

Income, troubles and legal family formats in the UK: Scotland

by Kenneth Norrie ¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 2 – Income and troubles)

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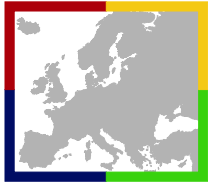
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



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Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), www.familiesandsocieties.eu.

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

The six papers about Scotland

The answers concerning Scotland can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu):

Formalisation of legal family formats in the UK: Scotland by Kenneth Norrie (Section 1)

Income, troubles and legal family formats in the UK: Scotland by Kenneth Norrie (Section 2)

Parenting and legal family formats in the UK: Scotland by Kenneth Norrie (Section 3)

Migration and legal family formats in the UK: Scotland by Kenneth Norrie (Section 4)

Splitting up and legal family formats in the UK: Scotland by Kenneth Norrie (Section 5)

Death and legal family formats in the UK: Scotland by Kenneth Norrie (Section 6)

So this paper is based on **Section 2 (Income and troubles)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 2.1 Lower income tax
- 2.2 Social benefits
- 2.3 Health insurance
- 2.4 Care between partners
- 2.5 Care for a parent
- 2.6 Next of kin
- 2.7 Domestic violence
- 2.8 Criminal procedure
- 2.9 General background regarding income and troubles

In the following pages of this paper, first the answer to question 2.9 is presented, followed by the answers to questions 2.1 to 2.8.

2.09 - General background regarding income and troubles (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, family support, etc.) that may be relevant for the understanding of your answers above regarding income and troubles, then please do so here.

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Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.01 - Lower income tax**

Can a relationship of this type result in lower income tax than for two individuals without a partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: Income Tax Act 2007, arts. 45 & 46. Finance Act 2014, art. 11.		References to legal sources: Income Tax Act 2007, arts. 45 & 46. Finance Act 2014, art. 11.		References to legal sources:	
Explanations and nuances: It has long been a feature of UK tax law that a married person's income tax bill can be reduced by claiming various marriage allowances (tax free elements of income). The current law is contained in the 2007 Act, and additional allowances were created by the 2014 Act.		Explanations and nuances: A civil partner's income tax bill can be reduced by claiming various allowances (tax free elements of income). The current law is contained in the 2007 Act, and additional allowances were created in the 2014 Act.		Explanations and nuances: The personal allowances referable to relationship status are claimable only by married persons and civil partners.	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.02 - Social benefits**

When one partner (long-term unemployed or even never having been employed at all) would be entitled to a basic social benefit, will the income of the other partner then be taken into consideration and will it possibly result in loss or reduction of this entitlement?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1992	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1992	2016 Yes 2005
? 0000	N/A 0000		N/A 0000	? 0000	No 0000
<p>References to legal sources: Social Security Contributions and Benefits Act 1992, arts 136 and 137. Welfare Reform Act 2012, art 39.</p>		<p>References to legal sources: Social Security Contributions and Benefits Act 1992, arts 136 and 137, as amended by Civil Partnership Act 2004, Sched 24 para 46. Welfare Reform Act 2012, art 39.</p>		<p>References to legal sources: Social Security Contributions and Benefits Act 1992, arts 136 and 137, as amended by Civil Partnership Act 2004, sched 24 para 46. Welfare Reform Act 2012, art 39.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Prior to the coming into force of the Civil Partnership Act 2004, social benefits were assessed for cohabiting couples in the same way as for married couples, but the definition of "unmarried couple" was limited to opposite-sex couples. The 2004 Act changed this so that same-sex couples who have not registered their civil partnership now have their benefits assessed in the same way as married couples and unmarried (opposite-sex) couples.	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

