



Ministry
of Justice

A fairer end to relationships

A consultation on reforming financial remedies on divorce and strengthening protections for cohabitants at the end of their relationship

June 2026



Government of the United Kingdom

Ministry of Justice

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A consultation on reforming financial remedies
on divorce and strengthening protections for cohabitants
at the end of their relationship

Presented to Parliament by the Lord Chancellor and Secretary of State
for Justice by Command of His Majesty

June 2026



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About this consultation

To: This consultation is open to the public. We would be particularly interested to hear from academics, family law practitioners, the Family Courts' judges and magistrates, Parliamentarians, support organisations and members of the public who have an interest in the law regarding cohabiting couples and financial provision on divorce in England and Wales.

Duration: From 05/06/26 to 14/08/26

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Foreword

Families are the bedrock of our society and this Labour Government is committed to supporting and protecting all types of families. The way people form families in England and Wales has changed significantly over the past quarter of a century, reflecting changing patterns of family life. Yet the law hasn't kept pace with the realities of modern families, leaving many without rights and facing financial hardship. This consultation proposes some of the biggest reforms to family law in decades – bringing the law into the 21st century, helping families feel better off and increasing protections for millions.

Over 3.5 million couples live together without getting married or entering a civil partnership, a number that has more than doubled over the past three decades. Despite this, cohabiting couples and their children have very limited financial protections should a relationship end.

Too often, families are left navigating costly and complex property law that was never designed to meet their needs. These limited rights have real consequences. Victim-survivors of domestic abuse, including economic abuse, may be trapped in unsafe relationships, while children can face instability despite having no say in their parents' marital status. Bereaved unmarried partners can be left with no inheritance if a partner dies without a will, adding stress to one of life's most difficult times.

In our manifesto, we committed to strengthening the rights and protections available to women in cohabiting couples as part of our wider ambition to halve violence against women and girls in a decade. This consultation marks the start of that journey. We are seeking views on how we can build a fairer legal framework for cohabitants: one that reflects the realities of modern family life and safeguards the most vulnerable, while retaining the distinct nature of marriage.

Protection against domestic abuse is a key theme in this consultation. As part of this, the consultation seeks views on how domestic abuse could be considered by the courts in both financial remedy and cohabitation cases.

The legal framework which sets out how finances are divided on divorce has also remained largely unchanged for over half a century. While marriage remains a lifelong commitment for many, the law must also provide clarity and fairness in circumstances when a marriage does come to an end. The Law Commission found that the current system can produce uncertain outcomes and prolong or even exacerbate conflict. The Government believes that the law should do the opposite: encourage agreement and settlement where possible.

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This consultation is about ensuring the law works for those getting a divorce, offering them what they need at difficult times in their lives. Part of that is making the law clearer and more transparent, so it is more accessible to those who use it. Reform should also give couples greater autonomy in planning their future financial arrangements. That is why this consultation proposes introducing Qualifying Nuptial Agreements, enabling couples to decide in advance how finances should be arranged in the event of divorce while ensuring important safeguards to ensure needs are met and to protect against coercion.

Marriage will always be one of this country's most important and beloved institutions. Entering into a lifelong union through marriage brings many benefits, including emotional support, financial stability and legal protections. Extending dedicated rights to unmarried couples reflects our commitment to supporting strong and stable family relationships in all their forms.

Supporting families also means ensuring families have financial security and these reforms are a key part of the Government's efforts to ease the burden on families. A clearer framework for divorcing couples would make it easier to resolve finances without going to court, helping to avoid costly court fees. Greater clarity in the law would also give couples more confidence in planning their future financial arrangements, at a time when household finances are under pressure. Ensuring that there are safeguards for cohabitants, many of whom are unaware that they do not have the same financial rights as a married couple, would also provide protection from financial destitution.

This consultation supports the Government's wider efforts to support families. Since the election we have removed the two-child limit on Universal Credit, lifting 450,000 children out of poverty. We are investing over £9.5 billion in the early years entitlements in 2026-27 alone, more than doubling annual investment in the sector compared to 2023-24. We have also launched a landmark review of parental leave. And we have published our *Freedom from Violence and Abuse Strategy*, which sets out robust support for families through transformative investments into children's social care and the Best Start Family Hubs, which will enable family services to address domestic abuse and help foster safe, loving homes.

Within my own Department, we have also announced a package of family court reforms to better protect children. This includes plans to repeal the presumption of parental involvement and, following Royal Assent of the Victim and Courts Act in April, to automatically restrict the exercise of parental responsibility where an individual has been convicted of a serious sexual offence against any child and where a child is born of rape.

This consultation is an opportunity to go further. We want to hear from everyone: legal professionals, academics, charities, interest groups and members of the public. Your views will help shape a system that is fairer, clearer and better equipped for the society we live in today.

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I look forward to hearing your views.

A handwritten signature in black ink, appearing to read 'David Lammy', with a stylized flourish at the end.

Rt Hon David Lammy MP

Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice

Glossary

“Beneficial interest”: a person with a beneficial interest enjoys the benefits of a property or asset, without necessarily being the legal owner, such as the right to live in it, receive rental income or receive a share of the proceeds if it is sold.

“Blended family”: a family where one or both partners have children from previous relationships and they combine to form a new family unit.

“Child maintenance”: regular payments made by one parent to another to cover a child’s living costs. This can be arranged by agreement between parents or managed through the Child Maintenance Service.

“Child Maintenance Service” (CMS): the statutory body that determines and administers child maintenance.

“Codification-plus”: a model of reform to the law of financial remedies on divorce and dissolution proposed by the Law Commission in its 2024 report on the law of financial remedies. Under this model, established case law principles would be set out clearly in legislation, with additional targeted statutory reforms where the law is currently uncertain.

“Coercive behaviour”: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

“Cohabitation agreements”: agreements or contracts which may set out details of ownership of property, outline each partner’s financial responsibilities during the relationship and specify what should happen if their relationship breaks down.

