



BRIEFING PAPER

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"Common law marriage" and cohabitation

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Summary

This briefing paper provides general information about the number of cohabiting couples, how the law applies to cohabitants, and about the Law Commission's proposals for reform.

Unless specified otherwise, this paper deals generally with the law in England and Wales. There is also a short summary of the position in Scotland and Northern Ireland.

Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware that there is no specific legal status for what is often referred to as a "common law marriage". This is the case no matter how long the couple lived together and even if they had children together.

This paper sets out information about how the current law affects cohabiting couples in these areas: property rights; housing; domestic violence; inheritance; social security; pensions; taxation; immigration; birth registration; and parental responsibility.

The Office for National Statistics has published annual data on the composition of families and households living in the UK since 1996. During this period, the number of opposite sex and same sex cohabiting couple families has increased, but trends differ between opposite sex and same sex couple families.

Some cohabitants enter into a cohabitation agreement which can act as encouragement to consider what they would want to happen if the relationship ends.

In July 2007, following consultation, the Law Commission published a report, *Cohabitation: the financial consequences of relationship breakdown*, which considered the financial consequences of the ending of cohabiting relationships. The Law Commission recommended the introduction of a new statutory scheme of financial relief on separation, based on the contributions made to the relationship by the parties. The scheme would be available to eligible cohabiting couples. Couples who have had a child together or who have lived together for a minimum period would be eligible. Couples would be able to opt out of the scheme by a written agreement to that effect.

In March 2008, the Labour Government announced that it would be taking no action to implement the Law Commission's recommendations until research on the cost and effectiveness of a similar scheme recently implemented in Scotland could be studied. On 6 September 2011, Jonathan Djanogly, then a junior Justice Minister, announced that, having carefully considered the Law Commission's recommendations, together with the outcomes of research on the *Family Law (Scotland) Act 2006*, the then Government did not intend to reform the law relating to cohabitation in that Parliamentary term.

In a separate report, published in 2011, the Law Commission recommended that some unmarried partners should have the right to inherit on each other's death under the intestacy rules, without having to go to court. The Coalition Government did not implement this recommendation.

In Scotland, cohabitants may make limited claims against each other either when their relationship breaks down or when a partner dies.

In Northern Ireland, cohabitants now have legal protection in several areas. However, they have fewer rights and responsibilities than couples who have married or formed a civil partnership.

1. What is “common law marriage”?

A man and woman living together in a stable sexual relationship are often referred to as “common law spouses”, but this is incorrect in law in England and Wales. Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware of this fact.¹ The charity One Plus One states that the “myth of common-law marriage” (that couples who live together have the same legal rights as married couples) springs from a time when there was uncertainty about what constituted a marriage.²

The then Department for Constitutional Affairs³ funded two voluntary sector partners, Advice Services Alliance and One Plus One, to manage the “LivingTogether” campaign.⁴ The purpose of the campaign was to make cohabitants more aware of their legal status and provide them with practical advice on how they could protect themselves and their families, should they wish to do so. The campaign was launched on 15th July 2004 and a range of general information is available on the [Advicenow](#) website⁵ and the [One Plus One](#) website.⁶

Citizens Advice also provides general information:

- [Living together and marriage: legal differences](#);
- [Living together and civil partnership - legal differences](#).⁷

¹ See, for example, One Plus One, [Your rights and responsibilities vary depending on the type of relationship you are in](#) [accessed 8 February 2016]

² For further information see One Plus One, [The myth of common law marriage](#) [accessed 8 February 2016]

³ Now the Ministry of Justice

⁴ Department for Constitutional Affairs, [Living together but not married? Do you know the legal implications of cohabitation?](#), July 2004 (ARCHIVED) [accessed 8 February 2016]

⁵ Advicenow, [Living together](#) [accessed 8 February 2016]

⁶ One Plus One, [Married or not?](#) [accessed 8 February 2016]

⁷ Accessed 9 February 2016

2. Number of cohabiting couples

The Office for National Statistics has published annual data on the composition of families and households living in the UK since 1996.⁸ During this period, the number of opposite sex and same sex cohabiting couple families has increased, but trends differ between opposite sex and same sex couple families.

