

## **PE1756/D**

Scottish Government submission of 10 January 2020

This is a joint response from the Directorate for Housing and Social Justice and the Directorate for Justice.

We note that the petition is calling on the Scottish Parliament to urge the Scottish Government to review current housing legislation in circumstances where a non-tenant has been responsible for domestic or elder abuse. It is not clear from the petition which housing legislation in particular the petitioner is referring to, however, we have responded to the points raised in your letter and can provide more detail if needed.

### **Removal of perpetrator from the home**

The Committee noted that there are various options available to remove a suspected perpetrator of abuse from a home, but that most of these require applications either to the local authority or to the courts on the part of the person at risk of abuse.

Where a suspected perpetrator of domestic abuse has been charged with a criminal offence, there are other means by which they may be removed from a home they share with the suspected victim. The police can release them on what is known as an 'undertaking' prior to a bail hearing. An undertaking is in place until the accused person first appears in court and such undertakings can include a condition imposed by the police that may require the accused person not to approach the complainer and/or not to return to their shared place of residence. A person who breaches the conditions of their release on undertakings can be arrested and held in prison until they appear in court.

Equally, once an accused person appears in court (either immediately after being charged, or following release on undertakings), the court can remand a suspect in custody prior to trial. There is a statutory presumption in favour of granting bail to an accused person, but this may be over-riden where certain criteria are met, including, for example, where the court has reason to believe that the individual may interfere with witnesses or there are reasonable grounds to believe the accused person would commit further offences before their trial.

Where a court decides to release a suspect on bail, the court will impose standard bail conditions and can, in addition, add special bail conditions. These special bail conditions could require that the accused person does not attempt to approach or contact the complainer or return to a place of residence that they share with the complainer.

However, where there is insufficient evidence to arrest and charge a suspected perpetrator of domestic abuse, a person at risk of abuse would usually have to apply themselves via the civil courts to have the alleged perpetrator removed from a shared home. This process can result in a long wait for a positive outcome and also place an undue burden on the person at risk to take action themselves.

As such, the Committee may be aware that, in October 2019, the First Minister announced that the Scottish Government will legislate in this Parliament to provide the police and courts with new powers to impose emergency protective orders which can be used to remove a suspected perpetrator of domestic abuse from a home they share with a person at risk. This follows a consultation which was published in December 2018, that can be found at: [https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/user\\_uploads/290884\\_sct1218171740-001\\_protective\\_p3.pdf](https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/user_uploads/290884_sct1218171740-001_protective_p3.pdf)

The details of the proposed scheme of protective orders are being developed with key stakeholders with an interest in this area, in light of the consultation responses. However, the consultation paper explained that the broad intention is that, where a person appears to be at risk of abuse, the Police would be able to impose a short-term order directly and to apply to a court to put in place a longer-term order. This should remove a barrier to victims of abuse staying in their home by enabling the removal of a suspected perpetrator without the need for the person at risk to initiate court action themselves, which we know can be very difficult in practice, both because a person experiencing abuse may be being controlled by their abuser, and because of the time that it can take for such cases to be determined by the courts.

As can be seen, ensuring there are powers in place that allow third parties to take steps to protect persons at risk of domestic abuse is a key priority of this new legislation which will aid the safety of those experiencing domestic abuse.

### **Exclusion orders**

The consultation above also discussed Exclusion Orders, which is an existing measure in this area.

A person can apply to court for an exclusion order which can suspend the rights of a person's spouse, civil partner or, in certain circumstances, cohabitant from living in the family home. An exclusion order can be granted by the court if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the other party which is or would be injurious to the physical or mental health of the applicant or child.

When an exclusion order is granted the court must, on application by the person seeking the order:

- grant a warrant for the summary ejection of the other party from the family home;
- grant an interdict prohibiting the other party from entering the matrimonial home without the express permission of the applicant;
- grant an interdict prohibiting the removal by the other party, except with the written consent of the applicant or by a further order of the court, of any furniture and furnishings in the family home.