“Common law marriage myth”: the mistaken belief that unmarried couples can obtain rights similar to those of married couples if they have lived together for a period of time or have a child.

“Controlling behaviour”: an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

“Civil partnership”: a legally registered relationship between two people which provides the same legal rights on dissolution as those available to married couples on divorce.

“Civil Partnership Act 2004”: the Act which sets out how these partnerships are formed and how they can be dissolved.

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“Clean break”: the ending of financial obligations and dismissal of all future financial claims between divorcing parties.

“Dissolution”: the legal termination of a civil partnership.

“Divorce”: the legal termination of a marriage.

“Domestic Abuse”: defined in the Domestic Abuse Act 2021 as abusive behaviour between two people aged 16 years or older who are personally connected to each other, regardless of whether the behaviour consists of a single incident or a course of conduct (pattern of behaviour).

“Economic Abuse”: defined in the Domestic Abuse Act 2021 as any behaviour that has a substantial adverse effect on an individual’s ability to acquire, use or maintain money or other property or obtain goods or services.

“Estate”: the total of all property, rights and interests of a person at the time of their death, less all liabilities, debts and expenses.

“Fact-finding hearing”: a court hearing where the court makes decisions about whether disputed allegations are true or not. For example, fact-finding hearings may be listed in private law children’s cases where one party makes allegations of domestic abuse, which are denied by the other party. The court will use the fact-finding hearing to decide the truth of these allegations.

“Family Courts”: the Family Court and the Family Division of the High Court in England and Wales, which hear applications relating to family disputes, including financial remedy applications on divorce.

“Financial order”: a court order which sets out the division of money and property after divorce or dissolution, for the benefit of a spouse or children.

“Financial remedy proceedings”: proceedings in the Family Courts where one party has (or both parties have) applied for a financial order on or after a divorce or dissolution of a civil partnership.

“Grant of letters of administration”: the formal legal authority issued by the Probate Registry permitting an individual, to manage and distribute the estate of someone who has died without leaving a valid a will.

“Grant of probate”: the formal legal authority issued by the Probate Registry permitting the executor named in a valid will to administer the estate of a deceased person.

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“Intestacy”: the situation where a person dies without leaving a valid will (they die “intestate”).

“Intestacy Rules”: the statutory rules which govern how an estate is administered and distributed where a person has died without leaving a valid will.

“Inheritance (Provision for Family and Dependants) Act 1975” (I(PFD)A 1975): legislation enabling the courts to order reasonable financial provision from a deceased person’s estate for eligible family members and dependants.

“Joint lives order”: a form of maintenance payment that continues indefinitely unless one party dies, the recipient remarries or the Family Courts make another order.

“Judicial discretion”: the ability of judges to make decisions based on their own judgement when considering a case.

“Limitation period”: a time frame within which an application to the court must be made.

“Lump sum order”: a type of financial remedy order that requires one party to pay to the other a specific amount of money.

“Maintenance”: regular payments made by one party to another (usually monthly) to meet ongoing income needs.

“Matrimonial Causes Act 1973” (MCA 1973): the legislation which sets out what financial orders can be made by the Family Courts on divorce, and the factors which the Family Courts should consider when making these orders.

“Matrimonialisation”: the process by which non-matrimonial property may become matrimonial property.

“Matrimonial property”: property earned or acquired during the marriage which comprises the fruits of the marriage partnership, reflects the marriage partnership or is the product of the parties’ common endeavour.

“Non-matrimonial property”: typically pre-marital property brought into a marriage by one of the parties or property acquired by one of the parties by inheritance or gift.

“Non-resident parent”: A parent who does not live with their child.

“Nuptial agreement”: an agreement made before or during a marriage which seeks to determine the financial outcomes in the event of divorce. “Pre-nuptial” agreements are made before a marriage and “post-nuptial” agreements are made after a marriage.

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“Personal chattels”: tangible moveable property owned by an individual, excluding money, business-use items, or property held solely as an investment. Examples include jewellery, art or furniture.

“Pension sharing order”: a Family Court order that shares a pension by giving a percentage of a pension fund to the person benefitting from the pension order, which they can put into a new pension of their own.

“Pension attachment order”: an order that allows a percentage of a divorced spouse’s pension to be paid when they retire to their ex-spouse.

“Probate”: probate is the legal process that takes place after someone dies, by which authority is given to deal with their estate. It confirms who is entitled to act, allows debts and taxes to be paid, and ensures any remaining money and property is distributed in accordance with the will or the law.

“Property adjustment order”: A transfer of ownership or interest in a property from one party to another.

“Schedule 1 to the Children Act 1989”: legislation which sets out the Family Court’s powers to make certain financial orders for the benefit of children, regardless of whether parents are married or not.

“Section 25 factors”: a “checklist” of specific factors set out in section 25(2) of the Matrimonial Causes Act 1973 which the Family Courts must particularly consider when deciding the financial orders it will make within financial remedy proceedings.

“Trust”: a legal arrangement where one person (a “trustee”) holds assets on behalf of another (a “beneficiary”).

“Trusts of Land and Appointment of Trustees Act 1996” (TOLATA 1996): the Act which sets out the court’s powers to resolve civil disputes about ownership of property or land.

“Victim-survivor”: a victim of domestic abuse, including physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse or psychological, emotional or other abuse.

“Will”: a legal document by which a person makes provision for the disposal of their estate on death.

Executive summary

Overview

This consultation brings together three connected areas of reform affecting families when relationships end.

1. Reforming the law of financial remedies on divorce and dissolution

The Law Commission's 2024 scoping report identified a lack of certainty and accessibility in the current law. To address this the government invites views on a "codification-plus" model of reform, which would bring settled case law principles, such as those of "needs" and "sharing", into statutory form.

The consultation also invites views on further targeted reforms, including introducing qualifying nuptial agreements which would enable couples to make binding financial arrangements in advance of divorce or dissolution.

