

Citizen Participation and Public Petitions Committee
Wednesday 11 December 2024
19th Meeting, 2024 (Session 6)

PE2060: Review existing legislation and legal remedies against trespassers

Introduction

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>

1. [The Committee last considered this petition at its meeting on 7 February 2024](#). At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received a new written submission from the Minister for Victims and Community Safety, which is set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 28 November 2023](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 15 signatures have been received on this petition.

Action

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

Clerks to the Committee
December 2024

Annexe A: Summary of petition

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: Extract from Official Report of last consideration of PE2060 on 7 February 2024

The Convener: PE2060, which is to review existing legislation and legal remedies against trespassers, has been lodged by Daithi Broad. The petition calls on the Scottish Parliament to urge the Scottish Government to review and revise existing legislation to offer better protection against trespassers. The SPICe briefing outlines the circumstances in which the public have the right to roam, noting that exceptions to that include domestic houses and gardens.

The briefing also notes that many people incorrectly—I was quite surprised by the briefing, I have to say—believe that the law of trespass does not exist in Scotland. Police Scotland has highlighted difficulties in applying the law in practice. Notably, the police have no jurisdiction, as trespass to land is a civil matter and they cannot assist in the removal of trespassers. Police Scotland’s comments on trespass state that the best and safest course of action is to obtain a court order, which, if breached, may then turn into a criminal matter.

The Scottish Government’s response to the petition also outlined information about the current law on trespassing. In response to the petition’s ask regarding responsibility for injuries on the land, the Scottish Government stated that the duty of care is the same regardless of whether 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 reasonable care has been taken in the particular circumstances. The response also notes that the evidential burden to prove trespass would depend on whether the individual was pursuing a criminal or civil law case.

For my own part, having read the briefing, I think that it is saying that there is little that you could risk doing, particularly in the current climate in which it seems to me that your interests are secondary to those of the people who want to trespass on your property. That is basically how it reads to me. Although we pretend otherwise, the reality is that that is how it will be if you seek to do anything. It is also very difficult, because the briefing does not define what “force” is; I imagine that, if you were to escort somebody off, “force” would now include even laying hands upon somebody, however gently that was done. I found the briefing quite dispiriting. Do colleagues have any suggestions on what we might do?

David Torrance: I wonder whether the committee would consider keeping the petition open and writing to the Scottish Government to ask whether it intends to carry out work relating to the issues that are raised in the petition and on whether it will undertake work to raise awareness about public rights to access different types of land and the law of trespass in Scotland.

The Convener: I would like to ask the Scottish Government whether it thinks that the current law of trespass in Scotland is worth the paper that it is written on. [Laughter.] I say that in all seriousness, because I was not quite sure what somebody’s remedy

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is under it. We will keep that petition open, and I can say to our petitioner that the briefing seems to recognise some of the issues raised.

Annexe C: Written submission

Minister for Victims and Community Safety written submission, 15 March 2024

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

Thank you for your letter dated 14 February 2024 seeking views from the Scottish Government on the points raised in PE2060: Review existing legislation and legal remedies against trespassers.

The Scottish Government provided a submission in relation to trespass in a letter dated 28 November 2023 to the Committee which covered the points raised by the petitioner.

You have asked for the Scottish Government's views on three questions arising from the Committee's consideration of the petition on 7 February 2024. These relate to practical remedies available for individuals who face persistent, repeated trespassing.

- Whether the Trespass (Scotland) Act 1865 ("the 1865 Act") can effectively address the circumstances outlined above

Yes, the 1865 Act does effectively address the circumstances. Trespass can be described as entering or remaining on another's property without permission.

Under common law, a landowner has the right to exclusive possession of their property. Accordingly, if someone enters a property without the lawful authority of the landowner or refuses to leave the property, then this may constitute a criminal offence under the 1865 Act.

On summary conviction, an individual may be found liable to a fine not exceeding £200. Where a person persists it should be reported to the police.

In the context of civil liability, if a trespasser causes damage to the property or interference with the landowner's enjoyment of their property, the landowner may seek legal recourse against the trespasser, including damages or an interdict to prevent further trespass

- Whether the 1865 Act is an effective deterrent, given that many people incorrectly believe that the law of trespass doesn't exist in Scotland

It is well understood by the general public that people cannot reside without permission in say, someone else's private garden. The Scottish Outdoor Access Code is widely publicised by a range of organisations including NatureScot, and sets out various categories of land which are outwith access rights, including for example a privacy zone around dwellings.

- more could be done to strengthen the Act to offer protection against trespassers

We do not consider that strengthening of the 1865 Act is required. The Act was amended by the Land Reform (Scotland) Act 2003 Act (“the 2003 Act”) and the Scottish Outdoor Access Code introduced under the 2003 Act provides further guidance in relation to access rights.

In addition, you ask for confirmation on whether the Scottish Government intends to carry out work related to the issues arising in the petition as well as raising awareness about public rights to access different types of land and the law of trespass in Scotland. The promotion of the Scottish Outdoor Access Code (SOAC) [Publication 2005 - Scottish Outdoor Access Code.pdf \(outdooraccess-scotland.scot\)](#) is, in our view, sufficient. The Code makes reference to the provisions of the 1865 Act, including for example, section 2.11 of the SOAC which sets out where access rights do not apply and where the law of trespass does, including categories of land such as a privacy zone around dwellings, the curtilage of other buildings, or crop land. Other relevant sections are 3.13 to 3.17 and 6.12 to 6.16.

We receive virtually no representations on this issue, so you will appreciate that this would not merit taking any direct action unless new substantial evidence comes to light.

I hope that this sufficiently addresses the points that you raise.

SIOBHIAN BROWN