two short-term civil protection orders, both of which could exclude a perpetrator from where the person at risk lives.

The two new measures are a **Domestic Abuse Protection Notice** (DAPN) and a **Domestic Abuse Protection Order** (DAPO).

This power to exclude under both DAPNs/DAPOs would extend to a property where the person subject to the measure is the (sole or joint) owner or tenant.

The police would have a key role in relation to DAPNs/DAPOs, so civil court action on the person at risk's own initiative would not be required.

One key policy aim of the 2021 Act is to give a person at risk space to consider their housing options, reducing the chance they would have to leave the family home for their own safety.

Legal aid

[For certain situations under the criminal justice system, there is something known as 'automatic legal aid'](#). For these situations, there are no financial eligibility test or other tests applied by the [Scottish Legal Aid Board](#) before legal aid is granted.

There is no equivalent of automatic legal aid for cases heard under the civil court system, including in divorce cases where domestic abuse is a factor. There will be an assessment of financial resources and the strength of the case in almost all cases. Depending on circumstances, a person in a civil case might be eligible for two types of legal aid - [Advice and Assistance](#) and [Civil Legal Aid](#).

Someone on a very low income or receiving certain social security benefits can access legal aid in civil cases without paying a contribution from their own income. However, in most cases, recipients of legal aid will pay some contribution, which increases as their income increases.

The current legal aid system depends on there being available solicitors willing to offer services in family law cases via legal aid. There are tensions in relation to rates of pay and working hours thought to be affecting current availability.

Ownership of a couple's property

In terms of how a couple's property is owned, family law distinguishes between the position during marriage and the situation on divorce.

During a marriage

The [Family Law \(Scotland\) Act 1985](#) (section 24) ('the 1985 Act') says that marriage, of itself, does not affect the ownership rights of spouses.

How a **matrimonial home** is to be owned is decided by the individuals concerned and ownership is reflected in the registered [title documents](#) of the property. Possibilities include co-ownership of the family home by a couple (in equal or other shares) or ownership by one person in the couple.

For **household goods**, there is a specific statutory presumption (i.e. a starting point for the courts) that those goods are owned equally by the couple (1985 Act, section 25), unless evidence shows otherwise in an individual case.

The ownership of household goods – whether owned by just one of the former couple or owned jointly – will be relevant in determining whether it is possible for an owner of those goods to seek a court order through the civil courts for either the return of those goods, or financial compensation for their loss.

Separately, ownership of household goods will also be a relevant factor when considering the application of the criminal law (e.g. whether or not there has been theft).

On divorce

On divorce, a separate part of the 1985 Act applies to determine how spouses' **matrimonial property** should be divided up (sections 8-16).

Matrimonial property is all property **belonging to the two people, or to either of them**, at the “relevant date.” The property must be acquired during the marriage, or before the marriage for use as a family home. The relevant date is usually the date when the couple stop living together.

The 1985 Act contains a number of principles relating to how matrimonial property should be divided up between the couple. One key principle of the 1985 Act is fair sharing of the net value of matrimonial property, which usually means equal sharing, unless special circumstances apply.

The court can make a variety of court orders to give effect to the principles in the 1985 Act in practice. For example, it can order the payment of a financial sum from one person to the other or make a court order requiring one person to transfer their share of a house to the other person.

Current policy work

PE1981: forcing the sale of the matrimonial home

The Citizen Participation and Public Petitions Committee ('the Committee') is currently considering a petition ([PE1981](#)) on various provisions of the 1981 Act, including those relating to exclusion orders.

[At a committee meeting on 23 February 2023](#), the Committee agreed to write to various stakeholders and these stakeholders have now responded to the Committee.

The work of the Scottish Law Commission

Separately, the [Scottish Law Commission](#) ('SLC') are considering carrying out a review of civil law remedies in relation to domestic abuse ([see Phase 2 on the relevant part of its website](#)). SPICe understands the scope of this project is yet to be finalised, although some limited information is available in a [submission from the SLC to the Committee, dated 23 March 2023](#).

Housing policies

In December 2020, a Scottish Government working group report was published, entitled [Improving housing outcomes for women and children experiencing domestic abuse](#). The group was co-chaired by Scottish Women's Aid and the Chartered Institute of Housing.

A key recommendation was the development of a homelessness prevention duty. The idea was that a range of public sector partners (social services; police; education) would work together to identify and refer those at risk of domestic abuse and homelessness.

