

RESPONSE FORM

DISCUSSION PAPER ON «CIVIL REMEDIES FOR DOMESTIC ABUSE»

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. Respondents who wish to address only some of the questions and proposals may do so. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

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 re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names. Any confidential response will not be published (in accordance with the 2002 Act).

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only a few of the proposals, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk). Comments not on the response form may be submitted via said email address on our website. If you prefer you can send comments by post to the Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh, EH1 1RQ.

We ask for responses to be submitted by **22 January 2025.**

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| **Name:**  «InsertTextHere» |
| **Organisation:**  «InsertTextHere» |
| **Address:**  «InsertTextHere» |
| Email address:  «InsertTextHere» |

**Summary of Proposals**

«1. Does the current law, requiring cohabitants to apply to court for occupancy rights, cause problems for cohabitants, and if so, can you provide more detail?»

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| **Comments on Proposal 1**  «InsertTextHere» |

«2. Should the court, at its discretion, be able to make an order for occupancy rights for up to 12 months, rather than the current maximum of six months?»

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| **Comments on Proposal 2**  «InsertTextHere» |

«3. What specific factors, if any, should the court take into account when exercising its discretion?»

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| **Comments on Proposal 3**  «InsertTextHere» |

«4. Do you support any other way of reforming occupancy rights for cohabitants, and if so what?»

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| **Comments on Proposal 4**  «InsertTextHere» |

«5. Does the definition of “cohabiting couple” in the 1981 Act give rise to any concerns in practice?»

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| **Comments on Proposal 5**  «InsertTextHere» |

«6. Should the court be required to consider making an exclusion order to suspend the occupancy rights of an entitled or non-entitled party, where that party is convicted of an offence under the 2018 Act or an offence which is aggravated in terms of section 1 of the 2016 Act?»

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| **Comments on Proposal 6**  «InsertTextHere» |

«7. Can you provide details of any case(s) where cohabitants have suffered because of a lack of statutory protection in relation to division and sale?»

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| **Comments on Proposal 7**  «InsertTextHere» |

«8. Should cohabitants (who meet the definition in the 1981 Act) benefit from the same statutory protection in relation to division and sale that spouses and civil partners do?»

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| **Comments on Proposal 8**  «InsertTextHere» |

«9. Should cohabitants (unlike spouses and civil partners) be able to contract out of any statutory protection in relation to division and sale?»

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| **Comments on Proposal 9**  «InsertTextHere» |

«10. Do you support the inclusion of a definition of “dealing” being a legal act in respect of the home, carried out by an entitled party, which may adversely affect occupancy rights?»

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| **Comments on Proposal 10**  «InsertTextHere» |

11. Can you provide details of any case(s) where the entitled party, who is the tenant, has attempted to transfer the tenancy or sub-let it, in order to defeat the occupancy rights of a non-entitled party; or where one party has refused to consent to the other party giving notice to leave? Do you think reform is required to prevent this?

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| **Comments on Proposal 11**  «InsertTextHere» |

12. Can you provide details of any case(s) where an entitled party (whether acting in bad faith or not) has sold the property, in spite of a non-entitled party’s occupancy rights?

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| **Comments on Proposal 12**  «InsertTextHere» |

13. What legal measures do you think could prevent this happening?

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| **Comments on Proposal 13**  «InsertTextHere» |

14. Should it be possible, as part of an exclusion order or any other civil protection order, for the court to require any communication between the perpetrator (or anyone acting on their behalf), and the victim/survivor, to be addressed only to the victim/survivor’s solicitor or named contact?

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| **Comments on Proposal 14**  «InsertTextHere» |

15. In your experience, as a practitioner or otherwise, is it an issue that interdicts ancillary to exclusion orders fall at the point of divorce or dissolution, and if so, why?

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| **Comments on Proposal 15**  «InsertTextHere» |

16. Should statutory provision for an exclusion order for cohabitants expressly include parties who were cohabiting, so long as both parties have occupancy rights?

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| **Comments on Proposal 16**  «InsertTextHere» |

17. Is the statutory test of necessity for an exclusion order too high?

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| **Comments on Proposal 17**  «InsertTextHere» |

18. What changes, if any, would you suggest to the statutory test for an exclusion order?

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| **Comments on Proposal 18**  «InsertTextHere» |

19. Do you agree that terminology should, where possible, be simplified, so that there is no longer any distinction based solely on the different type of relationship?