2. Reforming the law for cohabitants on separation

The very limited set of protections under the current law can leave cohabitants facing significant financial difficulties when relationships end, which disproportionately affects vulnerable groups such as women, children and victim-survivors of domestic abuse (including economic abuse).

The government invites views on introducing a statutory framework of rights and protections, for eligible cohabitants at the point of separation, supporting its manifesto commitment to "strengthen the rights and protections for women in cohabiting couples". The government proposes that this framework should be narrower than that which is available on divorce.

3. Reforming the law for cohabitants on intestacy

Cohabitants currently have no automatic right to inherit when a partner dies without a will, which can leave surviving or separating cohabitants facing serious financial hardship. The consultation seeks views on proposals to modernise the law affecting cohabitants on intestacy and on access to financial provision from a deceased partner's estate.

These three areas are closely linked. Consulting on them at the same time allows the government to consider how financial provision at the end of relationships, whether through divorce, separation or death, can be made clearer, more consistent and better aligned with the realities of modern family life.

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Principles underpinning the consultation

The government's approach to reform is guided by four principles, which underpin all the proposals in the consultation:

1. **Prioritising fair outcomes for children:** Placing children's welfare at the centre of decision-making by ensuring they are the court's first consideration, regardless of their parents' marital status, in order to support their stability and financial security.
2. **Protecting the vulnerable:** Strengthening safeguards for those most at risk of harm or financial insecurity at the end of a relationship, including women, children and victim-survivors of domestic abuse (including economic abuse).
3. **Providing a clear and accessible framework:** Ensuring the new cohabitation framework and the law of financial remedies on divorce and dissolution is easy to understand, with more predictable outcomes, reducing conflict and unnecessary litigation and improving public awareness in the law and confidence in the system.
4. **Preserving the distinct status of marriage:** Ensuring protections for cohabitants are proportionate, targeted and clearly differentiated from the full legal consequences of marriage, maintaining marriage as a distinct institution.

Core proposals

Part 1: Reforming the law of financial remedies on divorce and dissolution

This consultation seeks views on a "codification-plus" approach to reform the law of financial remedies on divorce and dissolution of civil partnerships. Under this model, established case law principles would be set out clearly in legislation, with targeted statutory reforms where the law is currently uncertain. The aim is to make the law clearer, more consistent and more accessible.

The government proposes introducing a clear overarching objective for financial remedies on divorce based on achieving a fair outcome through the established principles of "sharing" and "needs". These principles would be codified meaning the court's starting point is that matrimonial property should be shared equally unless unequal division is required to meet needs. The government also proposes codifying definitions of matrimonial and non-matrimonial property.

A methodical, three-stage approach to needs is proposed, with a child's welfare considered first, followed by the individual's capital and income needs and finally any further discretionary needs where resources permit. The remedies available would remain the same as under the current law.

The government is also consulting on introducing binding qualifying nuptial agreements, supported by safeguards to ensure that any decision to enter into such an agreement is fully informed and freely made.

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Views are also invited as to whether the court should give greater weight to the impact of domestic abuse, including coercive or controlling behaviour, or economic abuse, when determining financial needs and outcomes on divorce and separation of cohabitants.

Part 2: Reforming the law for cohabitants on separation

The consultation seeks views on a new statutory framework of rights and responsibilities for eligible cohabiting couples when they separate. This framework would offer clearer and more consistent protections while remaining different from and narrower than that available on divorce, preserving the distinct and unique status of marriage.

The framework would apply automatically to eligible couples, with an option to opt out where both partners agree. Eligibility would be limited to adults in long-term, committed and interdependent relationships who have lived together for at least three years or live together and share a child. As with divorce, shorter relationships will probably attract more limited awards.

Under the proposed model, the court would begin from the position that each person keeps what they legally own. The court would only depart from this where it is necessary to meet an individual's defined needs. These needs would be assessed more narrowly than on divorce, excluding discretionary needs and ensure that cohabitants cannot receive a more favourable outcome than spouses in comparable circumstances. Children's welfare would be the first consideration of the court, ensuring their welfare is protected where resources are limited.

A strong emphasis would be placed on achieving a clean break wherever possible. Remedies would be similar in type to those available on divorce, although maintenance would be limited to exceptional and time-bound circumstances, such as long-term health issues.

Part 3: Reforming the law for cohabitants on intestacy

This consultation seeks views on reforms to inheritance law affecting cohabitants, including changes to intestacy and family provision rules. The proposals include extending intestacy rights to qualifying cohabitants, who would automatically inherit where their partner dies without a valid will, subject to meeting a clear definition and minimum duration period.

The government also proposes aligning the rights of qualifying cohabitants to administer a deceased partner's estate with any new inheritance entitlements, reducing delays and disputes. Finally, views are invited on removing the qualifying time-period for cohabitants to apply for financial provision from a deceased partner's estate, where the surviving partner and the deceased had children together.

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Next steps

Responses to this consultation will inform the development of legislation better to protect couples and their children. Any legislation will be introduced when parliamentary time allows.

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Introduction

This paper sets out for consultation the government's proposals to reform the law governing financial arrangements and protections when relationships end in England and Wales. It brings together three related areas: financial remedies on divorce and dissolution, financial provision for cohabitants on separation and inheritance provision for cohabitants on death.

These three areas of reform are closely connected, each shaping how families are supported when relationships end. Consulting on them together will allow the government to build a clear and coherent modern framework which works for all families. We therefore encourage you to read the document as a whole, as the proposals have been developed to operate together as part of a cohesive framework.

This consultation is aimed at Parliamentarians, the Family Courts' judiciary, family law practitioners, academics, support organisations and members of the public with an interest in the law of financial remedies on divorce and the rights of cohabitants on separation or death.

