

Domestic Abuse and Housing Rights

By Scottish Women's Rights Centre



Introduction

This is an information guide for women in Scotland who are experiencing gender-based violence and need information on their housing rights.

Experiencing gender-based violence and abuse can impact your housing circumstances. You may not feel safe in your own home and want to find safe accommodation elsewhere, or you may want to know what your options are for staying in your home and keeping the abuser away. This guide will provide you with information about your housing rights in Scotland and enable you to make informed choices.

We have also included details of other organisations and services which may be able to offer you further support. Please note that this guide does

not include all forms of gender-based violence. If your circumstances are not covered by this guide, please contact the SWRC helpline and speak to a member of the team. They will be able to signpost you to appropriate information and support.

The Scottish Women's Rights Centre (SWRC) has co-produced this guide with Shelter Scotland and Scottish Women's Aid. The guide contains information for a range of circumstances that survivors of gender-based violence may face and has helpful flow charts that set out different options available depending on the relevant circumstances.

Other Associated Guides

Guide 2

Sexual Abuse and Housing Rights

Guide 3

Stalking and Housing Rights

Guide 4

Non-UK Nationals experiencing Gender-Based
Violence and Housing Rights

Visit: www.scottishwomensrights.org.uk

Helpline: 08088 010 789

Email: info@scottishwomensrightscentre.org.uk



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This guide was developed by:



The Scottish Women's Rights Centre is a collaboration project between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic, providing free legal information, advice, representation and advocacy support to self-identifying women in Scotland affected by violence and abuse



Scottish Women's Aid is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role in coordinating, influencing and campaigning for effective responses to domestic abuse. Working with a network of 34 specialists in local Women's Aid groups toward a shared vision of a Scotland where domestic abuse is not tolerated.

Acknowledgements

We would like to acknowledge and thank Shelter Scotland the support we received in the content for these guides.

Shelter Scotland provide practical support and advice to people experiencing bad housing or homelessness, by informing professionals, and by campaigning for legislative change.

What is Domestic Abuse?

Scottish Women's Aid defines domestic abuse as an **'a pattern of controlling, coercive, threatening, degrading and/or violent behaviour, including sexual violence, by a partner or ex-partner.'**

Domestic abuse is overwhelmingly experienced by women and perpetrated by men.



Domestic abuse has many forms, including but not limited to:

- physical abuse; hitting, shoving, physically attacking, shaking, scalding etc.
- sexual abuse: rape & sexual abuse, taking abusive images, sharing personal images.
- emotional abuse; frightening, humiliating someone, degrading remarks, deliberately upsetting someone etc.
- isolation: isolating you from family or friends.
- monitoring and regulating your activities, who you can see and where you can go.
- financial abuse: controlling your money and activities, stealing, preventing you access to your own money.

Domestic abuse is a crime. This means that a person who engages in a pattern of abusive behaviour towards a ex/partner could be prosecuted and punished by the law.

If you are not sure, but sometimes feel scared of or around

What is Domestic Abuse

your ex/partner, you can contact Scotland's Domestic Abuse and Forced Marriage Helpline and speak to trained workers about your situation. They will help you understand your options.

You can contact them on **0800 027 1234** 24 hours a day 7 days a week. You can also email or check their website for more information: <https://sdafmh.org.uk>.

Organisations offering support

If you are experiencing domestic abuse and are worried about your housing situation, this guide may be able to provide you with some information about your rights and the options available to you. The guide is limited because it can't include every individual circumstance. For further information you can contact the SWRC Helpline and speak to a worker who will provide a safe space to talk through your options and signpost you to appropriate sources of support: <https://www.scottishwomensrightscentre.org.uk/services/>.

You can also get in touch with your local Women's Aid group or Shelter Scotland who will also be able to provide further support and information about your housing rights and options.

Scottish Women's Rights Centre

<https://www.scottishwomensrightscentre.org.uk>

Our services include legal and advocacy helplines, legal advice surgeries, advocacy support and legal representation. You can find a [list of our services](#) on our website.

