



Relationship Breakdown: Your Housing Options

Section 1: Introduction

This leaflet provides information on housing options available in cases of relationship breakdown. It is not a precise statement of the law but a plain language guide.

This leaflet can be provided in a range of different languages or formats as required.

If you have nowhere to stay, or you have to leave your home because of abuse, you can contact our Homelessness and Advice Section. Contact details are available in Section 5.

If you are a woman who is experiencing abuse you can also contact Women's Aid Orkney. They provide accommodation and/or support for women and children.

Alternatively, people who are experiencing domestic abuse can contact Relationship Scotland for advice and/or assistance.

This leaflet outlines the rights of people who are:

- Married.
- In a civil partnership.
- Living together (cohabiting).

Civil partnership is a legal relationship that entitles people of the same sex to have their relationship recognised in law. Civil partners have similar rights to married people.

Information about agencies that can offer detailed guidance on family law matters, including civil partnerships, is given in the final section of this leaflet.

The legal terms used in this leaflet are explained in Section 4. Section 2 explains the rights of people living in the social housing sector. Section 3 deals with the rights of people who live in the private sector, whether they have a private sector tenancy or are owner occupiers.

Section 2: The Social Housing Sector

The following relationships are explained:

- [Sole tenants who are married or in civil partnerships.](#)
- [Joint tenants who are married or in civil partnerships.](#)

- [People whose spouse or civil partner is the tenant.](#)
- [Sole tenant living with a partner.](#)
- [Joint tenants living together as partners.](#)
- [People whose partner is the tenant.](#)

Throughout, the term “married” has been used to explain those who are married regardless of whether they are in same or opposite sex relationships.

The leaflet has been designed to let you look up the section which is relevant to you specifically by choosing from the list above, or that which refers to private sector properties in Section 3.

You are the sole tenant who is married or in a civil partnership

If you are the tenant, your spouse/civil partner has occupancy rights to the matrimonial/family home. Occupancy rights mean your spouse/civil partner has the right to live in, remain in and return to the family home.

You can only put your spouse/civil partner out legally by obtaining an order from the court.

If you are experiencing abuse, then you can seek to have your spouse/civil partner excluded from your home with an exclusion order.

You can also apply to the courts for a matrimonial interdict and powers of arrest that could keep your spouse/civil partner away from, for example, the home, your children’s school or your place of work.

You also need the consent of your spouse/civil partner to end the tenancy.

Your spouse/civil partner’s consent is also needed for any transaction that might affect their occupancy rights such as:

- Carrying out major home improvements.
- Subletting your house.
- Taking in lodgers.
- Exchanging your home with other Scottish secure tenants.

Similarly, your spouse/civil partner can only exclude you from your home by a court order.

If you both want to stay in the family home, and you cannot come to an agreement about who is to stay, then your spouse/civil partner may seek to transfer the tenancy by obtaining a court order. This can be done at any time or may be decided by the court when you are getting divorced or dissolving a civil partnership.

You are a joint tenant and are married or in a civil partnership

If you are a joint tenant with your spouse/civil partner, you are both entitled to live in, remain in and return to the matrimonial/family home.

If you are experiencing abuse, then you can go to court to seek to have your spouse or civil partner excluded from the family home with an exclusion order.

You can also apply to the court for a matrimonial interdict and powers of arrest that could keep your spouse/civil partner away from, for example, the home, your children's school or your place of work. (There are other orders you can seek; further information is available in Section 4).

You both need to agree to end the tenancy.

You also need your spouse/civil partner's agreement in certain situations. For example, you need their consent if you want to take in lodgers, sublet or exchange your home with other Scottish secure tenants.

If you are a joint tenant of Orkney Islands Council, or Orkney Housing Association Ltd, then you may end your joint tenancy by giving written notice of **twenty-eight days** or **one calendar month** respectively. This notice must be given to both the landlord and the other joint tenant. The Council has a detailed policy on joint tenancies, and this is available on request.