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| **Comments on Proposal 19**  «InsertTextHere» |

20. Should cohabitants with an interdict ancillary to an exclusion order be entitled to a power of arrest when craved, in terms of section 1(1A) of the 2001 Act, in the same way as spouses and civil partners?

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| **Comments on Proposal 20**  «InsertTextHere» |

21. In the case of interdicts for the purpose of protection from domestic abuse, should the length of the power of arrest attached be the same as the length of the interdict?

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| **Comments on Proposal 21**  «InsertTextHere» |

22. Is the test for attachment of a power of arrest to an interdict in relation to domestic abuse too high, and if so, what should the test be?

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| **Comments on Proposal 22**  «InsertTextHere» |

23. Do you support the introduction of a new statutory delict of domestic abuse?

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| **Comments on Proposal 23**  «InsertTextHere» |

24. Should the delict of domestic abuse be defined in terms of “abusive behaviour”, as in the 2018 Act?

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| **Comments on Proposal 24**  «InsertTextHere» |

25. If not, what definition do you propose instead?

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| **Comments on Proposal 25**  «InsertTextHere» |

26. Should the defence recognise behaviour which was reasonable in the particular circumstances, as in the 2018 Act?

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| **Comments on Proposal 26**  «InsertTextHere» |

27. Do you support the inclusion of tech abuse as one element of abusive behaviour in a statutory definition of domestic abuse as a delict, and if so, what factors should be included?

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| **Comments on Proposal 27**  «InsertTextHere» |

28. Do you support the inclusion of immigration abuse as one element of abusive behaviour in a statutory definition of domestic abuse as a delict, and if so, what factors should be included?

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| **Comments on Proposal 28**  «InsertTextHere» |

29. Do you support the inclusion of economic abuse as one element of abusive behaviour in a statutory definition of domestic abuse as a delict, and if so, should it be modelled on the definition in the Domestic Abuse Act 2021?

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| **Comments on Proposal 29**  «InsertTextHere» |

30. Should the following (final) orders be available to a pursuer in respect of the delict of domestic abuse, as part of a “Domestic Abuse Civil Protection and Redress Order”:

(a) A protection order to:

(i) Prohibit any future abusive conduct towards the pursuer; and

(ii) An extension of that order to protect other named people (including children of the household or other children or adults)?

(b) A redress order, to compensate the pursuer by way of an award of damages for losses suffered as a result of the abusive behaviour;

(c) A civil barring order, to exclude the defender from the home for a fixed period;

(d) An order for the delivery of specified documents;

(e) An order for the delivery of specified property and personal effects;

(f) An order regulating the care of and responsibility for a pet, or for the delivery of a pet; and

(g) Should any other order be included and, if so, what?

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| **Comments on Proposal 30**  «InsertTextHere» |

31. Should each element of a DACPRO be available as a interim order, on the balance of convenience?

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| **Comments on Proposal 31**  «InsertTextHere» |

32. Should an interim civil barring order last for three weeks and a final one for two months, or what other periods would you propose?

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| **Comments on Proposal 32**  «InsertTextHere» |

33. Should protection orders be available ex parte (without notice), and should orders for the protection of documents, property and pets be available ex parte where there is a risk the subject of the order will otherwise be destroyed or damaged or hidden?

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| **Comments on Proposal 33**  «InsertTextHere» |

34. Should a barring order be available only on notice, and not ex parte?

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| **Comments on Proposal 34**  «InsertTextHere» |

35. Should breach of an interim or final DACPRO (excluding redress orders) constitute a criminal offence?

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| **Comments on Proposal 35**  «InsertTextHere» |

36. Should breach of an ex parte (without notice) order be excluded from criminal sanction?

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| **Comments on Proposal 36**  «InsertTextHere» |

37. In your experience, are there any other measures relating to enforcement which could provide the necessary protection?

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| **Comments on Proposal 37**  «InsertTextHere» |

38. Should it be possible for a protection order to be made in relation to an associate of the defender, where the domestic abuse is carried out by the associate on behalf of or with the encouragement of the defender?