Shelter Scotland

<https://scotland.shelter.org.uk/>

Telephone 0808 800 4444. Mon – Fri except for bank holidays. Calls are free from most mobile networks and landlines. You can also chat to an advisor online Mon-Fri 9am to 4pm (except bank holidays).

Scottish Women's Aid

Visit their website for contact details of all local Women's Aid groups in Scotland: <https://womensaid.scot/find-nearest-wa-group>

Scotland's Domestic Abuse and Forced Marriage Helpline

Telephone 0800 0271234 24 hours a day 7 days a week.

<https://sdafmh.org.uk>

Rape Crisis Scotland

Telephone (Helpline): 08088 01 03 02 5pm – midnight,
Monday-Friday


Text: 07537 410 027

Email: support@rapecrisisscotland.org.uk

Webchat: <https://www.rapecrisisscotland.org.uk/>

Homeless Applications and Your Rights

- To do this you need to contact the council's Homeless Department and tell them that you are making a homeless application.
- You can present as homeless at any council as the council has a duty to provide you with temporary accommodation in an emergency.
- You can contact your local Women's Aid Group. <https://womensaid.scot/find-nearest-wa-group>
- You can find information about your nearest office, on the Shelter Scotland website:
- https://scotland.shelter.org.uk/housing_advice/i_need_help_from_the_council
- You do not need to go into lots of detail and provide evidence to the council that you are experiencing gender-based violence at this point.
- You do not need to have reported it to the police in order to access emergency homeless accommodation.



*I am a survivor of
domestic abuse;
I live in a privately
owned home and
my partner is the
abuser*

I live in a privately owned home and my partner is the abuser. In all cases, the following applies:

- If you need to leave your home due to domestic abuse, temporary refuge accommodation might be available from Women's Aid groups. Some refuges are accessible for women with disabilities and some that provide specific services for women from black and minority ethnic groups. There are also some specialist services that provide accommodation to young homeless women who are survivors of childhood sexual abuse.
- You have the right to make a homeless application to the local council.
- The council must supply you with temporary accommodation from the day you present as homeless.
- Domestic Abuse is a crime and you have the right to report it to the Police. The Scottish Women's Rights Centre has information about your rights when reporting Domestic Abuse to the Police.
- If you decide to report the abuser to the Police there might be protections put in place by the criminal justice system. Protections that stop the perpetrator from coming near you.
- If you have joint ownership, you have automatic occupancy rights. This means you have a right to remain in the

property and not be excluded from the property by your partner.

A Family Law Solicitor can advise whether you may be able to apply to the court for an exclusion order to remove their right to remain in the property.

More information on the next page.



You or your ex/partner has sole ownership of the property

You ARE married/in a civil partnership

You own the property

- You have automatic occupancy rights to live in the property as the owner.
- Your ex/partner also has occupancy rights as the owner.
- You have a right to remain in the property and not be excluded from the property by your ex/partner, unless you have left the property for more than two years. After two years of being out of the family home you lose occupancy rights.
- A Family Law Solicitor can advise whether you may be able to apply to the court for an exclusion order to remove your ex/partner's right to remain in the property.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.

Your ex/partner owns the property*

- You have automatic occupancy rights.
- Your ex/partner also has occupancy rights as the owner.
- You have a right to remain in the property and not be excluded from the property by your ex/partner, unless you have left the property for more than two years. After two years of being out of the family home you lose occupancy rights.
- A Family Law Solicitor can advise whether you may be able to apply to the court for an exclusion order to remove your ex/partner's right to remain in the property.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.

* The above point does not apply if:

- You are no longer married or in a civil partnership, following a divorce or dissolution of the relationship.
- You are out of the home for a continuous period of two years.
- If there is an agreement signed by a notary that states that you are no longer going to occupy the property.

