

Briefing for the Citizen Participation and Public Petitions Committee on Petition [PE1973](#): End of the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets, lodged by Sandy Izatt

Brief overview of issues raised by the petition

The regime currently applicable to cohabitants' property and finances on relationship breakdown is found in the [Family Law \(Scotland\) Act 2006](#) ('the 2006 Act'). The key provisions include:

- **section 28**, which entitles either partner to a cohabiting relationship that has ended otherwise than by death, to make a financial claim against their ex-partner. There is a strict time limit of one year from the end of the relationship to start legal proceedings.
- **section 25** which, when read in conjunction with section 4 of the [Marriage and Civil Partnership \(Scotland\) Act 2014](#), defines 'cohabitant' for the purposes of the other sections of the 2006 Act which apply to cohabitants. The main requirement is that the couple must be, or have been, living together as if they were married. No express minimum qualifying duration of cohabitation is set out in section 25. However, in determining whether a couple are cohabitants, the court may consider as one relevant factor how long they lived together.

The regime for cohabitants is currently much more limited in scope than that which exists for married couples and civil partners under the [Family Law \(Scotland\) Act 1985](#), sections 8-17. For example, significantly, there is no specific provision in the 2006 Act relating to how the family home should be treated on separation of the cohabiting couple.

For financial claims by cohabitants under section 28 of the 2006 Act, the court has a wide discretion as to whether it awards and how much it awards. Broadly speaking, an award by the court is based on the idea that one person might have suffered an economic disadvantage in terms of their contributions (financial and otherwise) during a relationship. Furthermore, the other person might have gained an economic advantage from these contributions.

[The 2006 Act has been criticised for being unclear and overly complicated, making it hard for solicitors to advise their clients on what to expect.](#)

The [Scottish Law Commission](#), the law reform body which makes recommendations to Scottish Ministers on possible law reform, is currently reviewing the law relating to cohabitants contained in the 2006 Act. [The Commission's final report on the topic was originally expected to come out at the end of summer 2022](#) but is now expected later this year.

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29/9/2022

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