A Welsh language consultation paper is/will be available at:

<https://www.gov.uk/government/consultations/a-fairer-end-to-relationships>

An Impact Assessment indicates that couples separating, HMCTS, the judiciary and the legal profession are likely to be particularly affected. The proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector. An Impact Assessment is available at: <https://www.gov.uk/government/consultations/a-fairer-end-to-relationships>

The current law

When a married couple divorce, or a civil partnership is dissolved, in England and Wales, there is a statutory framework that enables the Family Courts to make financial orders to divide the couple's money and property.

By contrast, when cohabitants separate, there is no equivalent overarching statutory framework. Instead, cohabitants may need to rely on provisions that were not designed with their specific circumstances in mind.

The sections below first outline the financial remedies available on divorce and dissolution before setting out the options currently available to cohabitants.

The current law on divorce and dissolution for married couples and civil partners

On or following an application for a divorce, or dissolution of a civil partnership, either party may apply to the Family Courts to seek financial remedies. These are financial orders that can be made by the court to divide assets between the separating couple and provide any ongoing maintenance from one party to another.

The law which governs financial remedy applications on divorce is contained within the Matrimonial Causes Act 1973 ("MCA 1973"), with equivalent provisions existing in the Civil Partnership Act 2004 for civil partners on dissolution. For simplicity, this consultation will refer only to the MCA 1973 and divorcing couples, but will apply equally to the Civil Partnership Act 2004 and dissolution.

When the court considers a financial remedy application, there is a range of financial orders at its disposal. These include one-off lump sum payments, regular maintenance/periodical payments and property-related orders such as transferring ownership or ordering a sale. In addition, the court can redistribute pensions through pension sharing orders or, more rarely, pension attachment orders.

In coming to a decision as to what, if any, orders to make, the court must refer to both statute and case law. Under statute, section 25 of the MCA 1973 requires the court to have regard to all the circumstances of the case, with the first consideration being the welfare of any child of the family under the age of 18. The court must also have particular regard to a list of factors set out in section 25(2) (known as the "section 25 factors").

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The “Section 25 Factors”

- a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- c) the standard of living enjoyed by the family before the breakdown of the marriage;
- d) the age of each party to the marriage and the duration of the marriage;
- e) any physical or mental disability of either of the parties to the marriage;
- f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

In general terms, these factors give the court a broad discretion about what financial remedy orders to make, depending on the individual facts of the case. Case law has further dictated, in *White v White*, that “fairness” is the key objective the court should consider when dividing finances.¹ *Miller v Miller; McFarlane v McFarlane* sets out that achieving this outcome should be guided by three overarching principles: **Sharing, Needs and Compensation.**²

¹ *White v White* [2000] UKHL 54, [2001] 1 AC 596.

² *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618.

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Sharing, needs and compensation

Sharing: Both parties to the marriage are ordinarily entitled to an equal share of assets acquired during the marriage (“matrimonial property”) unless there are good reasons to depart from equality. Under the sharing principle, contributions of the ‘homemaker’ are equivalent to those of the ‘breadwinner’. In practice, the court will usually only apply equal sharing of assets where there is a surplus of assets to cover the needs of each of the divorcing couple (and their children).³ Most cases do not have such a surplus, so equal sharing is generally less common than division of assets based on need.⁴ Non-matrimonial property, generally from outside the marriage, will not be shared unless needs require it.

Needs: Where the equal division of assets does not meet the needs of the concerned parties, the judge may depart from equality to ensure needs are met. Needs, whilst mentioned in the MCA 1973, are not defined. Needs are broadly considered to refer to the income and capital needs of the divorcing couple, the needs of any children of the marriage, the need for a home, the need for provision for retirement and, as far as possible, to avoid either party being left dependent upon state benefits.⁵

Compensation: This is the principle that the court should aim to redress any economic disadvantages which arose from the marriage. In practice, the compensation principle is rarely applied by the court.⁶

Consideration of conduct

When determining financial outcomes for parties, the court is required to consider the “section 25 factors” in the MCA 1973, as outlined above. One of these factors is the conduct of each party, if, in the opinion of the court, it would be “inequitable to disregard it”.⁷ The MCA 1973 does not specifically define “conduct”, but it is largely considered to refer to whether there has been misconduct (bad behaviour) by either of the spouses.⁸ Case law has established that the threshold for considering conduct is very high.

³ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report (HC 460, Law Com No 417, 17 December 2024), para 3.50.

⁴ Emma Hitchings, Caroline Bryson, Gillian Douglas, Susan Purdon and Jenny Birchall, Fair Shares? Sorting out money and property on divorce (Nuffield Foundation, 2021), pg. 32.

⁵ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report (HC 460, Law Com No 417, 17 December 2024), para 2.33.

⁶ *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, para 13.

⁷ Matrimonial Causes Act 1973, section 25(2)(g).

⁸ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report (HC 460, Law Com No 417, 17 December 2024), para 9.3.

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Nuptial agreements

Nuptial agreements, commonly referred to as pre-nuptial agreements (“pre-nups”) or post-nuptial agreements (“post-nups”), are agreements made between a couple, either before or during their marriage respectively. The agreements set out how the couple’s assets should be divided in the event of a divorce. At present, nuptial agreements are not automatically enforceable in England and Wales. However, the Supreme Court held in *Radmacher v Granatino* that a couple should be held to their nuptial agreement provided it has been freely entered into, with a full appreciation of the circumstances, unless it would be unfair to do so.⁹

The current law available to cohabitants on separation

The current law was not designed with cohabitants specifically in mind. Instead, claims must be made via the civil courts and be based on property ownership. Any claims in respect of children can be made to the court but are restricted to being for the benefit of the child(ren) only.

Property ownership

In England and Wales, property disputes between cohabiting partners are governed by the Trusts of Land and Appointment of Trustees Act 1996 (“TOLATA 1996”), which is based on trust law principles.

Where a property is legally owned by more than one person, a trust of land is automatically created. This means that the legal owners are “trustees” who also hold the property for each other as “beneficiaries”, giving each party a “beneficial interest” in the property.