You or your ex/partner has sole ownership of the property

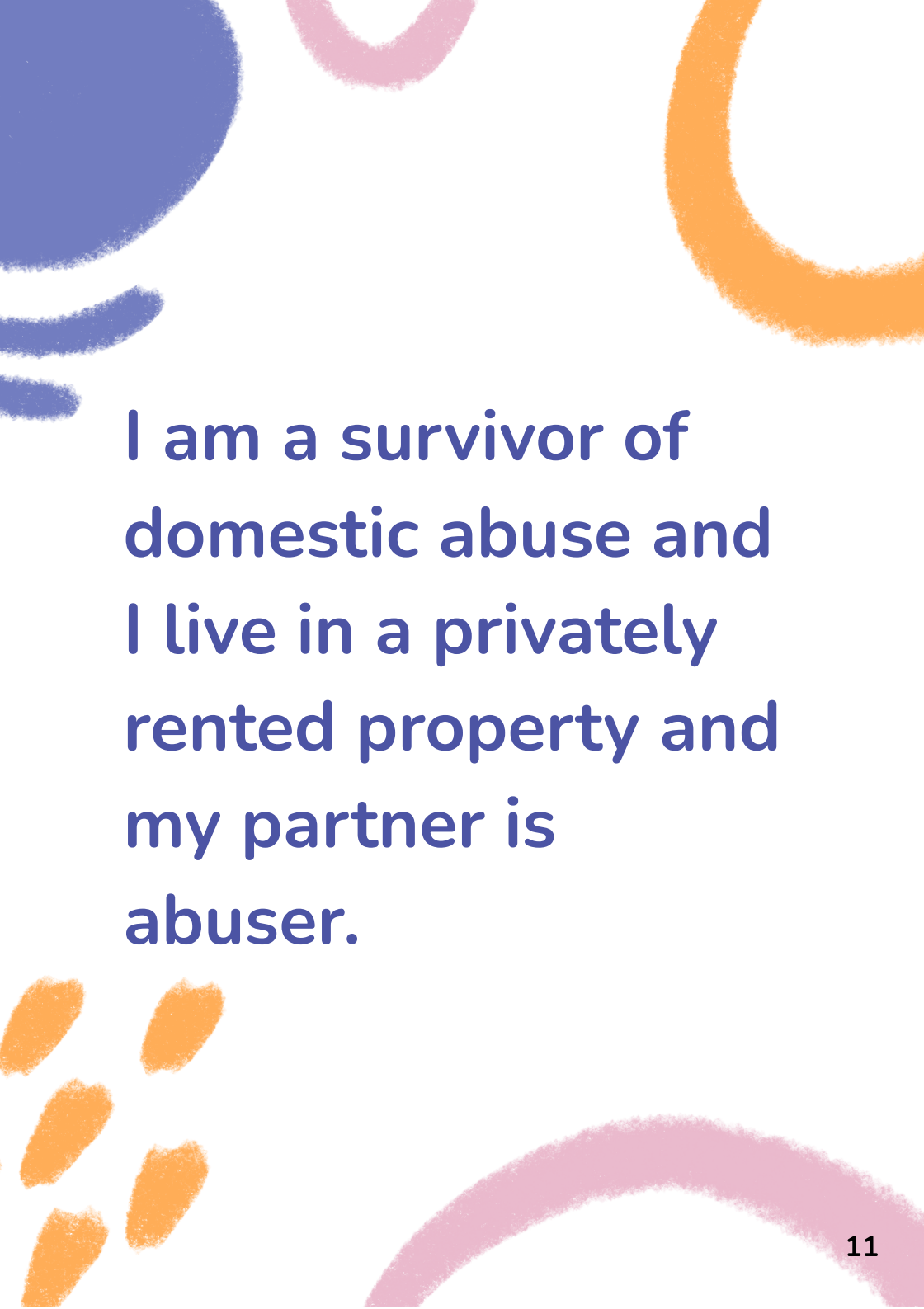
You ARE NOT married/in a civil partnership

You own the property and your ex/partner does not

- You have occupancy rights to live in the property as you are the owner.
- Your ex/partner has no legal right to reside in the property.
- You can tell them to leave the property and you do not need any orders of the court to do so.
- You have the right to change the locks on the property.
- If they refuse to leave you can ask the police to remove them or you can speak to a Family Law Solicitor about how to apply to the court for an ejection order to keep them from the home.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.