Is the amount of money that the two partners in this type of relationship would have to pay for (public or private) health insurance, normally smaller than what two individuals without a partner would have to pay?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 No, but 0000	2016 No, but 0000
	N/A 0000		N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no public health insurance in Scotland and public treatment is provided free at the point of delivery by the National Health Service.</p> <p>With private health insurance the matter will depend on the terms of the contract but principles of non-discrimination on basis both of marital status and sexual orientation leaves it open to argument that higher premiums depending on the nature of the relationship would not be lawful.</p>		<p>Explanations and nuances: There is no public health insurance in Scotland and public treatment is provided free at the point of delivery by the National Health Service.</p> <p>With private health insurance the matter will depend on the terms of the contract but principles of non-discrimination on basis both of marital status and sexual orientation leaves it open to argument that higher premiums depending on the nature of the relationship would not be lawful.</p>		<p>Explanations and nuances: There is no public health insurance in Scotland and public treatment is provided free at the point of delivery by the National Health Service.</p> <p>With private health insurance the matter will depend on the terms of the contract but principles of non-discrimination on basis both of marital status and sexual orientation leaves it open to argument that higher premiums depending on the nature of the relationship would not be lawful.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.04 - Care between partners**

In case one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1999	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1999	2016 Yes 1999
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
References to legal sources: Employment Rights Act 1996, arts. 57A and 57B. Employment Relations Act 1999, sched. 4(II)para 1.		References to legal sources: Employment Rights Act 1996, arts. 57A and 57B. Employment Relations Act 1999, sched. 4(II)para 1.		References to legal sources: Employment Rights Act 1996, arts. 57A and 57B. Employment Relations Act 1999, sched. 4(II)para 1.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The 1999 Act amended the 1996 Act by inserting new rights contained in arts. 57A and 57B. Since then, unpaid leave is permitted (for an amount of time reasonable in the individual circumstances) in order to provide assistance when a "dependant" requires care. "Dependant" is broadly defined and includes "spouse": art. 57A(3).</p>		<p>Explanations and nuances: The 1999 Act amended the 1996 Act by inserting new rights contained in arts. 57A and 57B. Since then, unpaid leave is permitted (for an amount of time reasonable in the individual circumstances) in order to provide assistance when a "dependant" requires care. "Dependant" is broadly defined and has included "civil partner" since the Civil Partnership Act 2004 came into effect in 2005: art. 57A(3).</p>		<p>Explanations and nuances: The 1999 Act amended the 1996 Act by inserting new rights contained in arts. 57A and 57B. Since then, unpaid leave is permitted (for an amount of time reasonable in the individual circumstances) in order to provide assistance when a "dependant" requires care. "Dependant" is broadly defined but does not refer to cohabitants or couples living together as if married. Instead, unpaid leave is afforded whenever an employee has to give care to "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder": art. 57A(3). It would seem that a same-sex cohabitant would have no difficulty in satisfying this definition even in 1999, because the right arises not through the conjugal relationship but through living in the same household.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.05 - Care for a parent**

In case the parent of one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1999	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 No, but 0000	2016 No, but 0000
No 0000	N/A 0000		N/A 0000		
References to legal sources: Employment Rights Act 1996, arts. 57A and 57B. Employment Relations Act 1999, sched. 4(II)para 1.		References to legal sources: Employment Rights Act 1996, arts. 57A and 57B. Employment Relations Act 1999, sched. 4(II)para 1.		References to legal sources: Employment Rights Act 1996, arts. 57A and 57B. Employment Relations Act 1999, sched. 4(II)para 1.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Since the 1999 Act amended the 1996 Act, unpaid leave is permitted (for an amount of time reasonable in the individual circumstances) in order to provide assistance when a "dependant" requires care. "Dependant" is broadly defined but not in terms of family relationship. Instead, unpaid leave is afforded whenever an employee has to give care to "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder": art. 57A(3). Since it is statistically likely that more parents live separately from their children and partners than with them, I have answered this question as "no, unless the parent is living in the same household as the employee".</p>		<p>Explanations and nuances: Unpaid leave is permitted (for an amount of time reasonable in the individual circumstances) in order to provide assistance when a "dependant" requires care. "Dependant" is broadly defined but not in terms of family relationship. Instead, unpaid leave is afforded whenever an employee has to give care to "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder": art. 57A(3). Since it is statistically likely that more parents live separately from their children and partners than with them, I have answered this question as "no, unless the parent is living in the same household as the employee".</p>		<p>Explanations and nuances: Since the 1999 Act amended the 1996 Act, unpaid leave is permitted (for an amount of time reasonable in the individual circumstances) in order to provide assistance when a "dependant" requires care. "Dependant" is broadly defined but not in terms of family relationship. Instead, unpaid leave is afforded whenever an employee has to give care to "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder": art. 57A(3). Since it is statistically likely that more parents live separately from their children and partners than with them, I have answered this question as "no, unless the parent is living in the same household as the employee".</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

