

NORTHERN CONSTABULARY

CIVIL AND CRIMINAL LEGISLATION OPTIONS AVAILABLE TO TACKLE DOMESTIC ABUSE

Introduction

In Scotland a range of legislation, both criminal and civil exists to protect victims and their families from domestic abuse.

Over the last couple of years several changes to legislation have been made which relate to the rights of people who are man and wife, co-habiting (living together) or in a same sex relationship.

The following guidance is aimed at providing you with information on your civil options when you are seeking ways to resolve your situation. The first section is a summary of relevant legislation and the second section contains advice on the issues you should consider when seeking a civil solution.

Common Law

The majority of domestic abuse incidents reported to the police and subsequently the Procurator Fiscal, are dealt with as a common law assault. Other common crime types associated with domestic abuse include Breach of the Peace, Breach of Special Bail Conditions, Breach of a Non-Harassment Order, murder, attempted murder, rape, possession of an offensive weapon, breach of bail, breach of non-harassment order and breach of interdict.

Family Law (Scotland) Act 2006

The Family Law (Scotland) Act 2006 has updated many aspects of the Matrimonial Homes (Family Protection) (Scot) Act 1981.

Occupancy Rights

The Family Law (Scotland) Act 2006 allows an 'entitled' spouse and a 'non-entitled' spouse to live in a matrimonial home together, in particular it allows the non-entitled spouse to enter and occupy the matrimonial home.

One spouse cannot refuse to allow the other to enter or live in a matrimonial home. The **exception to this** is where the spouses have not co-habited for a continuous period of two years and during that time the non-entitled spouse has not occupied the matrimonial home. In this case, the non-entitled spouse shall, after 2 years, fail to have occupancy rights.

Interdicts

Where spouses occupy a matrimonial home, **either spouse can apply to a court for an exclusion order (or interdict)** suspending the rights of the other spouse to live there, regardless of whether or not the other spouse is in occupancy at the time of the application.

The court will grant an interdict if it appears that it is necessary to protect the applicant and any child of the family from any conduct, even if it is merely threatened or anticipated conduct, and which causes the applicant and any child physical or mental injury.

When making an exclusion order the court will issue an **interdict** preventing the spouse from entering:

- A matrimonial home
 - Any residence occupied by the applicant spouse
 - Any place of work of the applicant spouse
 - Any school attended by a child in the care of the applicant spouse
- Pending the granting of an interdict, the court may issue an **interim interdict**, suspending the occupancy rights of the non-applicant spouse.

Power Of Arrest

If you have obtained an interdict you may apply to the court for a power of arrest to be attached to the interdict. This power is contained within the Protection from Abuse (Scotland) Act 2001. The court will specify an expiry date not later than three years after the date of issue.

You may apply for a power of arrest at the same time as applying for the interdict.

You may also apply for a power of arrest to be attached to a pre-existing interdict.

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Domestic Interdicts

The Family Law (Scotland) Act 2006 extends the legislation relating to **interdicts** to apply to co-habiting **heterosexual couples** and **same sex couples** who are living together as civil partners. A power of arrest, granted under the terms of the Protection From Abuse (Scotland) Act 2001 can be applied to a domestic interdict.

Protection From Harassment

Any person who pursues a course of conduct amounting to harassment of another is contravening the Protection from Harassment Act 1997.

The legislation states that harassment is conduct which causes personal alarm or distress and must involve conduct on at least two occasions.

A court may grant an interdict or interim interdict (a Non-Harassment Order) if it is satisfied it is appropriate to do so to protect a person from further harassment.

Breach of a Non-Harassment Order

A constable may arrest a person they reasonably believe is in breach of a Non Harassment Order, or has breached a Non Harassment Order.

Non-Harassment Order Issued Following Conviction For A Domestic Abuse Incident

Where a person is convicted in relation to an incident involving domestic abuse, the court may issue a Non Harassment Order against the perpetrator, requiring them to refrain from conduct towards the victim which amounts to harassment.

Human Rights Act 1998

Article 2 states everyone's right to life shall be protected by law.

Article 3 states no one shall be subjected to torture or inhuman or degrading treatment or punishment.

Article 8 states that everyone has the right to respect for private and family life, their home and correspondence.

There shall be no interference by a public authority with the exercise of this right, except in accordance with the law and as is necessary in the interests of public safety, the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

The Rights Of Cohabitants

The Family Law (Scotland) Act 2006 introduced new rights to protect cohabitants when their relationship breaks down. A cohabitant is a person who is living with a person as if they were husband and wife, or in a civil partnership.

Civil Partnerships

You can now register a civil partnership in Scotland if you are over 16 years of age, not already married or in a civil partnership and not closely related to the other person.

It is a legal way of formalising a same sex relationship, and getting the same rights as married couples.

Civil partnership affords you a number of rights including:

- Pension benefits
- Tax provision
- Exemption from testifying in court against your partner
- Recognition for immigration purposes
- **Protection from domestic abuse**
- A duty to provide maintenance for your partner and children
- Civil partnership affords you more rights than a co-habiting couple.

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Domestic abuse within a Civil Partnership

If you are living in a civil partnership you have the same legal protection as a married person. The Family Law (Scotland) Act 2006 has extended the terms of the Matrimonial Homes legislation to same sex couples. You can therefore apply to a court for the same protective orders to prevent an abusing partner from entering a shared home, even if the abusing partner owns it.

A civil partnership can be dissolved on application to a court. Anything acquired during the partnership will be classed as 'partnership property' and will be divided fairly between the partners by the court. Child residence and contact will also be determined by the court.

Parental Rights and Responsibilities (PRR's)

The Family Law (Scotland) Act 2006 has extended the provisions of the Children (Scotland) Act 1995 in respect of parental rights and responsibilities. Whether or not a child's parents are married to one another, they both have PRR's if they register the birth together, and both their names appear on the birth certificate.

If unmarried parents do not agree to register the birth together, the father can still obtain PRR's in relation to any child born after 4 May 2006 by:

- Marrying the mother
- Signing and registering a PRR Agreement with the mother
- Asking the court to give them to him

Unmarried fathers not initially recorded on a birth certificate of a child can subsequently have their name added to the birth certificate by lodging a declaration along with the mother, with the Registrar of Births. Unmarried fathers so registered after 4 May 2006 will be conferred PRR's.