2.1 Opposite sex cohabiting couples

Between 1996 and 2015 the number of opposite sex cohabiting couple families has doubled, from around 1.5 million in 1996 to around 3.1 million in 2015. In 1996, around 10% of all opposite sex couple families were cohabiting (rather than married) compared with 20% in 2015.

Chart 1 below shows ONS estimates of the number of opposite sex cohabiting couple families and opposite sex married couple families living in the UK in each year since 1996. This chart includes all opposite sex couples living together as a family, whether or not they have children.⁹

As the chart shows, while the number of opposite sex cohabiting couple families has grown, the number of opposite sex married couple families has remained broadly the same, at around 12.5 million. Between 1996 and 2004 the number of opposite sex married couple families fell, from around 12.6 million in 1996 to around 12.2 million. The number remained at roughly this level until 2011 but has increased since then, reaching 12.5 million in 2015.

Since 1996, the number of dependent children living in opposite sex cohabiting couple families has more than doubled, from around 0.9 million in 1996 to around 2.1 million in 2015.¹⁰ The number of dependent children in married couple families has fallen from around 9.7 million in 1996 to around 8.6 million in 2015.¹¹

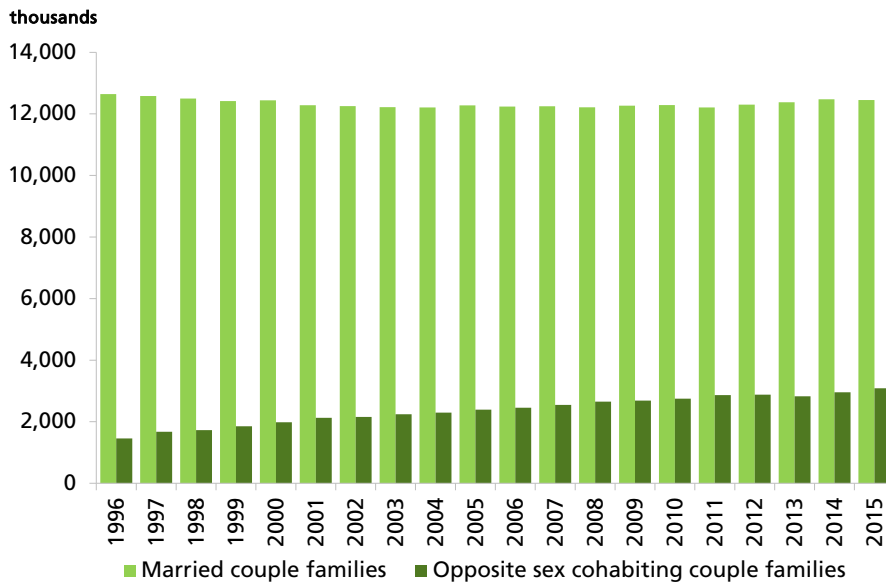
⁸ ONS, [Families and Households 2015](#)

⁹ The ONS defines a family as a married, civil partnered or cohabiting couple with or without children, or a lone parent with at least one child. Children may be dependent or non-dependent.

¹⁰ Dependent children are those living with their parent(s) and either aged under 16, or aged 16 to 18 in full-time education (excluding those aged 16 to 18 who have a spouse, partner or child living in the household).

¹¹ This figure includes a small number of children living in same sex married couple families in 2015.

Chart 1: Married couple and opposite sex cohabiting couple families, UK, 1996-2015



Source: ONS, [Families and Households 2015](#), Table 1

2.2 Same sex cohabiting couples

Between 1996 and 2015 the number of same sex cohabiting couples increased from around 16,000 to 90,000, which is an increase of around 460%. However, this figure understates the true extent of growth in same sex couple families, because the introduction of civil partnerships in December 2005 and of same sex marriage in March 2014 means some same sex couple families are no longer recorded as cohabiting.