Where a dispute over property arises, either party may apply to the court under section 14 of TOLATA 1996, which empowers the court to determine ownership or use of the property, including ordering a sale, deciding shares or granting occupation rights. The way the court will approach a case will usually depend on whether the parties are joint legal owners of a property or whether one of the parties is the sole legal owner of the property.

In cases where a property is held in joint names, the court will start with the presumption that the beneficial interest is shared equally between the parties. This means that, unless there is evidence to the contrary, the court assumes each person owns a 50% share of the property. In cases where one party is the sole legal owner, the starting assumption is that the legal owner holds the entire beneficial interest in the property. As a result, to claim successfully a share of the property, the other partner must prove they have a beneficial

⁹ *Radmacher v Granatino* [2010] UKSC 42, [2011] 1 AC 534, para 75.

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interest, usually by showing they made financial contributions or that there was a shared understanding about ownership.

In coming to its decision, the court must have regard to the factors listed in section 15 of TOLATA 1996 which include intentions behind creating the trust, the purpose for which property is held, the welfare of any minor occupying the home and the interests of any secured creditor of any beneficiary.¹⁰

Compared to divorce proceedings, the civil courts are significantly more limited in the types of order they can make when resolving disputes between cohabitants. Unlike in family law proceedings, civil courts dealing with TOLATA claims cannot award maintenance, divide pensions or make lump sum payments. Their powers are largely confined to determining ownership of property and ordering its sale.

Provision for children

For cohabitants who separate, the legal framework for financial provision in respect of children is via two avenues: child maintenance, via the Child Support Act 1991, and Schedule 1 to the Children Act 1989 (“Schedule 1”).

Child maintenance

Child maintenance is a financial arrangement made between separated parents to cover a child’s living costs when the child is living with the other parent. If parents are unable to agree on maintenance arrangements privately, the Child Maintenance Service (“CMS”) calculates the amount of maintenance due from one parent to another. Child maintenance arrangements calculated by the CMS are designed to cover a child’s basic living costs, such as food, clothing and housing.

To calculate these payments, the CMS uses a statutory formula to consider the amount of child maintenance a parent (usually known as the “non-resident parent”) must pay. Under this formula, the CMS typically expects the non-resident parent to pay 12% of their gross income for one child, 16% for two children and 19% for three or more children. If the child stays overnight with the non-resident parent, the payment is reduced to reflect shared care. If care is shared equally, no maintenance is due.¹¹

Schedule 1

Schedule 1 enables parents to make an application for financial provision for the benefit of their child or children and allows the Family Courts to make financial orders to meet the child’s needs. It is mostly used by unmarried parents, as the MCA 1973 allows married

¹⁰ Trusts of Land and Appointment of Trustees Act 1996, s15.

¹¹ Department for Work and Pensions, How We Work Out Child Maintenance: A Step-by-Step Guide (GOV.UK, updated 30 October 2023) accessible at: <<https://www.gov.uk/government/publications/how-we-work-out-child-maintenance/how-we-work-out-child-maintenance>>.

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parents to seek financial provision not only for the benefit of the child but also the spouse, offering broader protection.

Since 2013, the CMS only calculates payments on gross income capped at £3,000 per week (around £156,000 per year). Where a non-resident parent earns more than this, the CMS will still calculate maintenance, but only up to that capped amount. If a non-resident parent's gross income exceeds £156,000 per year, a resident parent can apply to the court for additional support through Schedule 1 for "top-up" maintenance. This is mainly relevant for cases involving high earners, as fewer than 2% of workers earn above £156,000 per year.¹² Schedule 1 also enables the court to make specific maintenance orders for circumstances such as education or disability.

In addition, Schedule 1 allows provision for lump sum orders for specific needs and property arrangements. These orders are made for the benefit and needs of the child and not the parent. When deciding whether to make an order, the court looks at all the circumstances, along with factors including the parties' income and resources, their financial needs and obligations and the child's needs.

In light of the above, Schedule 1 is rarely used in practice. Only 285 applications were made in 2022 compared to 119,700 child maintenance applications in the same period, around 0.2% of the CMS total.¹³ This limited use is probably driven by lack of awareness and the limited scope of applications.

Cohabitation agreements

Cohabitation agreements are agreements which may set out details of ownership of property, outline each partner's financial responsibilities during the relationship and specify what should happen if their relationship breaks down. They can be made at any stage and updated as circumstances change. However, they are not automatically legally binding and their enforceability depends on how they are drafted.

¹² Office for National Statistics, Employee earnings in the UK: 2025 (23 October 2025) accessible at: <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2025>>.

¹³ Ministry of Justice, *Family Court Statistics Quarterly: January to March 2025* (GOV.UK, 26 June 2025) accessible at: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2025>; Department for Work and Pensions, Child Maintenance Service Statistics: Data to December 2022 (Experimental) (GOV.UK, 26 April 2023) accessible at: <<https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-december-2022-experimental>>.

The current law on inheritance

On the death of a cohabitant there are limited legal entitlements for the surviving partner to inherit the deceased's estate if not provided for in a will.

Succession law in England and Wales

English and Welsh succession law operates through three distinct regimes: wills, intestacy and family provision. Together these set the rules for how a person's estate is distributed when they die.

Under the law of wills, individuals have wide freedom to leave their property to whomever they choose. This means a person can decide exactly who should inherit the different elements of their estate, and in what proportions, by producing a valid will.

Where a person dies without a valid will, the intestacy rules apply. These are set out in the Administration of Estates Act 1925 and distribute the estate according to a fixed statutory hierarchy of relatives, with priority given to a surviving spouse or civil partner, followed by children and other descendants.

Cohabitants are excluded from this hierarchy. Regardless of the length of the relationship or the presence of shared children, a surviving cohabitant is not entitled automatically to inherit any of their partner's estate upon intestacy.

Therefore, if a will does not leave anything to the surviving partner, or if there is no will at all, the partner has no automatic right to inherit. Their only route to financial support is to bring a claim under the Inheritance (Provision for Family and Dependents) Act 1975 ("I(PFD)A 1975") arguing that the will or intestacy rules failed to make reasonable financial provision for them.

