

Citizen Participation and Public Petitions Committee  
Wednesday 1 May 2024  
7th Meeting, 2024 (Session 6)

## PE1973: End the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets

### Introduction

**Petitioner** Sandy Izatt

**Petition summary** Calling on the Scottish Parliament to urge the Scottish Government to review the Family Law (Scotland) Act 2006 and provide greater clarity on the division of assets in cases of cohabitating couples who are separating by:

- Removing the use of Sheriffs Discretion rulings in civil cases;
- Providing clear legal guidance to the Law Society of Scotland on the division of assets for cohabitating couples;
- Allowing appeals to be heard where it is determined that a Sheriff has the rule of law wrong but have used their discretion to prevent an appeal, at no cost to the appellant; and
- Publishing information on what resources have been allocated to provide clear legal guidance.

**Webpage** <https://petitions.parliament.scot/petitions/PE1973>

1. [The Committee last considered this petition at its meeting on 6 September 2023.](#) At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from the Minister for Victims and Community Safety and the Petitioner which are set out in **Annexe C**.
4. [The Committee received five written submissions prior to its last consideration of the petition.](#)
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. The Minister for Community Safety provided [the Scottish Government's initial view on this petition on 6 October 2022.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 1 signature has been received on this petition.

## **Action**

8. The Committee is invited to consider what action it wishes to take.

**Clerks to the Committee**  
**April 2024**

## **Annexe A: Summary of petition**

**PE1973: End the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets**

### **Petitioner**

Sandy Izatt

### **Date Lodged**

21 September 2022

### **Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to review the Family Law (Scotland) Act 2006 and provide greater clarity on the division of assets in cases of cohabitating couples who are separating by:

- Removing the use of Sheriffs Discretion rulings in civil cases;
- Providing clear legal guidance to the Law Society of Scotland on the division of assets for cohabitating couples;
- Allowing appeals to be heard where it is determined that a Sheriff has the rule of law wrong but have used their discretion to prevent an appeal, at no cost to the appellant; and
- Publishing information on what resources have been allocated to provide clear legal guidance.

### **Previous action**

I have contacted my MSP David Torrance several times regarding this issue. He has been unable to obtain any information on the progress of the relevant guidance.

I have also sought information and guidance from a solicitor, QC and The Law Society of Scotland. They have stated that they await the Scottish Government guidance on this issue.

### **Background information**

For years the lack of clarity in the law regarding the division of assets of cohabitating couples has allowed perhaps unnecessary cases to take up valuable court time. Clarity on this issue could resolve these matters without a court hearing, saving both parties considerable costs and, in certain cases, legal aid funding. Providing clear legal guidance would also prevent the likelihood of solicitors unnecessarily prolonging cases to gain more revenue. My MSP advised me to create this petition as he was not getting answers on these issues. We have sought answers for well over a year and no response has been issued. The lack of clarity causes unnecessary stress, anxiety and confusion to the

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separating couple at a time where emotions are already elevated. This can cause mental health problems adding stress to other services.

## **Annexe B: Extract from Official Report of last consideration of PE1973 on 06 September 2023**

**The Convener:** The next petition, PE1973, in the name of Sandy Izatt, calls on the Scottish Parliament to urge the Scottish Government to review the Family Law (Scotland) Act 2006 and provide greater clarity on the division of assets in cases of cohabiting couples who are separating, by removing the use of sheriffs' discretion rulings in civil cases; providing clear legal guidance to the Law Society of Scotland on the division of assets for cohabiting couples; allowing appeals to be heard when it is determined that a sheriff has the rule of law wrong but has used their discretion to prevent an appeal at no cost to the appellant; and publishing information on what resources have been allocated to provide clear legal guidance.

We last considered the petition on 21 December, when we agreed to write to a number of organisations, including the Scottish Government, the Scottish Law Commission, the Law Society of Scotland and the Family Law Association. We have received submissions from the Scottish Law Commission, the then Minister for Community Safety and the Law Society of Scotland.

The Scottish Law Commission confirmed that judicial discretion was considered as part of its work on reform of the law relating to cohabitation, with its final report and recommended reforms having been published in November 2022.

In her response, the minister was unable to commit to a timescale for bringing forward legislation in relation to the commission's recommendations but said that the Government was considering how to implement a number of commission reports, including the one on cohabitation, during this parliamentary session.

The Law Society's response indicates that it would not support the removal of discretion in civil cases, noting that

"Every court decision involves an element of discretion, or judgement, on the part of a Sheriff"

and saying that the society is

"broadly supportive"

of the reforms that are proposed by the Scottish Law Commission.