If you cannot agree who is to stay in your home, then you can go to court to seek an order to transfer the joint tenancy into your name only.

The court will consider a number of factors including both your financial resources and the needs of any children.

Also, you can ask your landlord, if it is Orkney Islands Council or Orkney Housing Association Ltd, to raise court action to have the tenancy transferred into your name only.

Your landlord may consider this if:

- There is relationship breakdown.
- It is reasonable to take this action.
- Other suitable alternative accommodation is available.

Situations where it is reasonable to take this action may vary considerably but may include, where there are children, it is a family sized property and the children were to remain in the property with one parent.

Your spouse or civil partner is the sole tenant

You have automatic occupancy rights because you are married or in a civil partnership. This means that you have the right to live in, remain in and return to the family home.

If you do not wish to leave the family home you cannot be put out of it lawfully without a court order.

If you are experiencing abuse, then you can go to court to seek to have your spouse or civil partner excluded from the family home with an exclusion order.

You can also apply to the courts for a matrimonial interdict and powers of arrest that could keep your spouse/civil partner away from, for example, your home, your children's school or your place of work. (There are other orders you can seek; further information is available in Section 4).

If your spouse/civil partner puts you out without a court order, then the police could charge him/her with illegal eviction.

Your spouse/civil partner also needs your consent, for example, to end the tenancy.

Your consent is also needed for any transaction that might affect your occupancy rights such as:

- Carrying out major home improvements.
- Subletting your house.
- Taking in lodgers.
- Your spouse/civil partner wanting to exchange with other Scottish secure tenants.

If you cannot agree with your spouse/civil partner who should stay in the family home, you can ask the court to transfer the tenancy into your name.

Also, you can ask your landlord, if it is Orkney Islands Council or Orkney Housing Association Ltd, to raise court action to have the tenancy transferred into your name only.

Your landlord may consider this if:

- There is relationship breakdown.
- It is reasonable to take this action.
- Other suitable alternative accommodation is available.

Situations where it is reasonable to take this action may vary considerably but may include, where there are children, it is a family sized property and the children were to remain in the property with one parent.

You are the sole tenant living with your partner

The law is different in cases where a person is cohabiting with someone who is not their spouse/civil partner. We refer to them as partners as opposed to civil partners. The term "partner" includes people in same sex relationships.

Your partner is not entitled to stay with you if you refuse permission unless she or he has applied to court for occupancy rights. This means that you can give your partner reasonable notice to leave; this could be, for example, forty-eight hours' notice.

If your partner does not leave, then you can contact the police for assistance. Remember to advise them that you were cohabiting and not married. You may also want to seek legal advice.

If you are experiencing abuse, then you should seek advice about obtaining court orders. These include orders such as interdicts with powers of arrest both for your protection and to keep your partner away from the home.

Your partner will only have rights to remain in the home if he or she has applied to court to seek occupancy rights and the courts have granted occupancy rights.

You can put your case to the court against occupancy rights being granted to your partner, for example, because of abuse.

The court has to decide first of all if you and your partner have been cohabiting and will consider:

- How long you have been living together.
- Whether there are any children of the relationship.
- The nature and extent of any financial arrangements that existed during the relationship.

Only if the court considers that you and your partner have been cohabiting will it then consider whether or not to grant occupancy rights.

If your partner was successful in obtaining occupancy rights in the courts, then these occupancy rights last initially for six months and can be extended for further periods of six months by reapplying to the court.

You are a joint tenant living with your partner

The law is different in cases where a person is cohabiting with someone who is not their spouse/civil partner. We refer to them as partners as opposed to civil partners. The term “partner” includes same sex relationships.

Both you and your partner have the same rights to live in the family home. Neither partner can be excluded from the family home without a court order.

If you are experiencing abuse, then you can go to court to seek to have your partner excluded from the family home with an exclusion order.

You can also apply to the courts for an interdict and powers of arrest that could keep your partner away from, for example, the home, your children’s school or your place of work. (There are other orders you can seek; further information is available in Section 4).