Family provision and cohabitation

The I(PFD)A 1975 enables certain categories of applicant, including spouses, civil partners, cohabitants, children and dependants, to seek reasonable financial provision where a will or the intestacy rules fail to make adequate provision.

For all applicants, the sole ground of claim is that the disposition of the estate does not make reasonable financial provision. Any award is discretionary, and the court may vary the distribution of the estate after considering statutory factors, such as the applicant's financial resources and needs, the size of the estate and the competing claims of other beneficiaries.

An unmarried partner is eligible to apply if they lived with the deceased in the same household, as if they were spouses or civil partners, for at least two continuous years immediately before death. Those who cohabited for a shorter period may still apply, but

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only if they fall within scope of the I(PFD)A 1975 by showing that, immediately before the deceased's death, they were being maintained (wholly or partly) by the deceased.

The I(PFD)A 1975 treats spouses and civil partners more favourably than cohabitants with regards to their entitlement to claim against the estate. Spouses and civil partners can claim for financial dependence whether or not it is necessary for their maintenance, whereas cohabitants are limited to maintenance only. While the courts often interpret cohabitants' needs broadly, taking into account the standard of living enjoyed during the relationship, awards are typically less generous and less secure than those available to spouses or civil partners.

The case for reforming the law

The government is launching this consultation as part of a wider programme to modernise family law. We are looking at changes to the law for cohabitants on separation and death and financial arrangements after divorce at the same time because they all aim to make sure the law reflects modern relationships while protecting the most vulnerable.

These proposals sit alongside our work to reform weddings law, making it simpler and more flexible for couples to marry in a way that is meaningful to them. By removing unnecessary barriers to marriage, we are strengthening this important institution.

Overall, these reforms are designed to create a clear and cohesive approach to family law that respects personal choice, keeps marriage as a distinct status and aims to ensure fair outcomes for families.

We set out below the detailed reasons why each part of the reform is needed.

Reforming the law on financial remedies on divorce

While it is regrettable when relationships end and marriage remains a lifelong commitment for many, the law must provide clarity and fairness for those who separate.

The framework for financial remedies on divorce has remained largely unchanged for more than half a century, yet the evidence suggests that aspects of the law may no longer deliver predictable and fair outcomes. In December 2024, the Law Commission published a scoping report identifying areas where reform could strengthen public confidence in the system and improve outcomes for families.¹⁴

In 2023, there were 103,816 divorces and dissolutions in England and Wales and in 2025 around 50,000 people applied to the court to make financial remedy applications.¹⁵ These figures underline the scale of the issue and the importance of a framework that supports fair outcomes. However, the current approach is highly discretionary, which can make

¹⁴ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report (HC 460, Law Com No 417, 17 December 2024).

¹⁵ Office for National Statistics, Divorces in England and Wales: 2023 (ONS, 2023) accessible at: <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/bulletins/divorcesinenglandandwales/2023>>.; Ministry of Justice, 'Family Court Statistics Quarterly: October to December 2025' (GOV.UK, 26 March 2026) <<https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2025/family-court-statistics-quarterly-october-to-december-2025>>.

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outcomes difficult to predict. The Law Commission warned that this lack of certainty and accessibility could be argued to be inconsistent with the rule of law.

The Law Commission also noted that the law lacks cohesion and can, in some cases, prolong conflict rather than resolve it, at a time when families are already under considerable strain. A system that fails to provide clear expectations not only increases costs and delays but can exacerbate animosity between parties, making it harder to achieve constructive outcomes.

Concerns have also been raised about the way the current law operates in cases involving domestic abuse, including economic abuse. In 2023, an academic study conducted by the *Fair Shares Project* looked into finances on divorce, found that up to five years after their divorce, female domestic abuse victim-survivors continued to be more likely than other women to be in financially precarious situations.¹⁶

The *Fair Shares Project* also draws attention to gendered outcomes, particularly in relation to pensions. Women, who are more likely to take on caring responsibilities and have lower pension savings, can be disproportionately affected when pension assets are overlooked in settlements. The *Fair Shares Project* illustrated this, finding that 28% of women had under £1,000 take-home pay compared to only 10% of men.¹⁷ In relation to pensions, men were more likely to have more valuable pensions by virtue of paying into them for longer.

Taken together, these findings underline the need to consider whether the law should be modernised to promote certainty, accessibility and to support a clearer, more efficient, resolution of disputes.

Reforming the law on separation for cohabitants

Cohabiting relationships form an increasingly common part of family life in England and Wales. However, when those relationships end, there is no dedicated statutory framework to guide how financial matters should be resolved. As the number of cohabiting families has grown, the gaps in the current law have become more apparent, affecting a far larger proportion of the population than in previous decades.

¹⁶ Emma Hitchings and Caroline Bryson, *Dividing property and finances on divorce: what happens in cases involving domestic abuse?* Report (University of Bristol, 2024).

¹⁷ Emma Hitchings, Caroline Bryson, Gillian Douglas, Susan Purdon and Jenny Birchall, *Fair Shares? Sorting out money and property on divorce: Executive Summary* (Nuffield Foundation, 2021), p. 12.

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3.5 million couples live together without marrying or entering into a civil partnership, more than double the number than 30 years ago.¹⁸ By 2031, one in four families are projected to be cohabiting and in 2022 over half of babies (51%) were born to unmarried parents.¹⁹ The law has not changed despite these demographic shifts.

There is also no legal status of “common law marriage” in England and Wales, regardless of the length of time a couple has lived together or whether they have children. Despite this, almost half of people (47%) in England and Wales believe such a status exists.²⁰ This misunderstanding means that many cohabitants are unaware that, when their relationship ends, they have access to only very limited financial provision.

