



Exclusion orders

EXCLUSION ORDERS

An exclusion is an order granted by the court to exclude someone from living at their normal residence for a period of time. When a relationship ends, it can be difficult to decide who will stay in the [family home](#). When there is disagreement about this, who has the right to stay in the family home will depend on who has 'occupancy rights'. If your partner/ex-partner has occupancy rights and you wish to have them removed from the family home because they have been abusive towards you and/or your children, you can apply for an exclusion order.

The process to get an Exclusion Order can be complex, so we strongly recommend you find a solicitor to help you through the process.

This guide has some information that can help you understand this legal option. The guide explains:

- Occupancy rights (who has the right to stay in the family home)
- What are your options if you want your partner/ex-partner to leave your home?
- What is an exclusion order?
- What the court will take into consideration
- Who can apply for an exclusion order?
- Other protective orders the court can grant
- What happens if the order is not followed?
- The Court Process

Remember that this is just a guide and not a replacement for legal advice specific to your situation. Please make sure that you get legal advice to help you decide what your options are. If you feel you are in immediate danger, call the Police on 999.

If you don't have a solicitor already, call our [helpline](#) to discuss your circumstances or make an appointment with our solicitors at [one of our surgeries](#).

The [Law Society of Scotland](#) can also suggest solicitors in Scotland who may be able to assist you. Our [Getting Representation Guide](#) may be helpful, too.

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OCCUPANCY RIGHTS (WHO HAS THE RIGHT TO STAY IN THE FAMILY HOME)

The law **automatically** gives you the right to stay in the [family home](#) (occupancy rights) in the following situations:

- If you own the home
- If you are named as a tenant on the tenancy agreement for the home
- If you are married to or in a civil partnership with someone who either owns the home or is named on the tenancy agreement for the home. However, please note that it is possible to lose your occupancy rights for the family home if you have left the property for a continuous period of two years.

If you are a [cohabiting couple](#) (that is, people who live together as if they are married or as if they are civil partners), then only the owner of the property or the person named on the tenancy agreement has the automatic right to occupy the property. However, the other partner can apply to court for occupancy rights.

WHAT ARE YOUR OPTIONS IF YOU WANT YOUR PARTNER/EX-PARTNER TO LEAVE YOUR HOME?

- [Bail conditions/undertakings](#) - If you reported your ex-partner to the police and the police decided to charge them with a crime, your partner/ex-partner may be subject to bail conditions or an “undertaking” not to approach you or the family home. These can give you some temporary protection. However, we recommend you get legal advice to find out if it would be more appropriate to seek longer term measures of protection even if these are in place. This will be different for each case.
- **Change of locks** - If your partner/ex-partner does not have occupancy rights, you may have the right to change the locks. Shelter Scotland has [information about this](#), outlining the different options you might have. If in doubt, seek advice.
- **Warrant of Ejection** - If your partner/ex-partner doesn't have occupancy rights and they refuse to leave the property, you will need to get a different type of court order, called a Warrant of Ejection, from the court. A Warrant for Ejection is a court order telling your ex-partner that they have to leave the property.
- **Exclusion Order** - If you and your partner/ex-partner have occupancy rights for the family home (either automatically or by applying to court) and they have been abusive, you can apply to court for an exclusion order.

WHAT IS AN EXCLUSION ORDER?

An exclusion order is a type of protective order used to exclude someone from their normal residence for a period of time. It does this by temporarily suspending a person's occupancy

rights in their home. As an exclusion order is temporary, it does not affect ownership or tenancy rights to the property. Ownership or tenancy rights need to be dealt with as a separate issue when you separate from your partner. To understand the financial aspect of your separation, ask a solicitor for advice.