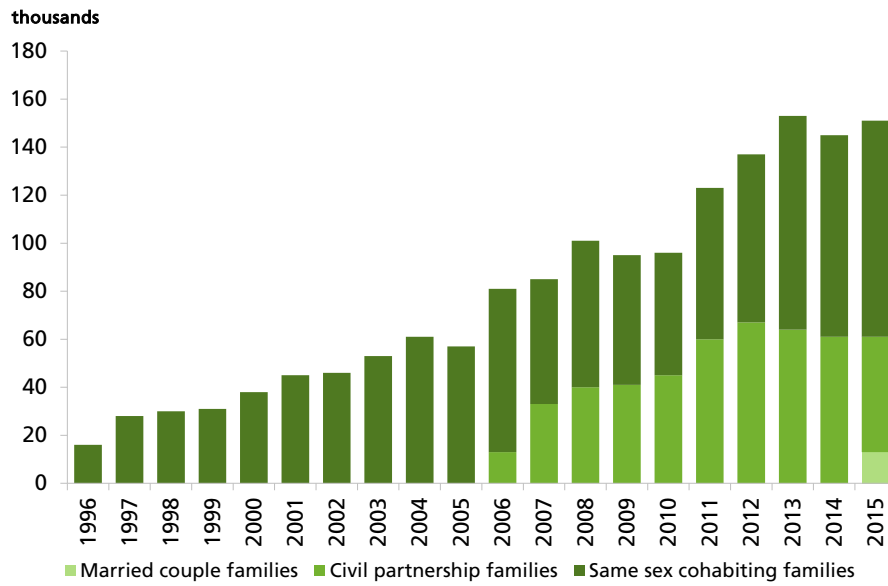
Chart 2 shows ONS estimates of the number of same sex cohabiting couple families, civil partnership families, and same sex married couple families from 1996 to 2015. Estimates of the number of civil partnership couples are available from 2006 and of same sex married couple families from 2015. In this chart, the three different types of same sex couple family are stacked in order to illustrate the trend in the total number same sex couple families.

Because ONS estimates of the number of families are based on survey data, estimates of these smaller populations are more uncertain. Nevertheless, despite this uncertainty there is a clear trend in the total number of same sex couple families, whether in a marriage, civil partnership, or cohabiting relationship.

The number of children living in same sex couple families is difficult to measure because the number is too small to estimate accurately from the available survey data. However, the best available estimates suggest that in recent years there have been somewhere around 20,000 dependent children living in same sex couple families of all types.

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Chart 2: Civil partnership and same sex cohabiting couple families, UK, 1996-2015



Source: ONS, [Families and Households 2015](#), Table 1

3. The current law relating to cohabitation

3.1 Property rights

Unmarried couples have no guaranteed rights to ownership of each other's property on relationship breakdown. If a cohabiting couple separate, the courts have no power to override the strict legal ownership of property and divide it as they may do on divorce or dissolution of a civil partnership. The courts may only make orders based on a determination of shares which have been acquired in the property in circumstances where the legal rules of trusts or proprietary estoppel apply. These rules are technical but, essentially, one party may be found to have a *beneficial* (or equitable) interest in the property even where the property is in the sole name of the other party; or to have a greater share than the other party where the property is held in joint names. The apparent intentions of the parties may be relevant in deciding the proportion of the property owned by each party. The length of time the partners have cohabited is not necessarily relevant. Each case is decided on its own facts.

The law relating to cohabitants and property rights is widely seen to be uncertain. In its 2002 discussion paper, [Sharing Homes](#), the Law Commission concluded that "It is quite simply not possible to devise a statutory scheme for the ascertainment and quantification of beneficial interests in the shared home which can operate fairly and evenly across the diversity of domestic circumstances which are now to be encountered."¹²

A number of court cases have considered the property rights of cohabitants.¹³ In a 2007 case, Lord Walker of Gestingthorpe said that there was "a good deal of uncertainty and the possibility of high litigation costs". In the same case, Baroness Hale of Richmond also cautioned about the costs of pursuing legal action:

In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual.¹⁴

In 2011, in another case, Lord Walker and Baroness Hale summarised the principles which apply where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests. They confirmed that each case would turn on its own facts:

¹² Law Com No 278, [Sharing Homes A Discussion Paper](#), November 2002, p7

¹³ For example, [Oxley v Hiscock](#) [2004] EWCA Civ 546, [Stack v Dowden](#) [2007] UKHL 17, [Jones v Kernott](#) [2011] UKSC 53

¹⁴ [Stack v Dowden](#) [2007] UKHL 17, paragraph 68

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“financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended... or fair...”.¹⁵ They also said that there was a different starting point where the family home is put into the name of one party only:

52. This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as ...above.¹⁶

It is open to cohabiting couples to enter into a contract regulating their relationship and in particular their property rights. In addition, if a house or other property is bought jointly, it is possible to make clear the basis of the joint ownership, and whether the property is owned equally or in unequal shares.