Children may also be affected when the financial position of their primary carer deteriorates following separation, as the needs of the primary carer and those of a child are inextricably linked. This connection means that financial hardship for a carer can have implications for a child’s wellbeing and future opportunities. For example, 2004 research from the Child and Adolescent Mental Health Survey suggests that children in persistent poverty are around three times more likely to have severe mental health problems.²¹

Women are more likely to reduce working hours or take lower-paid jobs to provide childcare which can result in long-term financial disadvantage. For example, 2019 ONS data found that mothers with children under 14 are six times (28.5%) more likely than fathers (4.8%) to reduce their working hours due to childcare.²² These patterns of work often leave them economically weaker at the point of separation.

Domestic abuse, including economic abuse, can also create significant financial vulnerability, which is amplified by a statutory framework that does not always provide sufficient clarity or protection. This is particularly problematic in a context where the prevalence of domestic abuse is twice as high for cohabitants as it is for married

¹⁸ Office for National Statistics, Families and households (dataset, 17 April 2026) <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/datasets/familiesandhouseholds>>; “families” is defined as a married, civil partnered or cohabiting couple with or without children, or a lone parent with at least one child, who lives at the same address; children may be dependent or non-dependent.

¹⁹ Law Commission, Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182, 2007), para 1.10; Office for National Statistics, Birth characteristics in England and Wales: 2022 (17 May 2024) accessible at: <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/bulletins/birthcharacteristicsinenglandandwales/2022>>.

²⁰ John Curtice et al (eds), British Social Attitudes: The 36th Report (NatCen 2019).

²¹ Mental Health Foundation, Poverty Statistics (Mental Health Foundation, 2024).

²² Office for National Statistics, Families and the labour market, UK: 2019 (24 October 2019) accessible at: <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/familiesandthelabourmarketengland/2019>>.

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couples.²³ In the absence of legal safeguards, perpetrators may exert control over a partner's life through restricting access to money or imposing debt. These dynamics can leave individuals facing difficult choices between separating with no financial security or staying with their abusive partner. The government has outlined in its "*Freedom from violence and abuse*" action plan its intention to tackle these issues through cohabitation reform.²⁴

The financial barriers to leaving an the abuser in a relationship can be substantial, with a 2024 Women's Aid report suggesting the cost of doing so can approach £50,000.²⁵ They also found that nearly three quarters (73%) of women say the cost of living had either prevented them from leaving or made it harder for them to leave.²⁶

Cohabitation reform could help address these risks by supporting victim-survivors in achieving financial independence and reducing the reliance on informal arrangements which can perpetuate harm.

Reforming the law of inheritance for cohabitants

There have been longstanding calls to reform inheritance law as it applies to cohabitants, with many of the arguments for reforming the law on cohabitants' rights on separation also applying to inheritance. In both contexts, the absence of legal protection can leave surviving or separating cohabitants facing serious financial hardship.

Under the intestacy rules, cohabitants have no automatic right to inherit from a deceased partner. In the absence of a valid will, their only route to provision is an application to the court under the I(PFD)A 1975.

Many surviving cohabitants are unaware that a claim under the I(PFD)A 1975 is available. Others, faced with the stress, cost and family conflict involved in court proceedings, may choose, or be forced, to move on rather than pursue a claim. Where the couple had children, matters are further complicated, as a successful claim by the cohabitant may be

²³ Office for National Statistics, Domestic abuse victim characteristics, England and Wales: year ending March 2025 (26 November 2025) accessible at: <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2025>>.

²⁴ Home Office, Freedom from violence and abuse volume 2: action plan (accessible) (CP 1450-II, 3 February 2026) Home Office, Freedom from violence and abuse volume 2: action plan (accessible) (CP 1450-II, 3 February 2026) accessible at: <<https://www.gov.uk/government/publications/freedom-from-violence-and-abuse-a-cross-government-strategy/freedom-from-violence-and-abuse-volume-2-action-plan-accessible>>.

²⁵ Women's Aid, The Price of Safety: The Cost of Leaving an Abusive Relationship (Women's Aid, 2024).

²⁶ Women's Aid, The Cost of Living: How the Cost of Living Crisis Is Affecting Women and Children Experiencing Domestic Abuse (Women's Aid, 2024).

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against their own children's entitlements on intestacy, potentially requiring separate representation and increasing both cost and strain on the family.

Although granting cohabitants automatic inheritance rights would not eliminate disputes altogether, such as where the deceased cohabitant had children from a previous relationship, it could reduce reliance on litigation in straightforward cases. Any reform would need to balance the interests of surviving cohabitants with those of other beneficiaries, principally adult children from previous relationships.

Many argue that inheritance law in England and Wales has not kept pace with modern relationship patterns. Evidence given to the Women and Equalities Committee in 2022 highlighted that the current regime is confusing, outdated and creates unnecessary barriers for those with a valid claim.²⁷ Other Commonwealth jurisdictions (including New Zealand, Australia and parts of Canada) have adapted their intestacy rules to reflect cohabitation.

Given that cohabitants are particularly vulnerable on death if they have not made a will and intestacy law does not recognise cohabitants as heirs, the practical impact of the current law is significant and growing.²⁸

²⁷ House of Commons Women and Equalities Committee, *The Rights of Cohabiting Partners*, HC 92 (4 August 2022).

²⁸ Law Commission, *Intestacy and Family Provision Claims on Death* (Law Com No 331, HC 1674, 2011).

The approach to reform

In achieving the government's objective of a modern, fair and coherent framework for families at the end of relationships, our approach to reform is guided by the following principles:

The principles underpinning the consultation

1. Prioritising Fair Outcomes for Children
2. Protecting the Vulnerable
3. Providing a Clear and Accessible Framework
4. Preserving the Distinct Status of Marriage

1. Prioritising fair outcomes for children

Children should have the security and support that they need regardless of their parents' relationship status. In financial remedies on divorce, the welfare of children is already the court's first consideration and the government does not propose changing this.

The government is proposing that children's welfare should also be the first consideration when determining financial provision for eligible cohabitants on separation. In doing so, it recognises that a child's wellbeing is closely connected to the financial stability of their primary carer and their home environment.