In case of accident or illness of one partner, is the other partner considered as next of kin for medical purposes (even without power of attorney)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2000	2016 Yes, but 2000
	N/A 0000		N/A 0000	? 0000	? 0000
<p>References to legal sources: Human Tissue (Scotland) Act 2006, arts. 7 and 50.</p> <p>Mental health (Care and Treatment) (Scotland) Act 2003, article 254.</p> <p>Adults with Incapacity (Scotland) Act 2000.</p>		<p>References to legal sources: Human Tissue (Scotland) Act 2006, arts. 7 and 50.</p> <p>Mental health (Care and Treatment) (Scotland) Act 2003, article 254.</p> <p>Adults with Incapacity (Scotland) Act 2000.</p>		<p>References to legal sources: Human Tissue (Scotland) Act 2006, arts. 7 and 50.</p> <p>Mental health (Care and Treatment) (Scotland) Act 2003, article 254.</p> <p>Adults with Incapacity (Scotland) Act 2000.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Generally speaking, the concept of "next of kin" has little relevance in Scotland and other than in the parent-child relationship no person may provide consent to medical treatment of another. But this is subject to qualification in a couple of specialist areas: mental health treatment and mortis causa donations of organs. The 2000 Act requires that the nearest relative of an adult who is incapable of determining their own medical treatment be kept informed of the treatment being provided; the 2003 Act requires a mental health patient's "nearest relative" to be informed of certain treatment the patient is being subject to. Likewise, the 2006 Act allows a deceased's "nearest relative" to consent to the removal of organs or tissue for transplantation. "Nearest relative" in each statute is defined by means of a list and the highest on the list is the patient's or deceased's nearest relative for the purposes of the Act. In each of these Acts, "spouse or civil partner" is top of the list.</p>		<p>Explanations and nuances: Generally speaking, the concept of "next of kin" has little relevance in Scotland and other than in the parent-child relationship no person may provide consent to medical treatment of another. But this is subject to qualification in a couple of specialist areas: mental health treatment and mortis causa donations of organs. The 2000 Act requires that the nearest relative of adults who are incapable of determining their own medical treatment be kept informed of the treatment being provided; the 2003 Act requires a mental health patient's "nearest relative" to be informed of certain processes the patient is being subject to. Likewise, the 2006 Act allows a deceased's "nearest relative" to consent to the removal of organs or tissue for transplantation. "Nearest relative" in each statute is defined by means of a list and the highest on the list is the patient's or deceased's nearest relative for the purposes of the Act. In each of these Acts, "spouse or civil partner" is top of the list.</p>		<p>Explanations and nuances: Generally speaking, the concept of "next of kin" has little relevance in Scotland and other than in the parent-child relationship no person may provide consent to medical treatment of another. But this is subject to qualification in a couple of specialist areas: mental health treatment and mortis causa donations of organs. The 2000 Act requires that the nearest relative of adults who are incapable of determining their own medical treatment be kept informed of the treatment being provided; the 2003 Act requires a mental health patient's "nearest relative" be informed about certain medical processes the patient is being subject to. Likewise, the 2006 Act allows a deceased's "nearest relative" to consent to the removal of organs or tissue for transplantation. "Nearest relative" in each statute is defined by means of a list and the highest on the list is the patient's or deceased's nearest relative for the purposes of the Act. In each of these Acts, "spouse or civil partner" is top of the list, but cohabitants come second and will be treated as nearest relative so long as there is no spouse or civil partner. Spouses and civil partners are excluded if they have separated so cohabitants will nearly always be top of the list in any case, which is why the answer is YES and not YES, BUT.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