Further information about property rights for cohabitants is available online including:

- One Plus One: [Property](#).¹⁷
- Shelter, [Buying a home with friends or a partner](#).¹⁸

3.2 Housing

The succession rights of cohabitants in relation to privately rented and social housing are explained in two Library briefing papers entitled [Succession rights and privately rented housing](#)¹⁹ and [Succession rights and social housing](#).²⁰

3.3 Domestic violence

Cohabitants do benefit, in a broadly similar way to married couples, from the protection available under Part IV of the *Family Law Act 1996*, which is designed to deal with domestic violence. The Act allows home-sharers and former home-sharers (including same sex partners) to apply for non-molestation orders and/or court orders regulating the occupation of the family home. The *Domestic Violence Crime and Victims Act 2004* extended these provisions to allow couples who have never cohabited to apply for non-molestation orders, and to strengthen the position of same sex partners, particularly with regard to occupation orders.

¹⁵ [Jones v Kernott](#) [2011] UKSC 53, paragraph 51

¹⁶ *Ibid* paragraph 52

¹⁷ Accessed 8 February 2016

¹⁸ Accessed 8 February 2016

¹⁹ SN/SP/2004, 6 March 2009

²⁰ SN/SP/1998, 30 June 2014

3.4 Inheritance

Surviving cohabitant has no automatic right to inherit partner's estate

Where a couple live together without getting married or forming a civil partnership and one of them dies, the survivor has no automatic right under the intestacy rules to inherit any part of his or her partner's estate.²¹ This is the case no matter how long they lived together and even if they had children together.²² It is sometimes possible for a surviving cohabitant to make a claim at court, under family provision legislation, against the estate of their partner, if no provision (or inadequate provision) has been made for them either by will or by operation of the intestacy rules. However, a cohabitant is not treated in exactly the same way as a spouse.

Law Commission proposal to extend inheritance rights for some cohabitants

On 29 October 2009, the Law Commission published a consultation paper, [Intestacy and Family Provision Claims on Death](#).²³ This covered a range of issues. One of the areas highlighted for potential reform was whether certain cohabitants should have a place in the intestacy rules, the conditions which would have to be met, and how much of the estate they should receive.

The consultation period ended on 28 February 2010 and the Law Commission published its final report, [Intestacy and Family Provision Claims on Death](#) on 14 December 2011.²⁴ This included two draft bills, one of which, the draft *Inheritance (Cohabitants) Bill* contained provisions intended to give some unmarried partners, who had lived together for five years, the right to inherit on each other's death under the intestacy rules, without having to go to court. Where the couple had a child together, this entitlement would accrue after two years' cohabitation, provided the child was living with the couple when the deceased died.

The Law Commission acknowledged that views differed on how far the law should provide for cohabitants. However, it considered that the question of whether a cohabitant should inherit on his or her partner's death was very different from the treatment of cohabitants on separation. It proposed reform only where the deceased was not married or in a civil partnership.²⁵

The Law Commission said that its recommendations "reflect the growing prevalence and public acceptance of cohabitation" and that

²¹ The intestacy rules specify who should inherit the property of a deceased person who did not leave a valid will

²² Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Consultation Paper No 191 (Summary), 29 October 2009, paragraph 15

²³ Law Commission Consultation Paper No 191, [Intestacy and Family Provision Claims on Death](#), October 2009

²⁴ Law Commission Report No 331, [Intestacy and Family Provision Claims on Death](#), December 2011

