



# Scottish Law Commission

*promoting law reform*

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## Reform of the civil law of domestic abuse

Domestic abuse is a significant problem in Scotland.

Police Scotland recorded 61,934 incidents of domestic abuse in the year 2022 to 2023. Of those, 81% involved a female victim and a male suspected perpetrator, reflecting the fact that women are much more likely to be victims of domestic abuse than men.

These statistics do not however record the true incidence of domestic abuse in Scotland, as not all incidents are reported to the police.

While criminal law is a key tool in tackling domestic abuse, 61% of the incidents of domestic abuse recorded in 2022 to 2023 did not involve criminal conduct. It is therefore essential that the civil remedies available for victim/survivors of domestic abuse are fit for purpose.

Civil remedies are court orders sought by victim/survivors against the perpetrator of domestic abuse. The remedies include a court order which removes a perpetrator from the family home, and an order preventing a perpetrator from coming within a certain distance of the family home. Being able to seek a civil remedy can ensure victim/survivors receive much-needed protection, as well as empowering them to take control of their situations.

Today the Scottish Law Commission has published a Discussion Paper reviewing the civil remedies available for domestic abuse in Scotland.

The law in this area has been criticised for being spread over many different Acts, for being overly complicated and inaccessible, and for lack of clarity about appropriate remedies.

Additional criticism includes:

- Insufficient recognition of the impact of domestic abuse on children, particularly in child contact disputes;
- Insufficient communication between the civil and criminal courts in domestic abuse cases: the civil courts may be unaware of criminal proceedings against the perpetrator;

- The tests for certain court orders (such as exclusion orders) are too high, making it difficult for a victim/survivor to get the protection they need;
- Cohabitants are not automatically entitled to the same level of protection as spouses and civil partners;
- Victim/survivors can be exposed to their perpetrator in court, and special measures are needed to protect them in the court and the building.

The Discussion Paper considers how the law could be improved and puts forward proposals for change. In particular, we seek views on a proposed new civil delict of domestic abuse. This would introduce a definition of “abusive behaviour” in the civil law for the first time. It could also take into account specific types of abuse, including tech abuse, immigration abuse, and economic abuse.

A new civil law would be able to offer specific remedies that would help protect victim/survivors, children, property, and pets. We also put forward suggestions to ensure that children are better protected when there are disputes about child contact and residence.

Professor Gillian Black, Commissioner on this project, said:

“Domestic abuse violates the trust at the heart of intimate relationships, and the statistics show that it is a critical problem in Scotland. The legal system can play a vital role in tackling domestic abuse, but it requires the law to be relevant and accessible. Too many parties have told us that the current civil law is overly-complex and fails to meet the needs of victims seeking protection from their abuser. In this Discussion Paper, we set out proposals to improve and strengthen the civil law, and introduce a new civil remedy to offer meaningful protection orders for victims and children. We welcome input on these proposals in this consultation exercise.”

The Scottish Law Commission invites comments from everyone with an interest. Responses to the Discussion Paper can be made until 22 January 2025.

## **FURTHER INFORMATION SECTION**

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chair is the Rt Hon Lady Paton, a Court of Session judge. The other Commissioners are David Bartos, Professor Gillian Black, Professor Frankie McCarthy and Ann Stewart. The Chief Executive is Rachel Rayner.

2. Further information can be obtained by contacting Lorraine Stirling, Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh EH1 1RQ (Tel: 0131 244 6605; email [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk)).

3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 23 October 2024.