Your ex/partner owns the property

- You may have no automatic right to stay in the home and your ex/partner may ask you to leave. If this happens then you can make a homeless application to the local council. The council must supply you with temporary accommodation from the day you present as homeless.
- You can speak with a Family Law Solicitor who will be able to advise whether you may be able to apply to go to court to get occupancy rights granted to you for six months at a time. This should be done urgently once you feel ready to leave your ex/partner.
- Once you have occupancy rights, you can stay in the house, and you can speak to a Family Law Solicitor about the possibility of applying for an exclusion order to keep your ex/partner from the home.
- You can read more about how to make a homeless application on the Shelter Scotland website.



**I am a survivor of
domestic abuse and
I live in a privately
rented property and
my partner is
abuser.**

I live in a privately rented property and my partner is the abuser. In all cases, the following applies:

- Domestic Abuse is a crime and you have the right to report to the Police. The Scottish Women's Rights Centre has information about your rights when reporting Domestic Abuse to the Police.
- If you decide to report to the Police there might be protections put in place by the criminal justice system, such as bail conditions that can stop your ex/partner coming near you.
- If you need to leave your home due to domestic abuse, temporary accommodation might be available from Women's Aid groups. Some refuges are accessible for women with disabilities and some that provide specific services for women from black and minority ethnic groups. There are also some specialist services that provide accommodation to young homeless women who are survivors of childhood sexual abuse.
- You have the right to make a homeless application to the local council.
- The council must supply you with temporary accommodation from the day you present as homeless.
- You can read more about how to make a homeless application on the Shelter Scotland website.

You or your ex/partner live in a rented property

You have a joint tenancy

You want to stay in the property

- You both have a contractual right via your lease to stay in the property.
- Your ex/partner cannot give up or transfer the tenancy unless you also agree in writing to do so. It is important to get legal advice before deciding to do this.
- A Family Law Solicitor can advise whether you may be able to apply to the court for an exclusion order to remove their right to remain in the property.
- If you are married or living in a civil partnership, then the court may be able to make an order transferring the tenancy to you.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.

You do not feel safe staying in the property

- You may be able to end the tenancy, but this will depend on the type of tenancy that you have.
- This can be complicated so you should seek housing advice on this issue as soon as possible.
- You can check your tenancy type using Shelter Scotland tenancy checker tool.
- You may remain liable for the rent while the tenancy is still running.

You or your ex/partner live in a rented property

You have a sole tenancy and your ex/partner lives with you

**You are
married or in
a civil
partnership**

- You have the contractual right to stay in the property via your lease.
- Your ex/partner will have automatic occupancy rights to remain in the property, unless they have been continuously out of the property for a period of two years (where they lose their occupancy rights).
- A Family Law Solicitor can advise whether you may be able to apply to the court for an exclusion order to remove their right to remain in the property.
- If your partner or ex-partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.¹

**You are not
married or in
a civil
partnership**

- You have automatic occupancy rights.
- You have the right to stay in your home.
- Your ex/partner has no legal right to reside in the property.
- If they refuse to leave you can ask the police to remove them or you can speak to a Family Law Solicitor about how to apply to the court for an ejection order to keep them from the home.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.
- If you wish to leave the property you will need to notify your landlord as per the terms of your contract.