²⁵ Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Law Com Report 331 (Summary), 14 December 2011, p5

they would also bring English law into line with the law in other Commonwealth jurisdictions. Cohabitants would still be able to make a will naming other beneficiaries (subject to making reasonable provision for those family members and dependants protected by existing family provision legislation).²⁶

In March 2013, the previous Government announced that it had decided that the Law Commission's recommendations regarding rights for cohabitants upon intestacy would not be implemented during that Parliament.²⁷

3.5 Social Security

For means-tested benefits and tax credits – and for Universal Credit which is to replace them – the unit of claim is the “family”. In general this includes the claimant and their husband, wife or civil partner, or someone they live with as husband, wife or civil partner.²⁸ If two people are treated as a couple, the resources of both partners are added together and taken into account when a claim is made.

The rules governing Income Support and income-based Jobseeker’s Allowance also recognise that married couples, and civil partners, have a duty to maintain each other. The Department for Work and Pensions may, for example, seek to recover money from a separated spouse or civil partner if their partner claims benefit. These powers are rarely exercised, however. There are no corresponding provisions for couples who are not married or in a civil partnership.

Contributory benefits – ie those which are dependent on a sufficient National Insurance contribution record – do not recognise couples who are not married or in a civil partnership. So, for example, partners who are not married or in a civil partnership would not be entitled to bereavement benefits.²⁹ Someone in receipt of bereavement benefits can however lose their entitlement if they start living together as if they were husband and wife, even if they do not remarry; or start living together with someone as though civil partners, even if they do not register their partnership.

²⁶ *Ibid* paragraph 33

²⁷ [HC Deb 21 March 2013 cc59-60WS](#)

²⁸ For further details of the “living together as husband and wife or civil partners” test, see Department for Work and Pensions Technical Guide IS20, [A guide to Income Support](#), April 2014

²⁹ There is however an exception in Scotland. In Scotland a person may be able to claim bereavement benefits if they were married 'by cohabitation with habit and repute' even if they did not go through a formal wedding ceremony [R(G) 1/71]. This is more than simply living together, as there must have been something about the relationship which meant that it could be inferred that the person and their partner consented to marriage and nothing existed which would have prevented a valid marriage taking place (e.g. either party already being married to someone else) [R(G) 5/83]. In addition, their relationship must have been such that other people generally believed that they married [CSG/7/1995]. However, the rule by which marriage could be constituted by cohabitation with habit and repute ceased to have effect from 4 May 2006 (as a result section 3 of *The Family Law (Scotland) Act 2006*). For people to continue to benefit from the rule, their marriage by cohabitation with habit and repute must have started before this date.

Successive governments have resisted calls to extend bereavement benefits to unmarried partners on the grounds that a founding principle of the social insurance system is that all rights to benefit derived from another person's contributions are based on the concept of legal marriage (extended to include civil partnerships). However, practical considerations have also been cited, such as the difficulty of ascertaining the nature and depth of the relationship, and the possibility of conflicting claims (eg where the spouse was separated when they died, leaving both a surviving unmarried partner and a legal spouse).³⁰

Part 5 of the *Pensions Act 2014* provides the legislative framework for a new benefit – Bereavement Support Payment – to replace the existing system of bereavement benefits for new claims starting from 2016-17. It follows a public consultation on proposals to reform bereavement benefits launched in December 2011. From the outset the Government made it clear that it had no plans to extend the new benefit to unmarried partners. Remarriage or repartnering will not however disqualify the bereaved individual from receiving Bereavement Support Payment, as it is intended as help with the additional costs of bereavement, rather than serving as replacement for the deceased spouse or civil partner's earnings. For practical purposes though, this change may have limited impact since, under current proposals, Bereavement Support Payment would only be payable for one year. Further information can be found in section 6 of [Library Briefing Paper 13/37](#), and in Library briefing SN00431, [Bereavement benefits](#).

3.6 Pensions

A cohabitant cannot rely upon their former partner's contributions for the purposes of State Pensions. Under current rules, a person who is or has been married, or in a civil partnership, may be able to claim a basic State Pension (BSP) on the basis of their (former) spouse or civil partner's contributions.³¹ These rules are to be removed (with some transitional protection) for people reaching State Pension age from 6 April 2016, when the new State Pension is introduced.³² The rationale is that the new State Pension has been designed for people to qualify on the basis of their own NI record.³³ For more detail, see Library briefing paper, SN 6525 [Single-tier State Pension](#) (December 2015) (section 6.4).