Colleagues, does anyone have any comment or suggestion to make?

**Fergus Ewing:** As it happens, I have by sheer coincidence spent many hundreds of hours dealing with the Family Law (Scotland) Act 1985. I think that most practitioners feel that that is a very good piece of legislation. It sets out clear rules for the division of matrimonial property on divorce and therefore does not have the problems that are associated with the Family Law (Scotland) Act 2006, which deals with cohabitants as opposed to married couples. Not all cohabitants necessarily want to make a lifelong commitment, so they cannot be equated.

At the time of the passage of the 2006 act, I opined that the Parliament perhaps felt that cohabitants were getting the same rights as married couples; they were not. The act provides a clear discretion to sheriffs to determine what financial settlement is suitable. The sheriffs—Sheriff Pyle, for example—and Court of Session judges have said that that discretion is very wide. That makes it difficult for lawyers to advise, because it is not clear what a fair outcome should be. All of that means that it would be desirable to have law reform. After all, that is the purpose of the Parliament.

The recommendation that has been made to us is that we might think of closing the petition because the Scottish Government anticipates bringing forward legislation in the current parliamentary session. I checked that yesterday in the programme for government and saw that it is not in the 2023-24 legislative programme. That means that it will probably be at the coo's tail and perhaps not even at the coo's tail.

My suggestion, therefore, is very simple, and cuts through all the complexities of the substantive issues. It is that we write to the Scottish Government before we close the petition, asking whether it is still the case that there is to be a bill during this session of the Parliament and, if not, we should ask for a view from the Law Commission and others, including Scottish Government officials, as to when that bill is likely to be ready.

The bill will be substantially dependent on the commission, the Law Society of Scotland and practitioners coming forward with a thesis. I do not think it is something that MSPs can be expected to bring forward. It is highly technical and complicated.

A lot of work has been done, but it looks as if the bill will not be before us during this session of the Parliament. Out of respect for the petitioner, therefore, we should find out the facts, given the absence of the bill in the programme for the coming year, which was announced yesterday.

**The Convener:** Are colleagues content to proceed on that basis?

**Members *indicated agreement.***

**The Convener:** We will seek that information.

## **Annexe C: Written submissions**

### **Minister for Victims and Community Safety submission of 3 October 2023**

#### **PE1973/F: End the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets**

I am grateful to the Clerks of the Committee for writing to my officials on 7 September 2023 following the Committee's consideration of this Petition at the Committee's meeting on 6 September.

The Committee is seeking confirmation of whether the Scottish Government intends to bring forward a Bill on cohabitation following the Scottish Law Commission (SLC) Report on An Improved Scheme for Financial Provision on Cohabitation Breakdown (2022) during this parliamentary session (that is, prior to the 2026 election). The Committee has also asked for the anticipated timescale for introduction if we do.

I am unable to provide a timescale for bringing forward a potential Bill in this area. This depends on future decisions about the Scottish Government's legislative programmes, which will be announced to Parliament in due course in the normal way through future Programmes for Government by the First Minister. As you may know, [this year's Programme for Government published on 5 September](#) includes our commitment to introduce legislation implementing the SLC's recommendations made in its Report on Judicial Factors (2013). This will be the third SLC Bill introduced this session.

In line with our wider ambition of giving consideration to implementing a number of SLC reports this Parliamentary session, I have recently written to Lady Paton, the Chair of the SLC advising that, after initial consideration, my officials will begin detailed work on the SLC Report on cohabitation and two other SLC Reports. The work on cohabitation will include an assessment of whether it would be helpful for us to consult on the Commission's recommendations in this area.

I will continue to consider whether and when there would be a suitable opportunity to take forward the recommendations contained in the report on cohabitants' rights as other commitments allow.

**SIOBHIAN BROWN**

### **Petitioner submission of 24 October 2023**

#### **PE1973/G: End the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets**

I would like to thank the Committee on the progress made in obtaining some responses regarding my petition.

I believe many of the answers to be rather vague without commitment to resolve these ongoing issues in a timely manner and would respectively request clarity.

I would also would like to emphasise the point raised in my petition, where:

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Sheriff's Discretion is used to prevent appeal where the wrong rule of law has been applied.

I believe the use of Discretion in this manner can allow our legal system to be abused by those who are tasked with our trust to uphold the law with no consequence.

I look forward to the continuing support of the Committee in addressing this petition.