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| **Comments on Proposal 38**  «InsertTextHere» |

39. If so, should breach of a protection order by an associate constitute a criminal offence?

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| **Comments on Proposal 39**  «InsertTextHere» |

40. Should it be possible for a DACPRO to extend beyond the sheriffdom in which it is granted?

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| **Comments on Proposal 40**  «InsertTextHere» |

41. Should it be possible for a third party to seek a DACPRO on behalf of a victim/survivor?

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| **Comments on Proposal 41**  «InsertTextHere» |

42. If so, should they need the victim/survivor’s consent to do so?

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| **Comments on Proposal 42**  «InsertTextHere» |

43. Should defenders be able to seek the preservation or delivery of their specified possessions, where it is not possible for the defender to access them without being in breach of a DACPRO?

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| **Comments on Proposal 43**  «InsertTextHere» |

44. Are there any other orders which a defender should be able to seek, and if so what?

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| **Comments on Proposal 44**  «InsertTextHere» |

45. Should civil remedies for domestic abuse remain focused on partners and ex-partners (that is, current and former spouses, civil partners, cohabitants and those in an intimate partner relationship)?

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| **Comments on Proposal 45**  «InsertTextHere» |

46. Should a child under 18 be recognised as an adjoined victim/survivor of abuse perpetrated by or against a parent or connected adult in their life?

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| **Comments on Proposal 46**  «InsertTextHere» |

47. Should a civil protection order be available for a child who is an adjoined victim/survivor:

(a) As part of a civil protection order/DACPRO sought by the victim/survivor;

(b) If sought by the adjoined victim/survivor themselves, where they have capacity;

(c) If sought by a parent/guardian on their behalf?

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| **Comments on Proposal 47**  «InsertTextHere» |

48. Do you agree that the Children (Scotland) Act 1995 should be amended so that:

(a) the court is required to provide written reasons for making an order under section 11 (such as a contact or residence order), where there is a history of domestic abuse?;

(b) the safety of the parents should be considered by the court as part of the consideration of the child’s welfare?

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| **Comments on Proposal 48**  «InsertTextHere» |

49. Are there any other ways of ensuring the safety of the child and of the victim/survivor is considered by the court in making orders under section 11 of the 1995 Act?

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| **Comments on Proposal 49**  «InsertTextHere» |

50. Do you agree that a person seeking a civil protection order should be entitled to special measures as a party and while giving evidence during those proceedings?

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| **Comments on Proposal 50**  «InsertTextHere» |

51. Do you think that a person who alleges they have been subjected to domestic abuse by the other party to the proceedings, should be entitled to special measures as a party and while giving evidence in civil proceedings?

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| **Comments on Proposal 51**  «InsertTextHere» |

52. Should remote hearings be available as a standard special measure?

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| **Comments on Proposal 52**  «InsertTextHere» |

53. Do you agree that personal conduct of cases by a party to proceedings should be prohibited where a civil protection order is sought against them, as well as in all civil cases where there is a civil protection order, conviction or bail conditions in place in respect of that party?

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| **Comments on Proposal 53**  «InsertTextHere» |

54. Should there be an obligation placed on parties who are (ex-) partners involved in civil proceedings, including those under section 11 of the 1995 Act, to disclose formal responses taken in respect of domestic abuse? If so, what should be disclosed?

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| **Comments on Proposal 54**  «InsertTextHere» |

55. How can the existence of a criminal proceedings in relation to domestic abuse be effectively communicated to the court in civil proceedings, including those under section 11 of the 1995 Act?

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| **Comments on Proposal 55**  «InsertTextHere» |

56. Should there be a statutory requirement for the Scottish Government to collect disaggregated statistics on the number of civil protection orders sought and granted in relation to domestic abuse?

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| **Comments on Proposal 56**  «InsertTextHere» |

57. Are there any civil law reform measures which could help support victim/survivors of domestic abuse in rural and island areas?

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| **Comments on Proposal 57**  «InsertTextHere» |

58. What information or data do consultees have on:

(a) the economic impact of current civil protection remedies sought under the common law and under the 1981 and 2004, 2001, 2011 and 1997 Acts?;

(b) the potential economic impact of any option for reform discussed in Chapter 5 of this Discussion Paper (in particular advice relating to, and raising of an action for, a DACPRO)?;

(c) the potential economic impact upon the SCTS and legal aid budgets of any option for reform discussed in this Discussion Paper, in particular those discussed in Chapter 8?

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| **Comments on Proposal 58**  «InsertTextHere» |

General Comments on the Discussion Paper

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| **General Comments**  «InsertTextHere» |

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.