¹ We have a Solicitor Signposting Network on our website, for more information visit: <https://scottishwomensrightscentre.org.uk/solicitors/>

You or your ex/partner live in a rented property

Your ex/partner has a sole tenancy, and you live with them

**You are
married or in
a civil
partnership**

- Your partner or ex-partner will have occupancy rights to remain in the property under matrimonial law unless they have been continuously out of the property for a period of two years (where they lose their occupancy rights).
- The Home Owner and Debtor Protection (Scotland) Act 2010 also introduced what are called “pre-action requirements” that mortgage lenders have to follow before they can take action to repossess your home. Shelter Scotland can give you more advice on this.⁴
- A Family Law Solicitor can advise whether you may be able to apply to the court for an exclusion order to remove their right to remain in the property.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.

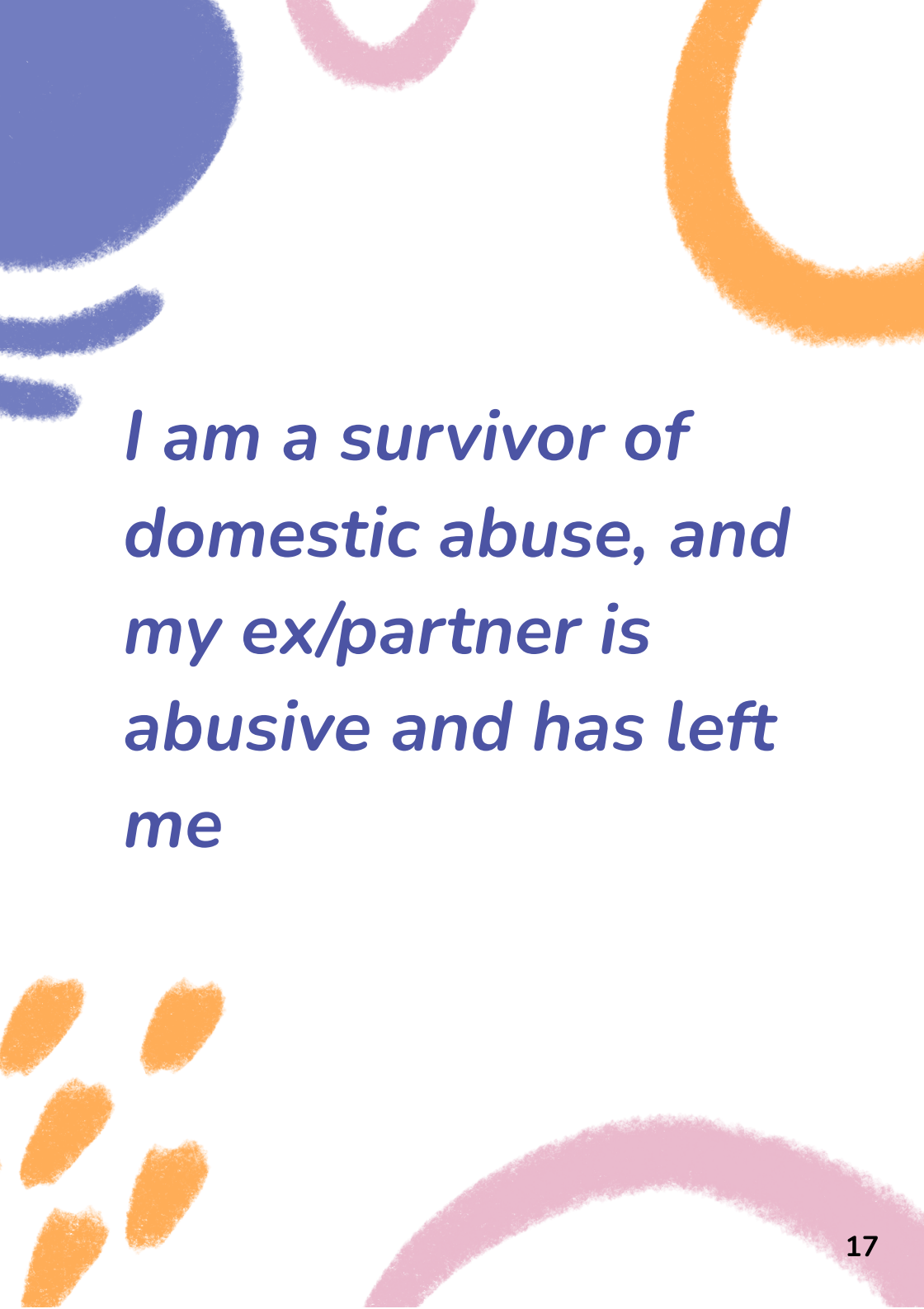
⁴ Visit <https://scotland.shelter.org.uk> and go to: Professional resources > Legal > Security of tenure > Tenants of mortgage borrowers > Mortgages and letting property