When one partner uses violence against the other partner, does specific statutory protection apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1981	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes, but 1981	2016 Yes, but 2006
No 0000	N/A 0000		N/A 0000	No 0000	Doubt 2004
					No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Matrimonial Homes (Family Protection) (Scotland) Act 1981.</p> <p>Protection from Abuse (Scotland) Act 2001.</p> <p>Domestic Abuse (Scotland) Act 2011.</p>		<p>References to legal sources: Civil Partnership Act 2004, arts 101-116.</p> <p>Matrimonial Homes (Family Protection) (Scotland) Act 1981.</p> <p>Protection from Abuse (Scotland) Act 2001.</p> <p>Domestic Abuse (Scotland) Act 2011.</p>		<p>References to legal sources: Matrimonial Homes (Family Protection) (Scotland) Act 1981, art. 18.</p> <p>Ghaidan v Godin-Mendoza 2004 UKHL 30 (UK House of Lords, 21 June 2004).</p> <p>Family Law (Scotland) Act 2006.</p> <p>Protection from Abuse (Scotland) Act 2001.</p> <p>Domestic Abuse (Scotland) Act 2011.</p>	
<p>Explanations and nuances: The 1981 Act allows a spouse to seek an interdict ("injunction" in English legal usage) against domestic abuse and to seek an exclusion order expelling their spouse from the family home in the face of actual or threatened domestic abuse. The 2001 Act strengthened the protections by allowing the court to attach a power of arrest to these orders, which authorises the police to act. And the 2011 Act created a criminal offence of breaching a domestic abuse interdict.</p>		<p>Explanations and nuances: The 1981 Act, as amended by the Civil Partnership Act 2004, allows a civil partner to seek an interdict ("injunction" in English legal usage) against domestic abuse and to seek an exclusion order expelling their civil partner from the family home in the face of actual or threatened domestic abuse. The 2001 Act strengthened the protections by allowing the court to attach a power of arrest to these orders, which authorises the police to act. And the 2011 Act created a criminal offence of breaching a domestic abuse interdict.</p>		<p>Explanations and nuances: The 1981 Act extended its protections against domestic violence applicable to spouses and civil partners to cohabiting couples, if in a more limited way than for spouses. Originally limited to opposite-sex cohabitants, the language was so gender-specific that the interpretative obligation traced to art. 3 of the Human Rights Act 1998 to include same-sex couples in legislative provisions dealing with cohabitants (Ghaidan v Godin-Mendoza) probably did not apply. The 2006 Act, however, included same-sex cohabitants in the 1981 legislation. The 2001 and 2011 Acts apply to cohabitants as they apply to spouses and civil partners.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Income, troubles and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK SC-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.08 - Criminal procedure**

In case of a criminal prosecution against one partner, can the other partner then refuse to testify against the partner who is being prosecuted?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 2011	2015 No 2014	2015 N/A 0000	2015 No 2011	2015 No 0000	2015 No 0000
Yes 0000	N/A 0000		Yes 2005		
			N/A 0000		
References to legal sources: Criminal Procedure (Scotland) Act 1995, art. 264. Criminal Justice and Licensing (Scotland) Act 2011.		References to legal sources: Civil Partnership Act 2004, art. 130. Criminal Justice and Licensing (Scotland) Act 2011.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The common law rule that the spouse of an accused was a competent but not compellable witness was given statutory effect in the 1995 Act. But the privilege was abolished in 2011 and now the spouse of an accused is not entitled to refuse to testify against his or her husband or wife in a criminal prosecution.</p>		<p>Explanations and nuances: The 2004 Act replicated for civil partners the privilege of spouses to refuse to testify against their partner, but the privilege was abolished by the 2011 Act and now the civil partner of an accused is not entitled to refuse to testify against his or her civil partner in a criminal prosecution.</p>		<p>Explanations and nuances: The common law privilege of spouses to refuse to testify against their husband or wife in a criminal prosecution never applied to cohabitants, and that position was not altered when the rule was put into statutory form by the Criminal Procedure (Scotland) Act 1995, nor when it was extended to civil partners by the 2004 Act. Its abolition in 2011 means that spouses and civil partners are now in the same position as cohabitants. That means there is no partner privilege to refuse to testify in a criminal prosecution.</p>	