In its [Housing to 2040 policy document](#), published in March 2021, the Scottish Government sets out its commitment to implementing the recommendations in the working group report. It is expected that homelessness prevention duties will be included in a housing bill due to be introduced sometime after the summer recess.

**Sarah Harvie-Clark, Frazer McCallum, Abi Bremner and Kate Berry
Senior Researchers**

18/5/23

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

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Minister for Victims and Community Safety submission of 1 June 2023

PE2025/A: Improve the support available to victims of domestic violence, who have been forced to flee their home

In regards to the above petition, my response refers to marriage and divorce (there are equivalent arrangements for civil partnerships and dissolution of civil partnerships) and the issues raised by the petitioner in general terms. You will understand I cannot comment on the petitioner's sister's individual treatment in the justice system.

The Scottish Government remains committed to tackling all forms of violence against women and girls, including domestic abuse, and ensuring that victims and survivors receive the support they need.

Legal aid in divorce proceedings

The petitioner raises the costs of obtaining a divorce where legal aid is not available to the applicant. Around 60% of divorces are obtained under the simplified (form-based) procedure, which is intended to be used without the necessity of employing a solicitor although a party may choose to do so. Information on when the simplified procedure can be used is available at <https://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>.

The simplified procedure is not available where:

- the parties are in dispute either about the divorce or financial provision,
- the basis of the divorce is unreasonable behaviour or adultery, or
- where there are children of the marriage under 16 years old.

We committed in the [Family Justice Modernisation Strategy](#) to consulting on proposals to extend the simplified divorce procedure to cases where the spouses have agreed about the upbringing of any children in the family under 16 years of age.

Civil legal aid is not available where the simplified procedure is used but it may be possible to obtain advice and assistance through legal aid. The Legal Aid Fund is demand led and open ended and to target funding appropriately, applications for legal aid are subject to statutory tests which cover the merits of the case and the means available to the applicant. If the tests are met, civil legal aid is available in a wide range of actions, including contested divorces through the ordinary procedure and applications for civil non-harassment orders. There are generous eligibility thresholds. Around 70% of people are eligible for some form of civil legal aid in Scotland. Means testing is an important lever for retaining this wide scope.

There are also other ways in which advice and support can be provided to those who have suffered gender-based violence. We have invested significant levels of funding into front line services, as well as working closely with statutory agencies to improve their response to victims and survivors. We support the Scottish Women's Rights Centre (SWRC) which offers free legal information and advice to women in Scotland who have or are experiencing gender-based violence. Funding is provided to SWRC by the Scottish Legal Aid Board up to a limit of £230,000 a year for the next 3 years and the Scottish Government has committed up to £384,000 for 2023/24.

Compensation for loss of the marital home

Domestic abuse is the leading cause of homelessness for women in Scotland, and we are strongly focused on improving housing outcomes for women and children experiencing domestic abuse. In December 2020, [Improving housing outcomes for women and children experiencing domestic abuse](#) (social rented sector) was published. The Scottish Government has convened an implementation and monitoring group to drive change and oversee delivery of the recommendations in the report. This includes a recommendation to explore the options for financial support for women leaving an abusive partner. We are working closely with partners to consider the details including feasibility, development, and delivery of such support.

The [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#) (the 1981 Act) makes provision for a spouse (and in some cases, a cohabitant) who is not otherwise entitled to do so as a tenant or owner, the right to occupy the matrimonial or family home. The 1981 Act also provides protection for a spouse (and, in certain circumstances, a cohabitant) at risk of physical or mental injury because of the other

party's conduct. They can apply to the court for an 'exclusion order', to suspend the rights of the other party to occupy the family home. An exclusion order can be sought by a spouse who has already left the family home. An exclusion order is temporary and will end when a married couple divorce.

In granting an exclusion order, unless satisfied it is unnecessary, the court is bound, following an application by the applicant spouse, to issue certain ancillary orders. These ancillary orders include an interdict prohibiting the removal by the non-applicant spouse of any furniture and furnishings from the matrimonial home except with written consent of the applicant or by further order of the court.

The Scottish Law Commission has previously [confirmed to the Committee](#) that they expect Phase Two of its project on aspects of family law to focus on a review of the civil remedies available for domestic abuse. The Commission is currently considering the scope of the review.

Where one party to a marriage seeks a divorce, the arrangements for financial provision and the division of the matrimonial property are set out in the [Family Law \(Scotland\) Act 1985](#) (the 1985 Act). Matrimonial property includes property acquired by one of the parties before marriage for use as a family home and its contents.