WHAT THE COURT WILL TAKE INTO CONSIDERATION

To get an exclusion order, you need evidence to persuade the court that the order is necessary to protect you or your children from your partner/ex-partner's behaviour and actions, because this could cause you and/or your children physical or psychological harm. To decide if an exclusion order should be granted, the court will consider closely the evidence and the following issues:

- (a) The nature of the behaviour of your partner/ex-partner?
- (b) Whether or not the behaviour is likely to happen again if your partner/ex-partner continues to live in the family home.
- (c) Has the behaviour happened more than once, or if it was repeated, could it cause you or your children physical or psychological harm?
- (d) If so, is the order you requested necessary to protect you and your children in the future?
- (e) Would granting an exclusion order be just and reasonable in the circumstances? The court will take into consideration, for example, the conduct of you and your partner/ex-partner towards each other, the needs and financial resources of you and your partner/ex-partner, the needs of the children, whether the property is used by your partner/ex-partner for work or business, and the availability of suitable alternative accommodation.

WHO CAN APPLY FOR AN EXCLUSION ORDER?

If you want to apply for an exclusion order, you must:

- be married, or
- have a registered civil partnership, or
- be cohabiting, that is, you are living together as if you are married or as if you are civil partners
and
- both must have the right to occupy the family home.

When you apply for an exclusion order you don't have to be personally living in the family home. You may have temporarily left the home because of your partner/ex-partner's behaviour. You can still apply for an exclusion order even if you are staying in temporary accommodation or in a refuge, for example. **However you would normally need to take steps to seek an order as soon as possible after you have left the home.**

You can also apply for an exclusion order if your partner/ex-partner has already left the family home. If you are concerned that they may return to the family home, you can apply for an exclusion order to prevent them from returning.

If you live in “[tied accommodation](#)” (accommodation that has been provided by your partner/ex-partner’s employer), you may not be able to get an exclusion order. The [Shelter Scotland’s website](#) has more information on “tied accommodation” and what this might look like.

If you would like to know more about what to expect from the court process, please see the [“Court Process” section](#) at the end of this guide.

In terms of the court process, please note that these procedures will need to be notified to your partner/ex-partner and they can be opposed. There will, therefore, be safety considerations to take into account, especially if you are still living together. This process may thus not suit all situations, which is why it is important you take legal advice.

OTHER PROTECTIVE ORDERS THE COURT CAN GRANT

During the initial stages of a request for an exclusion order, you can ask the court for additional temporary “emergency” orders against your partner/ex-partner, **but again these will be notified to your partner and they will have the opportunity to oppose these.**

If an exclusion order or interim exclusion order is granted, your solicitor can ask the court for other protective orders, including:

- Warrant of Ejection – As highlighted on page two of this guide, this is an order to remove your partner/ex-partner from the family home when they do not have occupancy rights. If your partner/ex-partner does have occupancy rights, both an exclusion order is needed (which suspends their occupancy rights), along with a Warrant of Ejection (which grants the power to remove them from the family home). If your partner/ex-partner does not voluntarily leave the home, your solicitor can use [Sheriff Officers](#) to evict them from the property.
- [Interdict](#) to stop your partner/ex-partner from returning to the family home.
- [Interdict](#) to stop your partner/ex-partner from going to places you regularly visit, like your workplace and/or your children’s school or nursery.
- [Interdict](#) to stop your partner/ex-partner from removing furniture and other objects from the family home. Please keep in mind that an order preventing your partner/ex-partner from removing these objects does not change whether they own those objects or not.
- When granting an exclusion order, the court can also make certain financial orders. For example, you can ask for a financial order which deals with the household expenses, that is, it says who should pay the household bills. A financial order can be used to make sure that your partner/ex-partner continues to pay towards the maintenance of the house and its running until the legal process is completed.

Some of these orders are necessary for an exclusion order to be effective. This is another reason why it is usually best to have a solicitor helping you to apply for an exclusion order.

WHAT HAPPENS IF THE ORDER IS NOT FOLLOWED?

Breaching a court order is a serious matter, it is up to you to report your partner/ex-partner and they could face a fine or term of imprisonment, if established.

