

Citizen Participation and Public Petitions Committee

2nd Meeting, 2024 (Session 6), Wednesday 7
February 2024

PE2060: Review existing legislation and legal remedies against trespassers

Petitioner	Daithi Broad
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to review and revise existing legislation to offer better protection against trespassers.
Webpage	https://petitions.parliament.scot/petitions/PE2060

Introduction

1. This is a new petition that was lodged on 31 October 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 collects signatures while it remains under consideration. At the time of writing, 10 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

PE2060: Review existing legislation and legal remedies against trespassers

Petitioner

Daithi Broad

Date Lodged:

31 October 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review and revise existing legislation to offer better protection against trespassers.

Previous action

I have contacted my local MSP Gordon MacDonald who, after contacting the Scottish Government, received a generic response on the right to roam.

I have also sought legal advice and advice from Police Scotland.

Background information

The current legislation in Scotland is poorly understood by laypeople with many people believing they have universal, unrestricted right of way over private property. It provides excessive protection to those abusing it.

Current legal remedies against trespassers often means costly court action or, alternatively asking trespassers to leave with little immediate power. This means that those experiencing persistent or hostile trespassers often find themselves with significant expenses to preserve their privacy and the integrity of their home. Additionally, a trespasser is owed a duty of care even if all reasonable/affordable steps have been taken to secure property against them.

Suggested actions:

1. Absolve homeowners of responsibility for injuries or inconvenience caused to trespassers
2. Allow easier access to interdicts
3. Permit criminal charges for demonstrable distress (especially to vulnerable people)
4. Lower evidential bars to prove trespass

These suggestions are hypothetical in the hope the Scottish Government can find more acceptable solutions if appropriate.

Annexe B



Briefing for the Citizen Participation and Public Petitions Committee on petition PE2060: [Review existing legislation and legal remedies against trespassers](#), lodged by Daithi Broad.

Brief overview of issues raised by the petition

- [Part 1 of the Land Reform \(Scotland\) Act 2003](#) grants the public a right of access to land and water for educational, recreational and limited commercial purposes, so long as this right is exercised responsibly. In short, this is known as the “right to roam”.
- Whilst this gives a legal right of access, it does not give blanket permission to go anywhere. Exceptions include:
 - Houses and gardens
 - Other buildings
 - School grounds
 - Most land where crops are growing
 - Places which charge for entry
- These rights and responsibilities are detailed in the [Outdoor Access Code](#), which also sets out clearly where access rights do not apply, what to do if you encounter irresponsible behaviour, and potential statutory criminal offences.
- The first port of call for questions about specific issues, or problems should be [local authority access officers](#), who uphold access rights and facilitate access in each local authority and national park.

- [Scottish Government research about attitudes to land reform](#), published in March 2021, found that 56% of respondents were confident about their rights to access different types of land, with 42% not confident. The research suggests that those who lack confidence in these rights still have a good idea about the main principles of responsible access.
- Overall, participants supported current access rights but considered that there should be more education and clarity around respective responsibilities of public and landowners – and what to do in the event of a dispute.
- Lawyers Shepherd & Wedderburn note that many people believe that [the law of trespass doesn't exist in Scotland](#), - which it does. They describe trespass as “entering or remaining on another’s property without permission”, and state:

The law of trespass is underpinned by both common law principles and statute, in particular the [Trespass \(Scotland\) Act 1865](#). It is not only a civil wrong, but trespassing can also give rise to criminal liability.

- [Police Scotland highlight some of the difficulties in applying the law in relation to trespass](#), with key points as follows:
 - Trespass to land is a civil matter and as such the police have no jurisdiction. Under common law, the landowner has a right to re-entry on the land; however the ejection of the trespasser is fraught with danger for the landowner. Initially, the landowner should ask the occupier to leave the land and if they do then all is well. The problems start however, if they refuse to leave.
 - It is also a criminal offence under the Trespass Scotland Act 1865 for a person to lodge in premises, occupy or encamp on any private property, without the consent and permission of the owner.
 - Anything done by a member of the public in exercising their access rights under the Land Reform Scotland Act 2003 does not amount to trespass.
 - The owner of the land could commit several criminal offences if they forcibly remove a trespasser and their

property from the land. The best and safest course of action is to obtain a court order, which if breached may then turn into a criminal matter.