I live in a privately rented property and my partner is the abuser

You are not married or in a civil partnership

- You may have no automatic right to stay in the home and your ex/partner may ask you to leave. If this happens then you can make a homeless application to the local council. The council must supply you with temporary accommodation from the day you present as homeless.
- You can speak with a Family Law Solicitor who will be able to advise whether you may be able to apply to go to court to get occupancy rights granted to you for six months at a time. This should be done urgently once you feel ready to leave your partner or ex-partner.
- Once you have occupancy rights, you can stay in the property, and you may be able to apply for an exclusion order to keep your ex/partner from the home.
- If your ex/partner has left the home, you may be able to apply for an interdict or a non-harassment order to keep them away. You can get advice from a Family Law Solicitor.²

² We have a Solicitor Signposting Network on our website, for more information visit: <https://scottishwomensrightscentre.org.uk/solicitors/>



*I am a survivor of
domestic abuse, and
my ex/partner is
abusive and has left
me*

I am the survivor of Domestic Abuse and my ex/partner has left me

You are the owner/joint owner of the home and cannot afford to pay the mortgage

- If you have a joint mortgage, you both might be liable to pay the mortgage and this can have an impact on your credit rating. Seek advice from a specialist support service. You can find a list here <https://www.mygov.scot/support-money>.
- If you accumulate mortgage arrears and the lender raises a court action against you, you can lodge a defence to the action in terms of the Mortgage Rights Act 2001.
- You can make an agreement to repay arrears at a reasonable rate along with your monthly mortgage.
- Your solicitor will tell the court that the reason for the arrears was that your income has changed/reduced because your ex/partner has left (or you had to get them excluded).

You are not the owner/joint owner of the home but there are mortgage arrears

- If the lender raises an action in terms of the standard security over the house due to arrears, even if you don't own the house, you are still entitled to be notified about such an action.
- If you qualify for income support you may qualify for help with your mortgage payments from the Department of Work and Pensions. Contact Citizens Advice Scotland and ask them about a mortgage rights defence for more details.



Your rented house is in your ex/partners name or joint names

**Your landlord
is the council
or a housing
association**

- You can request to put the tenancy into your name only (transfer of tenancy).
- A transfer of tenancy means that your landlord ends your ex/partner's tenancy and then gives you a new one in your name only.
- You need to ask for this by writing to your landlord. Your ex/partner will have to consent to this transfer and if they do not, you will have to go to court to get the tenancy transferred.
- Your landlord can only refuse to do this if they have a good reason.
- You can sign over the tenancy to anyone who has lived with you and used the property as their main home for the past 12 months.

**You rent from
a private
landlord**

- Check the terms of the tenancy agreement to find out if you can ask the landlord to transfer the tenancy.



Glossary

Gender-based violence

(GBV) and abuse is a term that is used to describe crimes such as rape, domestic abuse, stalking, and forced marriage that are overwhelmingly but not exclusively carried out by men against women. It is a symptom of the historic and current inequalities of power that exist between men and women.

There are many ways in which gender-based violence can cause harm. It can be physical, financial, emotional, sexual, or cause harm and suffering in other ways. What all forms of gender-based violence have in common is that they stem from and reinforce gender inequality.

Coercive Control

Involves a pattern of behaviours used to control and dominate. These can

and financial abuse, humiliation, sexual abuse, isolation from friends and family, undermining a person's sense of self, and deliberately causing confusion to distort a person's sense of reality. Coercive control is a term that is used to show that Domestic Abuse is not related only to incidents of physical violence.