Some information on the number of applications for exclusion orders considered and granted by the courts is contained in the publication "Civil justice statistics in Scotland 2017-2018": <https://www.gov.scot/publications/civil-justice-statistics->

[scotland-2017-18/pages/6/#Table\\_5](#) The civil law court statistics presented in this publication relate only to the principal crave in a court case. An individual case can involve a number of different case types. The case type which is listed first on the initial writ is normally known as the principal crave and the others are described as ancillary craves. By not including ancillary craves, the statistics will be underestimating those case types.

There are no Scottish Courts and Tribunals Service statistics on the length of time it takes to deal with an application to court for an exclusion order. However, there are some statistics from the Scottish Legal Aid Board. These are shown at Annex B of the above consultation.

The majority of respondents to the consultation were in favour of more information being made available in relation to exclusion orders. One of the actions of the Family Justice Modernisation Strategy <https://www.gov.scot/publications/family-justice-modernisation-strategy/> which was published in September 2019 is to produce further guidance in this area.

### **Scottish Law Commission**

The Scottish Law Commission is undertaking a review of aspects of family law. This project is being approached in two phases. The first phase is a review of the law relating to cohabitants as set out in sections 25-28 of the Family Law (Scotland) Act 2006. The Scottish Law Commission expects to issue a report on the law relating to cohabitants in early 2021. Phase two of the review has not yet been identified but may be a review of civil remedies for domestic abuse, which would consider, among other matters, whether the existing legislative framework is adequate and sufficient to provide the victims of abuse and violence with prompt and effective protection. This will be a separate report to the work on cohabitants.

### **Ending Homelessness Together**

As the Committee is aware, in November 2018 we published the Ending Homelessness Together High Level Action Plan which detailed the actions needed to address homelessness in Scotland. It included the following commitment:

**We will develop preventative pathways for the groups at highest risk of rough sleeping and homelessness.** During 2019 we will review the evidence and identify the timetable and process for the design and implementation of preventative pathways for each high-risk group. Where pathways have already been developed, such as the SHORE standards (Sustainable Housing on Release for Everyone) for people leaving prison, we will support local authorities and delivery partners in their implementation. Through 2020-23, pathways will be developed and implemented with consideration of the groups at highest risk of rough sleeping and the highest proportion of people who become homeless. We will target our efforts in accordance with evidence, seeking to develop and share good practice that already exists. We recognise that effective prevention of homelessness must recognise the particular needs of people, mainly women and children, fleeing domestic abuse. We will seek to adopt housing advice, Housing Options and

housing management actions to avoid homelessness for families in this situation. This will build on the ongoing work with the Chartered Institute of Housing and Scottish Women's Aid. We will work with people with lived experience across at risk groups to ensure we are working towards solutions tailored for specific groups that will prevent people from becoming homeless.

During 2019, Scottish Government policy officials undertook work to understand the experience of people who find themselves homeless as a result of domestic abuse, alongside a wider piece of work on equalities across the Ending Homelessness Together Action Plan. We shortly intend to convene a working group to look improving housing outcomes for people, primarily women and children, experiencing domestic abuse and Callum Chomczuk, National Director of the Chartered Institute of Housing (CIH), Scotland and Jo Ozga from Scottish Women's Aid have agreed to chair this group.

One of the aims of this group will be to consider how to support the local implementation of [Domestic Abuse: a good practice guidance for social landlords](#), which was published in August by CIH in partnership with SWA, ALACHO, SFHA and Shelter Scotland as well as looking at the National Policy and Legislative Framework, including measures to remove the perpetrator from the home as indicated above.

It may interest the Committee to know that in January, we will publish the Ending Homelessness Together Action Plan Annual Report, which will detail the progress of each of the 49 actions outlined in the Action Plan.

I hope the Committee find this information helpful and note that the Scottish Government is continuing to work, in partnership with key stakeholders, to consider effective options to improve housing outcomes for people experiencing domestic abuse.