- If the police do attend an incident such as this, they are merely there as observers for any possible criminal offences committed by either party. The police cannot assist in the removal of the trespassers or their property from the land in question.
- The police do have some powers against larger groups of occupiers if damage has been caused.

Alasdair Reid
Senior Researcher
17 November 2023

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 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

Scottish Government submission of 28 November 2023

PE2060/A: Review existing legislation and legal remedies against trespassers

The petitioner urges the Scottish Government to review and revise existing legislation to offer better protection against trespassers. The following information may be helpful to inform the Committee's consideration of PE2060.

Trespass can be considered as either entering or remaining in property owned by someone else without having received permission to do so. Depending on the specific circumstances, trespass can be dealt with through the civil law as well as through the criminal law. Underpinned by common law principles, the Trespass (Scotland) Act 1865 (the 1865 Act) criminalises certain conduct that amounts to what can be described as trespass. The offence in the 1865 Act is disapplied in respect of the exercise of rights under the Land Reform (Scotland) Act 2003.

A number of specific suggestions are proposed. The petitioner suggests homeowners should be absolved of responsibility for injuries or inconvenience caused to trespassers.

In general terms, there is no general criminal law exemption that permits, for example, homeowners to use violence or force against trespassers. The use of reasonable force against a person who is house-breaking can be justified on occasion; however it will always be for the police and prosecutors to assess the specific circumstances of any situation arising and this is in respect of a person house-breaking rather than trespassing a property.

To succeed in a personal injury claim in Scotland the claim must meet the following criteria: a third party must have owed you a relevant legal duty; the duty must have been breached; and you must have suffered injury as a result of that breach.

Under the Occupiers Liability (Scotland) Act 1960, an 'occupier' of land has a duty to show care towards people on that land in relation to

dangers connected with the state of the land or anything being done there. The care required is such care as is reasonable in the circumstances to see that the person will not suffer injury as a result of such dangers. This duty of care is the same regardless of whether or not an individual has permission to be on the occupier's land, but factors such as the foreseeability of unauthorised entry and any steps taken to prevent unauthorised entry and to warn of dangers may be of relevance in determining whether or not reasonable care has been taken in the particular circumstances. Any personal injury claim will turn on the particular facts and circumstances including whether the person who suffered the injury contributed through their own negligence. You may find the information in the following guide of interest.

[Brief guide to occupiers legal liabilities in Scotland in relation to public outdoor access.pdf \(outdooraccess-scotland.scot\)](#)

The petitioner also suggests there should be easier access to interdicts. A person can apply to the civil courts in Scotland at the moment for an interdict. Legal aid may be available when making any such application. An interdict can protect the applicant by prohibiting the other person from doing certain things, including being on or using the applicant's land or property. The decision on whether or not to grant an interdict is for the court. Before granting an interdict or an interim (temporary) interdict, the court would need to be satisfied that doing so would protect the applicant's rights for example because there is a reasonable likelihood that a wrong previously committed will be repeated, and it is clear what the interdicted person is being told not to do.

There is a proposal from the petitioner that criminal charges should be able to be sought where 'demonstrable distress' arises, with a particular mention made of vulnerable people. Without further detail it is difficult to understand the specifics of what may be sought here. [Section 3 of the 1865 Act](#) provides for certain circumstances in which criminal liability in respect of trespass in Scotland currently arises.

Finally, there is a request by the petitioner for lower evidential burdens to prove trespass. It is worth noting exactly what evidential burden operates in respect of the law relating to trespass will depend on the nature of the legal process e.g. a criminal offence carries a differential evidential burden than a civil law matter.

I hope this reply is helpful to the Committee's consideration of PE2060.

Criminal Justice Division