If you are a tenant of Orkney Islands Council, or Orkney Housing Association Ltd, then you may end your joint tenancy by giving written notice of **twenty-eight days** or **one calendar month** respectively. This notice must be given to both the landlord and the other joint tenant. The Council has a detailed policy on joint tenancies and this is available on request.

If you cannot agree who is to stay in your home, then you can go to court to seek an order to transfer the joint tenancy into your name only.

The court will look at a number of factors including both your financial resources and the needs of any children.

If the transfer goes ahead then your partner will not have the right to remain in the home if you ask her/him to leave.

Also, you can ask your landlord, if it is Orkney Islands Council or Orkney Housing Associated Ltd, to raise court action to have the tenancy transferred into your name only.

Your landlord may consider this if:

- There is relationship breakdown.
- It is reasonable to take this action.
- Other suitable alternative accommodation is available.

Situations where it is reasonable to take this action may vary considerably but may include, where there are children, it is a family sized property and the children were to remain in the property with one parent.

Your partner is the sole tenant

The law is different in cases where a person is cohabiting with someone who is not their spouse/civil partner. We refer to them as partners as opposed to civil partners. The term “partner” includes same sex relationships.

If your partner has withdrawn his/her permission for you to remain in your home and has given you reasonable notice to leave, then you have no rights to remain.

You can, however, apply to court to seek occupancy rights.

Occupancy rights entitle you to live in, remain in and return to the house but the court will only grant them initially for **six** months.

The court has to decide first of all if you and your partner have been cohabiting and will consider:

- How long you have been living together.
- Whether there are any children of the relationship.
- The nature and extent of any financial arrangements that existed during the relationship.

Only if the court considers that you and your partner have been cohabiting will it consider whether or not to grant occupancy rights.

If you are experiencing abuse, **and you have occupancy rights**, then you can go to court to seek to have your partner (that is, the tenant) excluded from your home with an exclusion order. The exclusion order will end when your occupancy rights come to an end.

You may also apply to the courts for a matrimonial interdict and powers of arrest to keep your partner away from the home, your children’s school or your place of work.

The matrimonial interdict with powers of arrest will end when your occupancy rights come to an end.

If you don't have occupancy rights, then there are other interdicts or order you can seek from the court for protection. These include orders such as interdicts with powers of arrest for protection and powers of arrest that could keep your part away from, for example, your home, your children's school or your place of work (refer to Section 4).

If you have occupancy rights, you can also go to court to seek to have the tenancy transferred into your name.

The court will consider a range of issues including:

- The needs of any children.
- Financial resources.
- Conduct of the parties.

If the transfer goes ahead, then your partner will not have the right to remain in the home if you ask her/him to leave.

Also, you can ask your landlord, if it is Orkney Islands Council or Orkney Housing Association Ltd, to raise court action to have the tenancy transferred into your name only.

Your landlord may consider this if:

- There is relationship breakdown.
- It is reasonable to take this action.
- Other suitable alternative accommodation is available.

Situations where it is reasonable to take this action may vary considerably but may include, where there are children, it is a family sized property and the children were to remain in the property with one parent.

Section 3: The Rights of People Living in the Private Sector

This section explains the rights of people living in the private sector including private sector tenancies and owner occupation.

It covers the following situations:

- [You or your partner is a private sector tenant.](#)
- [You are the sole owner and are married or are in a civil partnership.](#)
- [You are a joint owner with your spouse/civil partner.](#)
- [You are married or in a civil partnership with the sole owner.](#)
- [You are the sole owner and living with your partner.](#)
- [You are the joint owner with your partner.](#)
- [You are living with your partner who is the sole owner.](#)

The leaflet has been designed to let you look up the section which is relevant to you specifically by choosing from the list above, or that which refers to the social rented sector in Section 2.

You or your partner is a private sector tenant

There are various different types of private sector tenancies which differ slightly as regards your rights.

If you are occupying a property which is let under a private sector tenancy agreement, your rights will be similar to equivalent relationships detailed in the section on the Social Housing Sector. However, to some extent this is dependent on the nature of the lease.

