

Citizen Participation and Public Petitions Committee

6th Meeting, 2021 (Session 6), Wednesday 3
November 2021

PE1898: Make entering someone's home
without their permission or warrant a crime

Note by the Clerk

Petitioner Julia Gow

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to
make it a crime for a stranger to enter your home without permission
or a warrant.

Webpage <https://petitions.parliament.scot/petitions/PE1898>

Introduction

1. This is a new petition that has been under consideration since 27 September 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 100 signatures have been received.
4. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe B** of this paper.
5. A submission has been provided by the petitioner. This is included at **Annexe C**.

Scottish Government submission

6. In its submission, the Scottish Government set out the current offences that relate to entering someone's home without their permission and states that it "recognises how important it is to feel safe and secure in your own home and community".
7. The Scottish Government confirms that whilst entering someone's home without their permission is not a crime in and of itself, housebreaking with intent to steal is an aggravated form of the common law offence of theft in Scots law, with the essential elements being that a person (1) overcomes the security of the premises and (2) does so with the intention of stealing. However, it is important to note that the housebreaking must be with the intention of stealing, not for some other purpose, such as finding a place to sleep.
8. The Scottish Government suggests that, dependent on the individual circumstances, a number of other common law or statutory offences may be used.
9. For example, the common law offence of malicious mischief criminalises the wilful destruction or damage to the property of another. The submission also highlights that Section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 (the statutory offence of vandalism) which provides it is an offence for a person to, without reasonable excuse, wilfully or recklessly destroy or damage any property belonging to another.
10. Section 57 of the Civic Government (Scotland) Act 1982 also contains provision to criminalise any person who is found in or on a building or premises without lawful authority to be there, where it may reasonably be inferred that the person intended to commit theft there.
11. The Scottish Government notes that this is not an exhaustive list of all the offences which may be relevant to this petition.
12. The Scottish Government states that it is for Police Scotland to investigate whether or not a crime has been committed. The submission continues by noting that potential crimes will be reported to the Crown Office and Procurator Fiscal Service (COPFS) to determine what action, if any, should be taken in the public interest.

SPICe briefing

13. The SPICe briefing also highlights Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 as it sets out an offence of threatening or abusive behaviour which might cover some situations where a person enters someone's house without permission:

- A person ("A") commits an offence if –
 - a) A behaves in a threatening or abusive manner,
 - b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
 - c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

Petitioner submission

14. In her submission, the petitioner questions the essential elements of the aggravated form of theft in Scots law which states that a person must both overcome the security of the premises and do so with the intent of stealing. She asks the Committee to consider how being subject to either element of the crime can leave a person feeling "safe and secure in their own home".

15. The petitioner recalls the police informing her that it is impossible to prove intent to steal unless a theft has occurred. She suggests that there could be intent, but the theft could be interrupted by an alarm, home-owner or the person could decide there's nothing of value to steal.

16. The petitioner urges the Committee to consider the mental trauma and loss of experiences (such as missing the wedding of a dying friend, as she has) are "more important than stealing a bottle of wine".

17. In conclusion, the petitioner asks "What is the point of even locking our doors if anyone can break in without consequence?" and states that she would like an opportunity to give evidence to the Committee.

Action

18. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

PE1898: Make entering someone's home without their permission or warrant a crime

Petitioner

Julia Gow

Date Lodged

30/08/21

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to make it a crime for a stranger to enter your home without permission or a warrant.

Previous action

I wrote to my MSP, Angus Robertson. Angus had initially not realised there was no such crime and had offered to take up the matter with the police on my behalf. When I explained to Angus I had already written to the Police who had confirmed they couldn't take any action as breaking into someone's home is not a crime, he forwarded me a link to the petition site. I wrote to the Scottish Government Department of Justice and they confirmed their current position.