Under the 1985 Act, a court can make a range of financial orders, including an order for payment of a capital sum or the transfer of property, such as the family home, where this is justified by one of more of principles set out in [section 9](#), and is reasonable with regard to the resources of the parties.

Under the 1985 Act, a party's behaviour is not usually relevant to financial provision on divorce. However, under [section 11\(7\)](#), the court can take account of conduct in certain circumstances, such as where the conduct has adversely affected financial resources that are relevant to the court's decision.

The 1985 Act is based on the Scottish Law Commission's Report "[Family Law: Report on Aliment and Financial Provision](#)" (Report No 67).

[Research](#) indicates that the law in Scotland on financial provision on divorce is generally well regarded.

Consultation with victim where changes are sought to a non-harassment order

It is not clear whether the petition is raising points on non-harassment orders (NHOs) issued in criminal or civil proceedings.

A criminal NHO can be issued under [section 234A](#) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), as part of criminal proceedings, where the offence or offences involve misconduct against a person. A request for an NHO can be initiated by the prosecutor leading a case for the Crown Office and Procurator Fiscal Service, but under [section 234AZA](#) of the 1995 Act, the court is bound to consider making a NHO when dealing with certain domestic abuse cases.

The person against whom such a criminal NHO is made, or the prosecutor in the case in which it was made, may apply to the court for its revocation or variation. The [Act of Adjournal \(Criminal Procedure Rules Amendment No.2\) \(Non-harassment order\) 1997](#) (legislation.gov.uk) sets out rules which apply to an application for variation or revocation of a non-harassment order. These state that the applicant has to serve a copy of the application on “any person, other than the offender, who is named in the order” – i.e. the victim. This provision seeks to ensure that the intimation is made to the victim in advance of the application being heard.

A victim can also raise an action in the civil courts seeking a non-harassment order under section 8 and section 8A of the [Protection from Harassment Act 1997](#).

The Scottish Courts and Tribunals Service has indicated that rules of court provide the procedure for an application to vary or revoke a civil NHO under the 1997 Act. Where the person against whom a civil NHO has been granted makes the application, those rules provide that they must serve the application on the holder of the NHO. However, this would be subject to any order by the court, on cause shown, to dispense with service. Once the application has been intimated to them, the holder of the NHO may oppose the application.

Criminal Injuries Compensation Scheme

The petitioner mentions criminal injuries compensation in the background information to the Petition. The [Criminal Injuries Compensation Scheme](#) (the Scheme) is a Great Britain-wide scheme designed to compensate victims of violent crime. The Criminal Injuries Compensation Authority (CICA) administers the Scheme and processes

Scottish cases on behalf of the Scottish Ministers, deciding if applicants are eligible and assessing the appropriate value of any award.

The Scheme rules and the value of the payments awarded are set by a UK Government Secretary of State (most recently from the Ministry of Justice) and approved by the UK Parliament. To qualify for an award, an injury must be described in the tariff of injuries at Annex E of the Scheme. The CICA must pay an award in line with these prescribed amounts, based on the severity of the injuries and the impact on a person.

The Annex to my letter sets out some further information on the Criminal Injuries Compensation Scheme.

**SIOBHIAN BROWN MSP
MINISTER FOR VICTIMS AND COMMUNITY SAFETY**

ANNEX

**FURTHER DETAILS ABOUT THE CRIMINAL INJURIES
COMPENSATION SCHEME**

The [Criminal Injuries Compensation Scheme](#) sets the criteria and amounts of compensation that can be paid. The current scheme has been in operation since 2019, and explains

- what kind of injury might make someone eligible for compensation
- where a person must live to be eligible
- what to do if a person's injury happened before 2012
- why someone might not get compensation
- details about compensation due to injury, loss of earnings, special expenses, or bereavement
- what happens after someone has applied for compensation
- how to appeal if the person doesn't agree with a Criminal Injuries Compensation Scheme decision

CICA can consider claims for the following:

- mental or physical injury following a crime of violence
- sexual or physical abuse
- loss of earnings - where a person has no or limited capacity to work as the direct result of a criminal injury
- special expenses payments - these cover certain costs a person may have incurred as a direct result of an incident. A person may only ask CICA to consider special expenses if their injuries mean

they have been unable to work or have been incapacitated to a similar extent for more than 28 weeks

- a fatality caused by a crime of violence including bereavement payments, payments for loss of parental services and financial dependency and funeral payments.

Scottish Government

May 2023