You should contact our Homelessness and Advice Section for guidance on your rights in the private sector.

You are the sole owner and are married or living in a civil partnership

Your spouse or civil partner has rights to live in, remain in and return to the family home. You cannot exclude her or him without a court order.

If you are experiencing abuse, then you can go to court to seek to have your spouse or civil partner excluded from the family home with an exclusion order.

You can also apply to the courts for a matrimonial interdict and powers of arrest that could keep your spouse/civil partner away from, for example, your home, your children's school or your place of work. (There are other orders you can seek; further information is available in Section 4).

You could agree with your spouse/civil partner to sell the house and divide the proceeds. Or you may agree that one partner will stay in the home and make a financial settlement with the other partner. For example, by buying the other partner's half.

You need the consent of your spouse/civil partner before you can sell the house. You also need their consent to any other transaction that could affect their occupancy rights such as:

- Carrying out major home improvements.
- Subletting your house.
- Taking in lodgers.

If this consent is not given, you can apply to court to have his/her consent waived.

When you are getting divorced or dissolving a civil partnership, the court decides what happens to the family home. The court will take into account the financial position of you both and the needs of any children.

You are a joint owner with your spouse/civil partner

You both have equal rights to live in, remain in and return to the family home.

Your spouse/civil partner cannot legally exclude you from your home without a court order.

If you are experiencing abuse, then you can go to court to seek to have your spouse or civil partner excluded from the family home with an exclusion order.

You can also apply to the courts for a matrimonial interdict and powers of arrest that could keep your spouse/civil partner away from, for example, your home, your children's school or your place of work. (There are other orders you can seek; further information is available in Section 4).

You could agree with your spouse/civil partner to sell the house and divide the proceeds. Or you may agree that one partner will stay in the home and make a financial settlement with the other partner. For example, by buying the other partner's half.

If your spouse/civil partner does not agree to sell the house you could try and force the sale through an action for division and sale. You should seek further legal advice.

When you are getting divorced or dissolving a civil partnership, the court decides what happens to the family home. The court will take into account the financial position of you both and the needs of any children.

You are married or in a civil partnership with the sole owner

You have automatic occupancy rights because you are married or in a civil partnership. This means that you have the right to live in, remain in and return to the family home.

If you do not wish to leave the family home you cannot be excluded from it without a court order.

If you are experiencing abuse, then you can go to court to seek to have your spouse or civil partner excluded from the family home with an exclusion order.

You can also apply to the courts for a matrimonial interdict with powers of arrest to keep your spouse/civil partner away from, for example, your home, your children's school or your place of work.

If your spouse/civil partner puts you out without a court order, then the police could charge them with illegal eviction.

You could agree with your spouse/civil partner to sell the house and divide the proceeds. Or you may agree that one of you stays in the home and make a financial settlement with the other partner, for example, by buying the other partner's half.

Your spouse or civil partner needs your consent before she or he can sell the house. If this consent is not given, your spouse or civil partner must apply to court to have his/her consent waived.

Your consent is also needed for any other transaction that could affect your occupancy rights such as:

- Carrying out major home improvements.
- Subletting your house.
- Taking in lodgers.

When you are getting divorced or dissolving a civil partnership, the court decides what happens to the family home. The court will take into account the financial position of you both and the needs of any children.

You are the sole owner and living with your partner

The law is different in cases where a person is cohabiting with someone who is not their spouse/civil partner. We refer to them as partners as opposed to civil partners. The term “partner” includes people in same sex relationships.

Your partner is not entitled to stay with you if you refuse permission unless she or he has applied to court for occupancy rights. This means that you can give your partner reasonable notice to leave; this could be, for example, forty-eight hours’ notice.

If your partner does not leave, you can contact the police for assistance. Remember to advise them that you were cohabiting and **not** married. You may also have to seek legal advice.

If you are experiencing abuse, then you should seek advice about obtaining court orders. These include orders such as interdicts with powers of arrest for protection and powers of arrest that could keep your partner away from, for example, the home, your children’s school or your place of work (refer to Section 4).