Interdict

An interdict is an order from the civil courts which forbids a person from doing something and/or from visiting a certain place or approaching a certain person or even contacting them. An interdict can have specific requirements such as preventing a person from visiting your workplace or place of education. You can apply for an interdict against someone who is still living with you. For example, you

can have an interdict to stop a person from abusing you.

Please note however, this would only be limited to forbidding certain behaviours, as they are still living in the same house. For example, it could not stop your ex/partner from approaching you. Also, if your ex/partner has the legal right to live in the house, you cannot use an interdict to remove these rights.

When you are asking your solicitor to apply to the court for an interdict, make sure you ask them to request the court attaches a power of arrest to any interdict or interim interdict made against the abuser. This means that if the abuser breaches the conditions of the interdict, the police may be able to arrest them if there is sufficient evidence. Your solicitor can also ask the court to “determine” that your interdict is, what is

called, a Domestic Abuse Interdict. This is important because if the court does this and you have a power of arrest attached to that interdict, breach of any of the conditions of the interdict becomes a criminal offence.

Interim Interdict

This is a temporary emergency order which you can request from the court before any legal action is served on the abuser.

Non-Harassment Order

A non-harassment order is designed to prevent behaviour which may cause you harm or distress. It is similar to an interdict but provides additional protection from harassment. If the harassment you are experiencing amounts to domestic abuse, then the behaviour only has to happen once before you can apply to the civil court for a non-harassment order. If the

harassment is not part of domestic abuse situation, then the behaviour must happen on at least two occasions before you can apply for the civil non-harassment order.

Sex for rent

is a form of sexual exploitation which is on the rise in Scotland. Shelter defines sex for rent as being an arrangement where someone is being asked for payment for the housing costs in the form of sexual acts. This can take place in several ways:

Someone has entered a tenancy agreement with a landlord, who if unable to pay rent, may be asked for sex as payment.

- Someone has entered a tenancy agreement with a landlord, who if unable to pay rent, may be asked for sex as payment.

- A person on a low income who never enters into a tenancy agreement and is asked for sex as payment.
- This payment could be for free accommodation, a reduction in rent or to write off rent arrears.

Occupancy rights are the legal rights to stay in a family home and apply where an individual either:

- Owns the home themselves
- Is a joint owner
- Is named as a tenant or a joint tenant on the tenancy agreement or
- Is married or in a civil partnership with someone from the three categories above.

Exclusion Order

An Exclusion Order suspends the occupancy rights of your ex/partner. If you and your ex/partner are married, in a civil

partnership or are joint owners of the property, exclusion orders will only be effective while the marriage or civil partnership continues and until expiry of the order or until one or either of you ask the court to remove the order.

If you are joint tenants, the exclusion order will be in place until it is removed by the court, you or your ex/partner are no longer legally entitled to live in the house. However, if you asked for - and were given - occupancy rights by the court, these only last for up to six months at a time. So, in this case the exclusion order can only last as long as the time you have occupancy rights. The exclusion order stops having an effect when those occupancy rights fall. You can however, go back to the court and ask them to extend the occupancy rights.

Safety Planning

This is a way of helping you to protect yourself and your children. It helps you to plan in advance for the possibility of future violence and abuse. It also helps you to think about how you can increase your safety either within the relationship or if you decide to leave.

Refuge accommodation:

This is a type of temporary accommodation run by Women's Aid groups for women, children and young people who are experiencing Domestic Abuse.

Temporary accommodation:

Is short term accommodation provided by the council. The council can place you in temporary accommodation when you are considered homeless. This can consist of self-contained flats and houses.



The Scottish Women's Rights Centre (SWRC) is a collaboration project between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic. We are a unique collaborative project providing free legal information, advice, representation and advocacy support to self-identifying women in Scotland affected by violence and abuse.

Helpline: 0808 801 0789