Background information

At present there is no such crime providing they do not steal anything. Housebreaking in itself is not a crime regardless of how vulnerable the residents are. Whilst in London we received a call from our security company to say we had an intruder. They called the police who attended but could not secure our home. The police informed us that it is not a crime to enter someone's home, sit on their sofa and turn on their tv provided nothing is stolen and there was no intent. This means any OAP (including my husband) can open their door to out rubbish and anyone can just walk in and sit down. The same for any vulnerable person. In our case the man entered despite the alarm sounding and not knowing who he would encounter. A week earlier it would have been a 3 year old. I petition for all homes.

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1898](#): Make entering someone's home without their permission or warrant a crime, lodged by Julia Gow

Background

The petition seeks the creation of a specific criminal offence dealing with situations where a stranger enters a person's home without permission or a warrant.

It highlights an experience the petitioner had of someone breaking into their home whilst they were out. It states that the intruder was apprehended by the police but that there were no criminal charges because nothing had been stolen and there was no evidence of an intention to steal anything.

Existing criminal offences

The petition refers to advice received from the police that "breaking into someone's home is not a crime". In cases where a person breaks into a house (or some other building), the evidence may support a charge of theft by housebreaking or housebreaking with intent to steal. However, these common law offences do not cover an act of breaking into a house without theft or an intention to steal.

Various other offences may be relevant in some situations, but do not necessarily cover all the circumstances the petitioner may have in mind.

Where the act of breaking into a house causes damage, charges of vandalism or malicious mischief may be relevant. Vandalism is a statutory offence under [section 52 of the Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#):

"any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another shall be guilty of the offence of vandalism".

Malicious mischief is a common law offence dealing with behaviour which damages or destroys the property of another. Most of what it covers may also be charged under the statutory offence of vandalism.

[Section 38 of the Criminal Justice and Licensing \(Scotland\) Act 2010](#) sets out an offence of threatening or abusive behaviour which might cover some situations where a person enters someone's house without permission:

“A person (“A”) commits an offence if –

- (a) A behaves in a threatening or abusive manner,
- (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
- (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.”

Frazer McCallum
Senior Researcher

27/09/2021

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Scottish Government submission of 30 September 2021

PE1898/A - Make entering someone's home without their permission or warrant a crime

The Scottish Government recognises how important it is to feel safe and secure in your own home and community.

In light of the issues raised by Ms Gow in her petition, it might be helpful to the Committee if I set out some relevant laws which may apply where someone enter another person's dwelling without consent.

While entering someone's home without their permission is not a crime in and of itself, housebreaking with intent to steal is an aggravated form of the common law offence of theft in Scots law. The essential elements of this crime are that a person (1) overcomes the security of the premises and (2) does so with the intention of stealing. The housebreaking must be with the intention of stealing, not for some other purpose, such as finding a place to sleep.

Housebreaking involves overcoming the security of any premises, not just dwelling houses. Examples are by forcing a door, smashing a window, or picking a lock. Violent entry or damaging the building isn't necessary. The security of a premises can also be overcome by using an unexpected means of entry like climbing up a drainpipe to an upstairs window, or using a stolen key or a skeleton key.

Whether or not a crime has been committed is a matter for Police Scotland to investigate in the first instance. Where the police consider there may be sufficient evidence to support that a crime has been committed, they will report the matter to the Crown Office and Procurator Fiscal Service (COPFS), who will determine what action, if any, should be taken in the public interest. Police Scotland and COPFS are both independent of the Scottish Government.

While decisions in relevant cases are for independent law enforcement agencies within the overall legal framework, it is understood that other

common law and other statutory offences may also be used depending on the individual facts and circumstances of each case.

For example, section 57 of the Civic Government (Scotland) Act 1982 criminalises any person who, without lawful authority to be there, is found in or on a building or other premises, whether enclosed or not, or in its curtilage or in a vehicle or vessel so that, in all the circumstances, it may reasonably be inferred that the person intended to commit theft there.

Another offence that may be relevant in circumstances where the property of another person has been damaged is the common law offence of malicious mischief. This offence criminalises the wilful destruction or damage to the property of another.

