

23 October 2024



Dear Consultee

**DISCUSSION PAPER ON CIVIL REMEDIES FOR DOMESTIC ABUSE  
(DISCUSSION PAPER No. 178)**

We invite comments on the above Discussion Paper which has been published today. The paper is available on our website at <https://scotlawcom.gov.uk/law-reform/consultations/>, together with a news release and a summary.

The Discussion Paper reviews the existing law and puts forward proposals for reform of the current regime relating to civil remedies for domestic abuse and for a new law. The Discussion Paper starts by considering the civil remedies for domestic abuse available under the common law and under the following legislation: the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the Civil Partnership Act 2004, the Protection from Harassment Act 1997, and the Domestic Abuse (Scotland) Act 2011. The current civil remedies for domestic abuse include exclusion orders, interdicts (whether matrimonial, relevant or domestic interdicts), non-harassment orders, and domestic abuse interdict determinations. The Discussion Paper also considers the legislative provision for powers of arrest to be attached to interdicts in terms of the Protection from Abuse (Scotland) Act 2001. Our project does not however, extend to a review of the criminal law in relation to domestic abuse.

Stakeholders we have met with during the course of this project thus far, are of the view that the law in this area, which is contained in several statutes, is overly complicated and inaccessible; there are multiple remedies available in different provisions, and it is often not clear which is the most appropriate remedy to seek; this complexity and uncertainty has led to varying and inconsistent practice by practitioners and decision-makers, and it is unclear how or if the law in this area interacts with criminal and child protection law. Additional comments and observations include:

- The legislative foundation of civil protection from domestic abuse, the much-amended Matrimonial Homes (Family Protection) (Scotland) Act 1981 has been supplemented over the years by numerous statutes. The result is a bewildering patchwork of legislation and remedies that makes the law more complex and less accessible;
- There is insufficient recognition of the impact of domestic abuse on children in the civil protection legislation and concerns that children's views are not taken into account in contact and residence disputes;



- There is a lack of joined-up thinking and communication between the civil and criminal courts dealing with family law actions (for example child contact) and criminal prosecutions relating to domestic abuse involving the same victim/survivor and perpetrator;
- The distinction between spouses and civil partners on one hand and cohabitants on the other, when it comes to occupancy rights (cohabitants must apply to the court for a declarator of occupancy rights) is unfair;
- Victim/survivors need greater protection by way of special measures when appearing in the civil courts, to seek a civil protection order or in cases of child contact/residence disputes.

In order to address these concerns holistically, we set out proposals for reform of the current law but, critically, we also propose a new law which would involve the creation of a statutory delict of domestic abuse, together with the introduction of a statutory civil definition of domestic abuse (harmonising it with the definition of abusive behaviour in the Domestic Abuse (Scotland) Act 2018) to apply to this new law. We also discuss specific forms of abuse, tech abuse, immigration abuse, and economic abuse. Having set out the basis for a delict of domestic abuse, we propose a bespoke set of remedies for victim/survivors, if the delict of domestic abuse is established in court, and address ancillary matters such as defences, enforcement and third party orders.

In light of these and other difficulties, the paper seeks consultees' views on the current law and on possible options for reform.

Consultation is critical in all our law reform projects to ensure that the final recommendations contained in our report would, if implemented, result in law which is just, principled, responsive and easy to understand.

We would therefore be grateful to receive your views on any or all of the questions in this Discussion Paper. All views will be fully considered and analysed in the course of reaching our final conclusions. The consultation period ends on **22 January 2025**.

Where possible, we would prefer the electronic submission of comments. You can use the electronic response form for this Discussion Paper on our website at:

<http://www.scotlawcom.gov.uk/publications/discussion-papers-and-consultative-memoranda/2010present/>.

The form has a questionnaire format which allows you to comment (briefly or at length) on any of the paper's questions which interest you. The form can be emailed to us at [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk).

Alternatively, you may prefer to send your comments on the Discussion Paper by using the general comments form on the website "Contact us" page (<http://www.scotlawcom.gov.uk/contact-us/>). As noted above, the consultation concludes on **22 January 2025**, accordingly, we would be grateful if comments were submitted by then.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. We may also (i) publish responses on our website (either in full or in some other way such as summarised); and (ii) attribute comments and publish a list of consultee' names. However, if you would like to respond confidentially, please let us know and we will not publish your response or your name, in accordance with the 2002 Act.



More information on the work of the Commission can be found on our website at <https://www.scotlawcom.gov.uk/>. Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully

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