The following are possible consequences if any order is not followed:

- **Power of arrest**– If the court has a [power of arrest](#) attached to the order, you can report your partner/ex-partner to the police and they can arrest them without a warrant if they consider that they have breached the order. There are rules about when a power of arrest can be requested and your solicitor can tell you more about this. If your partner/ex-partner breaches the order, the police also have the power to detain them until they can appear in court. The Procurator Fiscal will then decide whether or not to prosecute your partner/ex-partner for criminal charges.
- **Take an action for breach of interdict/contempt of court** -You may have the option of taking an action for contempt of court, or an action for breach of interdict against your partner/ex- partner to the civil court. Your solicitor would advise you on what option is available to you.

THE COURT PROCESS

Starting a court action - If you want to apply for an exclusion order, your solicitor will raise a court action by submitting a document called an initial writ with your local Sheriff Court or the Court of Session. The initial writ will explain the details of the abuse/incidents, the impact this has had and will continue to have on you and/or your children and what you are asking from the court.

Interim exclusion orders - if you urgently need to have your partner/ex-partner removed from the family home, you can apply for an interim exclusion order to suspend your partner/ex-partner's occupancy rights. Interim exclusion orders are temporary "emergency" orders the court can put in place while it decides whether to grant the exclusion order. An interim exclusion order is not a final order and your partner/ex-partner would still have a chance to defend the action.

Interim protective orders - You can apply for interim protective orders in the same application, for example to prevent your partner/ex-partner from approaching or contacting you (if you are staying somewhere else temporarily), threatening or abusing you verbally, using physical violence against you, or being within a certain distance of your home or work or children's school.

COURT ACTION STEPS

- After submitting the initial writ, your partner/ex-partner would then have a period of time to submit or "lodge" a notice telling the court that they want to defend the action. This is called "Notice of Intention to Defend" and it can be submitted by them or their solicitor. Normally, your partner/ex-partner would have 21 days from the date the initial writ was served on them to lodge the Notice of Intention to Defend with the court. It is important to understand that, unless there is an emergency situation and you have applied for emergency temporary orders (see above), nothing is likely to happen until the notice period ends.
- If your ex-partner defends the action, the court will then issue a timetable of dates by which certain things need to be done, and will set a date for a court hearing. The timetable will have a date by which your partner/ex-partner's solicitor would need to lodge **written defences**. Written defences are his written response to the "initial writ". The timetable will give an "adjustment" period, that is, a period of time when both sides can make changes to the initial writ and defences that they submitted to the court. This usually lasts for 8 weeks and any new evidence or updating of further incidents can be included.
- An **Options Hearing** will also be scheduled. This is a hearing for the court to decide what type of **full hearing** is best to decide the case. The type of full hearing can be:
 - Proof - a hearing that looks at the evidence
 - Debate - a hearing that only looks at the legal arguments
 - Proof Before Answer - a hearing that looks at the evidence and the legal arguments.

At the Options Hearing, the case can also be continued (or "held over") for many different reasons. For example, if you or the other person need more time to add more information into the documents they have lodged at court or either of you need to get a report from a doctor,

social worker or other professional. The Options Hearing can only be continued on one occasion for a maximum of 28 days.

You don't usually need to appear in court during the initial hearings of the case. Your solicitor can appear on your behalf during the initial hearings. If your partner/ex-partner does not defend the action, then it is likely that you will not have to attend court at all.

Your solicitor will submit written statements to the court, known as Affidavits which are taken from you and, if possible, from a third party (someone who knows you and is aware of your situation). The written statement would explain the incidents of harassment/abuse and the impact these have had on you. Your solicitor would use these statements, together with any other evidence, to ask the court for the orders you are requesting.

If your partner/ex-partner defends the action, then there is the possibility that you will need to attend court for the Proof (a full hearing on evidence) to give evidence directly to the court. Your solicitor may be able to apply to the court to ask that you can give evidence in a way that you don't need to see your partner/ex-partner while giving evidence, such as by video link or behind a screen. Sometimes you can reach an agreement about getting certain orders, which may mean that you will not need to attend a full Proof hearing.