For means-tested benefits, such as Pension Credit, if two people are treated as a couple, the resources of both are added together and may be taken into account in assessing entitlement. Two cohabitants are treated as a couple if they are considered to live together and share their lives in the same way as if they were married or civil partners.³⁴ They are still treated as a couple during periods temporarily living apart.

³⁰ See section 3.7 of Library briefing SN00431, [Bereavement benefits](#), 30 August 2013

³¹ DWP, [State Pension entitlements derived from a current or former spouse's or civil partner's national insurance contributions](#) (March 2013) - [Annex A](#); Pension Service, [a detailed guide to State Pensions for advisers and others](#), NP46, August 2009, p44-54

³² [Pensions Act 2014](#), s1(2), 11 and 12

³³ [Pensions Act 2014](#), s1(2), 11 and 12

³⁴ Pension Service, [a detailed guide to Pension Credit for advisers and others](#), PC10S, September 2011, [People living as husband and wife or as civil partners](#)

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If a temporary separation becomes permanent, they can apply for Pension Credit separately.³⁵

For occupational and personal pensions, a cohabitant whose partner has died may be entitled to benefits from their pension scheme. This will depend on the circumstances at the time of death (including their partner's age), the type of pension arrangement and the rules of the scheme.³⁶ For more detail, see Library Note SN 6348 [Occupational pensions: survivors' benefits for cohabitants](#) (June 2012).

3.7 Taxation

Cohabiting couples are treated as unconnected individuals for taxation purposes and as such cannot, for example, benefit from various reliefs and exemptions in the taxation system available for spouses and civil partners.

3.8 Immigration

The legal position of non-EEA national unmarried cohabitants seeking to enter or remain in the UK with their British/settled partner largely mirrors that for married couples, as set out on the ['Family visas'](#) section of the GOV.UK website. In order to be eligible for permission to remain in the UK as an unmarried partner of a British/settled person, the couple must have been "living together...in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application".³⁷

3.9 Birth registration

If the parents were married to each other at the time of the birth or conception, either the mother or father can register the birth on their own and details of both parents will be recorded. The law assumes that the mother's husband is her child's father.

If the parents are not married to one another, generally the father's details may be recorded only if both parents (or the court) acknowledge the father's paternity. The father's particulars may be entered in the register in the following circumstances:

- the mother and father sign the birth register together, or
- one parent completes a statutory declaration of parentage form and the other takes the signed form to register the birth,
- one parent goes to register the birth with a document from the court (for example, a court order) giving the father parental responsibility.³⁸

If the father's details are not included in the birth register, it may be possible to re-register at a later date.

³⁵ *Ibid*, [People living apart from their partner](#)

³⁶ See, for example, Pensions Advisory Service website, [Workplace pension schemes – final salary scheme - death benefits](#) and [Personal and stakeholder pensions - death benefits](#). HMRC's Registered Pension Scheme Manual - [Members Pages - Death benefits](#)

³⁷ [Immigration Rules \(HC 395 of 1993-4 as amended\)](#), Appendix FM para GEN.1.2

³⁸ Gov.UK, [Register a birth](#), updated 30 December 2015 [accessed 8 February 2016]

Information about registering a birth is included on the [Gov.UK](#) website. This includes information about how same sex couples may register a birth and about who else may be able to register a birth.