Section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 (the statutory offence of vandalism) provides it is an offence for a person to, without reasonable excuse, wilfully or recklessly destroy or damage any property belonging to another.

Depending on the exact facts and circumstances, there may also be other relevant laws that operate. The offences mentioned in this letter are not intended to be an exhaustive list of all relevant offences.

Within this context, I hope this is helpful information in understanding how existing criminal laws may be relevant in the circumstances of the issues raised in the Petition.

Petitioner submission of 30 September 2021

PE1898/B - Make entering someone's home without their permission or warrant a crime

Scottish Government statement 1:

“The Scottish Government recognises how important it is to feel safe and secure in your own home and community”

Scottish Government statement 2:

“While entering someone's home without their permission is NOT a crime in and of itself, housebreaking with intent to steal is an aggravated form of the common law offence of theft in Scots Law. The essential elements of this crime are that a person

1. Overcomes the security of the premises

AND

2. Does so with the INTENT of stealing.

The housebreaking MUST be with the intention of stealing, not for some other purpose, such as finding a place to sleep.”

I ask the committee to consider these two statements made by the Scottish Government and consider how EITHER elements of the crime can leave a person feeling “safe and secure in their own home.” A further example given by the police is “it is not a crime to break into someone's home, sit on their sofa and turn on the TV.”

The police also informed me that it is impossible to prove intent unless something is actually stolen. There could be intent but the intruder was spooked by an alarm, confronted by the home owner or simply nothing of value to steal. Intent is a thought process and no one can know what someone's intent truly was. In Scotland it is currently perfectly legal to overcome someone's home security simply to watch their children sleep or play, to watch their TV, to simply stare at the occupants.

I ask the committee to consider how leaving someone traumatised unable to sleep alone in their own home in order that a stranger can watch TV or sleep is keeping them “safe & secure”.

Why must there be an intent to steal? Is a watch or a bottle of wine more valuable than someone’s mental health? I ask you to consider changing AND to OR.

It cannot be right that someone in Scotland can overcome your security simply to watch TV or watch your child sleep or simply stare at you – all of this confirmed by the Police. We do not live in Syria or The Yemen we have Police, Hospitals, Hostels, Hotels. We can knock and request help but surely not just overcoming security on a whim. If this was widely known surely every homeless person in the country could simply break into your home and sleep there?

In my personal circumstances the intruder did not steal a £10 bottle of wine or a watch, he stole my holiday - £1500 (I had to travel home from London to secure my property). He stole my husband and I attending our son’s engagement party. He stole us attending my best friend’s wedding (her husband is dying and we have not seen them since Covid). He stole my ability to sleep alone in my own home. He stole my ability to sleep without imagining him encountering my three year old grandchild in the hallway. He stole the £1200 it cost to fix my door and this denied me donating my current £80 per month to Big Hearts Charity for the next year. He stole my right to “feel safe and secure in my own home” but he did not commit a crime. He had no reason to be in my home he had simply walked down a lane with no through path – he had the choice to walk back 200m to the main road or break in my back door and leave by the front for his convenience – this is not a crime. I have to suffer the cost of his convenience. The alarm was activated when he breached the external door, he had to negotiate 4 further doors to reach the front door, passing the bedroom where on another occasion my grandchild would have been asleep. He could do all of this because it is perfectly legal to do so. He had no thought of who might be sleeping there.

I urge the committee to support my petition that we cannot make our communities “feel safe and secure” by allowing individuals to break into our homes for any purpose so long as they do not intend to steal. I urge them to consider that mental trauma and loss of experiences (such as missing the wedding of a dying friend) are more important than stealing a bottle of wine. We have very secure doors, the garden has security lights, we have CCTV and pay for a security company to monitor the

home we love. What is the point of even locking our doors if anyone can break in without consequence? I would like an opportunity to give evidence to the Committee to explain the full impact of having an intruder in your home.