The court will need to see evidence of your partner/ex-partner's behaviour and the impact it is having/will have on you. Evidence can be things like police reports, a GP or other medical report or records, and witness evidence. These are just some examples and there are many other things that can be used as evidence.

GLOSSARY OF TERMS

Affidavit	An Affidavit is a written statement given under oath by a witness setting out their evidence.
Bail conditions	Bail is where a person accused of a crime is released from custody by the court on certain conditions called bail conditions. This will include standard conditions like: they must not commit any offences while on bail; they must attend court on the day that their case is called; they must not interfere with witnesses etc.
Cohabiting couple	The law in Scotland defines cohabitation as two people who live together “as if they are married or as if they are civil partners”.
Family home	By family home we mean the property which you share/shared with your spouse or partner/ex-spouse or partner. This is sometimes called “matrimonial home”.
Interdict	An interdict is a court order that prohibits your partner/ex-partner from carrying out certain actions or going to certain places.
Options hearing	In a sheriff court ordinary action in Scotland, an Options Hearing is a procedural hearing where the court will decide what type of full hearing is best to decide the case.
Pre-warrant hearing	At a pre-warrant hearing, you can request certain interim protective orders to provide some temporary protection to you before your partner/ex-partner is aware that you are raising an action against them.
Power of arrest	In Scotland, a power of arrest is a court order that can be attached to any form of interdict where the purpose of the interdict is to protect a person from a form of abuse. Where a power of arrest has been attached to an interdict, the police can arrest the interdicted person if there is a reasonable suspicion that the interdict has been breached. A power of arrest can only be granted once your partner/ex-partner has had an opportunity to be heard by or represented at court.
Sheriff officer	Sheriff officers are officers of the court in Scotland who are employed by firms of sheriff officers or they are self-employed. They enforce court orders, which includes orders to remove an abusive partner from the home. If the sheriff officer comes to your home to evict your partner/ex-partner and they refuse to leave, the sheriff officer has permission to physically remove them from your home.
Tied accommodation	Tied accommodation is accommodation that is provided as part of a person’s employment. The Shelter Scotland website has more information on “tied accommodation” and what this might look like.
Undertaking	An undertaking is similar to bail conditions, it is conditions set by the police that a person accused of crime agrees to in order to stay at home until their court hearing.

ABOUT US

The Scottish Women's Rights Centre (SWRC) is a collaborative project that provides free legal information, advice, advocacy and representation to women affected by violence and abuse.

Who is involved?

We are a collaboration between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic.

Need more information?

To learn more about us, visit our website and follow us on our social media channels.

www.scottishwomensrightscentre.org.uk

 /scottishwomensrightscentre

 @SWRC_

 /swrc



SUPPORT AGENCIES AND USEFUL CONTACTS

Scottish Women's Rights Centre

Helpline: 08088 010 789 (opening times available on website)
Website: www.scottishwomensrightscentre.org.uk/helpline

Rape Crisis Scotland

Helpline: 08088 01 03 02 (everyday 6pm-midnight)
Website: www.rapecrisisScotland.org.uk

Scottish Women's Aid

Website: www.womensaid.scot
Local specialist groups: www.womensaid.scot/find-nearest-swa-group

Scotland's Domestic Abuse and Forced Marriage Helpline

Helpline: 0800 027 1234 (24 hour)
Website: www.sdafmh.org.uk
Email: helpline@sdafmh.org.uk

Police Scotland

Telephone: 101 (non-emergency)
 999 (emergency only)
Website: www.scotland.police.uk

National Stalking Helpline

Helpline: 0808 802 0300 (daily 9.30am-4pm except Wednesday 1pm-4pm)
Website: www.suzylamplugh.org

Shelter Scotland

Helpline: 0808 800 4444 (9am to 5pm, Monday to Friday)
Website: www.scotland.shelter.org.uk

For information on local services please visit: www.scottishwomensrightscentre.org.uk.