Section 56 and Schedule 6 of the [Welfare Reform Act 2009](#) were intended to make provision for the joint registration of births, wherever possible, where the parents of a child are not married to each other nor are civil partners of each other. However, these provisions have not been brought into force.³⁹

3.10 Parental responsibility

The legal position relating to parental responsibility for unmarried fathers is set out in a Library briefing paper, [Parental responsibility for unmarried fathers and step-parents](#).⁴⁰

³⁹ Department for Education, [The Registration of Births \(Parents Not Married And Not Acting Together\) Regulations 2010 - Consultation Results](#) [accessed 8 February 2016]

⁴⁰ SN/SP/2827, 8 September 2014

4. Cohabitation agreements

Cohabitants may wish to enter into a cohabitation agreement and this can act as encouragement for them to consider what they would want to happen if the relationship ends. Both parties should take legal advice on the effect of any proposed agreement. One Plus One comments that "although courts are showing more willingness to take account of such agreements there is still no certainty that they would enforce one", but considers that an agreement provides "a good starting point".⁴¹

Advicenow has published, [How to make a living together agreement](#), which includes a template of an agreement.⁴²

⁴¹ One Plus One, [Contracts](#), [accessed 8 February 2016]

⁴² March 2015 [accessed 8 February 2016]

5. Law Commission report

5.1 New statutory scheme recommended

On 31 July 2007, following consultation, the Law Commission published a report, [Cohabitation: the financial consequences of relationship breakdown](#).⁴³ The Report recommended the introduction of a new scheme of financial remedies for cohabitants on separation. The Law Commission did not consider that cohabitants should be given the same rights as married couples and civil partners in the event of their separation.

The Law Commission proposed the introduction of a scheme of financial relief on separation based on the contributions made to the relationship by the parties (rather than on the respective financial needs of the parties as in divorce). First consideration would be given to any dependent children of the couple. Unlike in cases of divorce, cohabitants would not be expected to meet each other's future needs by means of maintenance payments, and there would be no principle that the parties should share their assets equally.⁴⁴

Moving in with someone, by itself, would not automatically give rise to any entitlement to a remedy. The scheme would be available to eligible cohabiting couples. Couples who have had a child together or who have lived together for a minimum period would be eligible. The Law Commission recommended that the minimum period for couples without children should be set within a range of two to five years.⁴⁵

Couples would be able to opt out of the scheme by a written agreement to that effect.

The key features of the scheme were summarised in the [Executive Summary](#). This includes an explanation of the basis for remedies based on "qualifying contributions" to the relationship:

1.17 It would not be sufficient for applicants simply to demonstrate that they were eligible for financial relief and that the couple had not made a valid opt-out agreement disapplying the scheme. In order to obtain a remedy, applicants would have to prove that they had made qualifying contributions to the parties' relationship which had given rise to certain enduring consequences at the point of separation.

1.18 The scheme would therefore be very different from that which applies between spouses on divorce. Simply cohabiting, for however long, would not give rise to any presumed entitlement to share in any pool of property. Nor would the scheme grant remedies simply on the basis of a party's needs following separation, whether by making orders for maintenance or otherwise.

1.19 In broad terms, the scheme would seek to ensure that the pluses and minuses of the relationship were fairly shared between

⁴³ [Cm 7182, LAW COM No 307](#)

⁴⁴ Law Commission press release, *New remedies for cohabitants – different from divorce*, 31 July 2007

⁴⁵ *Ibid*

the couple. The applicant would have to show that the respondent retained a benefit, or that the applicant had a continuing economic disadvantage, as a result of contributions made to the relationship. The value of any award would depend on the extent of the retained benefit or continuing economic disadvantage. The court would have discretion to grant such financial relief as might be appropriate to deal with these matters, and in doing so would be required to give first consideration to the welfare of any dependent children.

1.20 We consider that a scheme based on these principles would provide a sound basis on which to address the hardship and other economic unfairness that can arise when a cohabiting relationship ends. It would respond, more comprehensively than the current law can, to the economic impact of the contributions made by parties to their relationship, and so to needs which arise in consequence. Where there are dependent children, the scheme would enable a remedy to be provided for the benefit of the primary carer, and so better protect those children who share their primary carer's standard of living. By making adequate provision for the adult parties, the scheme would give more leeway to the court than it currently has to apply Schedule 1 to the Children Act 1989 for the benefit of the parties' children.⁴⁶

Stuart Bridge, the Commissioner leading the project, said that the scheme would be distinct from divorce provisions and would not undermine marriage:

The scheme we are recommending, in the light of consultation, is distinct from that which applies between spouses on divorce. It would not apply to all cohabitants and where it did apply would only give rise to remedies relating to contributions made to the relationship. We do not accept the argument that such reform would undermine marriage. We consider that our scheme strikes the right balance between the need to alleviate hardship and the need to protect couples' freedom of choice.⁴⁷

5.2 Government response

Labour Government: study research on Scottish scheme before decision

On 6 March 2008, Bridget Prentice, who was then a junior Justice Minister, announced that no action would be taken to implement the Law Commission's recommendations until research on the cost and effectiveness of the scheme recently implemented in Scotland could be studied.⁴⁸

Coalition Government: no implementation at that time

On 6 September 2011, Jonathan Djanogly, then a junior Justice Minister, announced that, having carefully considered the Law Commission's recommendations, together with the outcomes of

⁴⁶ Law Commission, [Cohabitation: The Financial Consequences of Relationship Breakdown Executive Summary](#), Law Com No 307 (Summary), 31 July 2007

⁴⁷ Law Commission press release, New remedies for cohabitants – different from divorce, 31 July 2007

⁴⁸ [HC Deb 6 March 2008 c122WS](#)

research on the *Family Law (Scotland) Act 2006*, the then Government did not intend to reform the law relating to cohabitation in that Parliamentary term:

The findings of the research into the Scottish legislation do not provide us with a sufficient basis for a change in the law. Furthermore, the family justice system is in a transitional period, with major reforms already on the horizon. We do not therefore intend to take forward the Law Commission's recommendations for reform of cohabitation law in this parliamentary term.⁴⁹

6. Scotland

Under the *Family Law (Scotland) Act 2006*, which came into force in May 2006, cohabitants (opposite sex and same sex couples) may make limited claims against each other in the event of their relationship terminating or on the death of one cohabitant. However, couples living together do not have the same rights as married couples and civil partners. In May 2006, the Scottish Executive produced a leaflet entitled *Family Matters: Living Together in Scotland* which provides information about the law on cohabitation and the rights introduced by the 2006 Act.⁵⁰ This states that "common law marriage" does not exist in Scotland and that cohabiting couples do not have the same rights as married couples and civil partners:

Common law marriage

It is a common misunderstanding that a couple will have established a "common law marriage" after living together for a period of time. This is not the case. Common law marriage does not exist in Scotland. Even if you have lived with your partner for many years, you do not have the same rights in law as a married person does. There was a type of irregular marriage called "marriage by cohabitation with habit and repute" which could apply to couples who had lived together and were thought to be married. This was rarely used in practice and, except for very particular circumstances, was abolished by the 2006 Act.

Cohabitants' rights

The 2006 Act has introduced a set of basic rights to protect cohabitants, either when their relationship breaks down, or when a partner dies. But the law is very clear: couples living together do not have the same rights as married couples and civil partners. It is very important that you understand this when deciding whether to move in with your partner or to make a formal commitment.⁵¹

Citizens Advice Scotland provides further information:

- [*Living together and opposite sex marriage: legal differences*](#),
- [*Living together and same-sex marriage: legal differences*](#).⁵²

⁵⁰ [*Family Matters Living Together in Scotland*](#), May 2006

⁵¹ *Ibid* p2

⁵² Accessed 9 February 2016

7. Northern Ireland

In Northern Ireland, cohabitants are now given legal protection in several areas. However, they and their families have significantly fewer rights and responsibilities than their counterparts who are married or who have formed a civil partnership.⁵³ The NI Direct website provides further information:

Most people think that after they've been living with their partner for a couple of years, they become 'common law husband and wife' with the same rights as married couples. This is not the case. In fact, couples who live together have hardly any of the same rights as married couples or civil partners.

There is no such thing as 'common law marriage'.

If you are living together as a couple, there are steps you can take to protect yourself and your partner.

There are also ways to minimise the legal and financial problems which may arise if, as can happen, you decide to separate, or if one of you dies.

Citizens Advice provides further information, [*Living together and marriage: legal differences \(Northern Ireland\)*](#).⁵⁴

⁵³ NI Direct, [*Marriage, civil partnerships and cohabitation*](#) [accessed 9 February 2016]

⁵⁴ Accessed 9 February 2016

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