Your partner will only have rights to remain in the home if he or she has applied to court to seek occupancy rights and the courts have granted occupancy rights.

You can put your case to the court against occupancy rights being granted to your partner, for example, because of abuse.

The court has to decide first of all if you and your partner have been cohabiting and will consider:

- How long you have been living together.
- Whether there are any children of the relationship.
- The nature and extent of any financial arrangements that existed during the relationship.

Only if the court considers that you and your partner have been cohabiting will it then consider whether or not to grant occupancy rights.

If your partner was successful in obtaining occupancy rights in the courts, then these occupancy rights last initially for six months and can be extended for further periods of six months by reapplying to the court.

You are the joint owner with your partner

You both have equal rights to live in, remain in and return to the family home.

Your partner cannot legally exclude you from your home without a court order.

If you are experiencing abuse, then you can go to court to seek to have your partner excluded from the family home with an exclusion order.

You can also apply to the courts for a matrimonial interdict and powers of arrest that could keep your partner away from, for example, your home, your children's school or your place of work. (There are other orders you can seek; further information is available in Section 4).

You could agree with your partner to sell the house and divide the proceeds. Or you may agree that one partner will stay in the home and make a financial settlement with the other partner. For example, by buying the other partner's half.

You are living with your partner who is the sole owner

The law is different in cases where a person is cohabiting with someone who is not their spouse/civil partner. We refer to them as partners as opposed to civil partners. The term "partner" includes same sex relationships.

If your partner has withdrawn his/her permission for you to remain in your home and has given you reasonable notice to leave, then you have no rights to remain.

You can, however, apply to court to seek occupancy rights.

The court has to decide first of all if you and your partner have been cohabiting and will consider:

- How long you have been living together.
- Whether there are any children of the relationship.
- The nature and extent of any financial arrangements that existed during the relationship.

Only if the court considers that you and your partner have been cohabiting will it then consider whether or not to grant occupancy rights.

Occupancy rights last initially for **six months** and may be extended by the court.

If you are experiencing abuse and **have occupancy rights**, then you can go to court to seek to have your partner excluded with an exclusion order. The exclusion order comes to an end when your occupancy rights come to an end.

If you have occupancy rights, you can also apply to the court for an interdict and powers of arrest that could keep your partner away from, for example, the home,

your children's school or your place of work. (There are other orders you can seek; further information is available in Section 4).

You should seek legal advice to see if you have any claim on the household goods or financial payments.

Section 4: Legal Orders and Other Terms

This section outlines various legal orders and the meanings of other terms used in this leaflet.

Abuse

This is defined by the Protection from Abuse Act to include:

- Violence.
- Harassment.
- Threatening conduct.
- Any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress.

It would include physical, sexual, mental and emotional abuse.

Spouse

Spouse refers to the husband or wife.

Cohabitants/partners

This term refers to partners of the same or opposite sex. Cohabitants can apply to the court for occupancy rights; occupancy rights last for six months initially.

Civil partners

This refers to two people of the same sex who enter a legal contract that gives them similar rights to married couples.

Exclusion order

You can apply to the court if you are subject to abuse to exclude your spouse/civil partner or partner who has occupancy rights from your home.

The court takes account of a number of factors, including both persons' financial resources, conduct and the needs of any children. The court will not grant an exclusion order if it thinks it would be unjustifiable or unreasonable to do so.

Interdicts

An interdict is a court order that is used to prevent someone doing something unlawful. If you are subject to abuse, you can apply for interdict with powers of arrest

to be attached to the interdict (The Protection from Abuse (Scotland) Act 2001). You can also apply for this if you are cohabiting.

You can also apply for a **domestic interdict** (including those in a same sex relationship) where you do not have any occupancy rights. The interdict can prohibit the partner from entering or remaining in the family home (as long as he or she does not have any occupancy rights or other rights to stay there). It can also stop your partner from coming to your place of work or to your children's school.

A matrimonial interdict can be applied for if you are married/in a civil partnership (and in specific situations if you are cohabiting with your partner). This would be used to stop certain forms of abusive behaviour towards you or to stop your spouse/civil partner from coming to your home, place of work or your children's school. You can ask the court to attach powers of arrest to this interdict.

Non-harassment order

Harassment involves behaviour that causes alarm or distress to other individuals (the Protection from Harassment Act 1997). If you have been subject to a course of conduct (it has happened twice or more) which amounts to harassment, you can apply to the court for a non-harassment order. This is a civil order to prevent the behaviour in question.

You can only use this remedy if there have been at least two incidents of harassing behaviour. For example, a number of threatening phone calls from a former spouse or partner.

You can ask the court to attach powers of arrest to this order. Breach of this order is a criminal offence.

Matrimonial home

The matrimonial home is a home provided or made available by you or your spouse/civil partner (or both of you) to live together as the family home. It also covers a home that becomes a family home, for example, this could be where one of you had a house before you were married and then lived in that house as the family home after you were married.

The term applies to houses and flats, as well as specialist housing forms such as caravans and houseboats.

Occupancy rights

If you are married, you have occupancy rights automatically in the matrimonial home. This applies equally to people in a civil partnership.

This gives the spouse/civil partner of the owner or tenant:

- A right to occupy, that is live, in the matrimonial home.
- A right to continue to live there.
- If not in occupation, a right to enter the matrimonial home and occupy it.

This right to occupy also includes a right to do so with any children.

There are other rights that are associated with occupancy rights you should seek further advice.

Power of arrest

Powers of arrest can be attached to certain court orders by the courts, for example, interdicts; this procedure allows the police to arrest the person who breaches the order.

Section 5: Information and Advice

Contacts

Homelessness and Advice Section

Address: Housing Services, Council Offices, School Place, Kirkwall, KW15 1NY.

Telephone: 01856873535.

Email: housing@orkney.gov.uk

Emergency out of hours homelessness officer: 07921582962.

Housing Management Section

Address: Housing Services, Council Offices, School Place, Kirkwall, KW15 1NY.

Telephone: 01856873535.

Email: housing@orkney.gov.uk

Housing Benefit Section

Address: Finance Division, Council Offices, School Place, Kirkwall, KW15 1NY.

Telephone: 01856873535 extension 2116 or 01856886312 (direct dial).

Fax: 01856876158.

Email: benefits@orkney.gov.uk

Jobcentre Plus

Address: West Tankerness Lane, Kirkwall, KW15 1AQ.

Telephone: 01856885300.

Fax: 01856872392.

Orkney Housing Association Ltd

Address: 39a Victoria Street, Kirkwall, KW15 1DN.

Telephone: 01856875253.

Fax: 01856876764.

Email: enquiries@ohal.org.uk

Citizen's Advice Bureau

Address: 6 Bridge Street, Kirkwall, KW15 1HR.

Telephone: 01856875266.

Relationships Scotland

Address: 1st Floor, Kirkwall Travel Centre, West Castle Street, Kirkwall, KW15 1GU.

Telephone: 01856877750.

Email: enquiries@rsorkney.org.uk

Victim Support

Address: 6 Bridge Street, Kirkwall, KW15 1HR.

Telephone: 01856871965.

Email: victimsupport.orkney@victimsupportscotland.org.uk

Website: <https://victimsupport.scot/>

Women's Aid Orkney

Address: Phoenix House, Junction Road, Kirkwall, KW15 1AX.

Telephone: 01856878900.

Email: info@womensaidorkney.org.uk

Legal Services Agency Ltd

Address: Fleming House, 134 Renfrew Street, Glasgow, G3 6ST.

Telephone: 01413533354.

Website: <https://lsa.org.uk/>

Details of solicitors engaged locally in private practice can be found in the Yellow Pages Directory.

Police Scotland

Address: Police Station, Burgh Road, Kirkwall, KW15 1AH.

Telephone: 101.