Reform of intestacy for cohabitants should provide a clear route to financial provision, reducing uncertainty over housing and resources after a parent's death and supporting stability for any children affected.

2. Protecting the vulnerable

Reform will strengthen protections for those most at risk of harm or financial insecurity at the end of relationships, particularly for women, children and victim-survivors of domestic abuse, including economic abuse.

In the context of financial remedies on divorce, this means a clearer, more predictable framework so parties can understand likely outcomes and settle earlier, reducing avoidable conflict. It should also reduce the scope for protracted, costly proceedings that can deter those with fewer resources from pursuing claims.

For cohabitants, it means introducing a targeted statutory framework to reduce hardship and meet both individuals' needs. This is particularly important where a partner has made

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non-financial contributions to a relationship, such as unpaid childcare, which are essential to family life but not consistently recognised at present. It should also enable victim-survivors of domestic abuse to leave a relationship by providing clear legal protections, reducing dependency on abusive partners and supporting independence.

For intestacy, it would ensure bereaved cohabitants in committed relationships are less reliant on costly litigation to secure financial provision, reducing financial vulnerability at a time of grief.

3. Providing a clear and accessible framework

The law should be clear, predictable and easy to navigate, particularly at times of stress and transition. This is essential to delivering the other three principles outlined above.

In financial remedies on divorce, the government is considering reforms to improve the coherence and accessibility so separating couples better understand probable outcomes and resolve disputes earlier, whilst preserving judicial discretion to reflect individual circumstances. For cohabitants, this reform must address the persistent “common law marriage” myth, which leaves many wrongly assuming rights exist on separation or death.

A clearer statutory framework, with simple eligibility criteria, will make rights and responsibilities easier to understand, reduce unmeritorious claims and support confidence in the new legal protections.

4. Preserving the distinct status of marriage

Marriage is and will remain a uniquely important social and legal institution and is for many a meaningful way to formalise commitment. For that reason, the government is committed to ensuring that cohabitation reforms do not impinge on the unique status of marriage.

To achieve this, we propose introducing a distinct and proportionate framework for cohabitants, narrower than that available on divorce and available only to those in committed romantic relationships who meet defined eligibility criteria.

Research has found no evidence that introducing legal rights for cohabitants in other jurisdictions has reduced marriage rates, supporting the view that it is possible to protect cohabitants without diminishing the value or appeal of marriage.²⁹

²⁹ K Kiernan, A Barlow and R Merlo, “Cohabitation Law Reform and its Impact on Marriage” (2006) 36 Family Law 1074; Dr Andy Hayward, “Cohabitation and Labour’s Commitment to Changing the Law: What Reform Might Look Like” (23 November 2023) Financial Remedies Journal, accessible at: <<https://financialremediesjournal.com/cohabitation-and-labours-commitment-to-changing-the-law-what-reform-might-look-like/>>.

The proposals

Financial remedies on divorce

Law Commission’s proposed models of reform

The government sets out within this consultation a proposed model of reform to the law of financial remedies, having considered the Law Commission’s 2024 report which set out four possible models on which future reform could be based.³⁰ The models identified are:

- **Codification:** minimal change is made to the existing law, but current law as developed through case law is codified (meaning it is put into legislation), making the law more cohesive and accessible. The court’s current broad discretion remains.
- **Codification-plus:** current law is codified and additional reform is made to specific areas of law where case law is not settled, with the aim of providing more certainty.
- **Guided discretion:** legislation sets out the purpose of the law and the principles that guide its application, prescribing how and when the court’s discretion should be exercised.
- **Default regime:** common in European jurisdictions, a regime which imposes a set of rules which come into effect from the date of marriage, dictating the financial outcome when the marriage ends.

Government proposal for a “codification-plus” model

The government proposes a “**codification-plus**” model of reform and invites views within this consultation on proposed elements of this model.

The government believes this model will make the law clearer and more accessible, making it easier for divorcing couples to resolve their finances without coming to court. It would also provide greater certainty, so that divorcing couples have a better idea of probable outcomes on separation, making it easier to reach agreement.

At the same time, the government considers that there is value in the court retaining discretion, to reflect the wide variation in couples’ financial circumstances and to ensure the needs of the financially vulnerable can be met. The government considers that a “codification-plus” model should prioritise fair outcomes for children and protect those who are financially vulnerable, such as women and victim-survivors of domestic abuse,

³⁰ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report, Law Com No. 417, HC 460 (18 December 2024).

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including economic abuse. This model will also uphold the unique status of marriage by being distinct from the proposed cohabitation model.

Core features of the model:

- **A clear objective for financial remedies on divorce:** the court’s overarching objective will be to achieve a fair outcome by applying the well-established principles of meeting needs and sharing assets.
- **A coherent and structured framework:** codification of the principle that matrimonial property should be shared equally as a starting point, unless unequal sharing is required to meet needs. The model will explicitly set out:
 - objectives for application of the “needs” and “sharing” principles;
 - explain how the court should apply these objectives; and
 - building on section 25 of the Matrimonial Causes Act 1973 (“MCA 1973”), a checklist of factors which the court should consider when applying both objectives.
- **A methodical approach to meeting needs:** the model will outline how the court would address ‘categories’ of need through a three-stage hierarchy, with the needs of the child being the first consideration.
- **Definitions of “matrimonial property” and “non-matrimonial property”:** codification of the definitions of both matrimonial property and non-matrimonial property, as clarified in the Supreme Court case *Standish v Standish* (“*Standish*”).³¹
- **Binding nuptial agreements:** the model will introduce “qualifying nuptial agreements” (“QNAs”) which will allow couples to make binding financial arrangements about division of assets in the event of divorce.

This proposed model does not suggest any changes to the current remedies available under the MCA 1973.

Cohabitation framework on separation

The government’s proposed model has been built with the objective of protecting children and those who are financially vulnerable, including women and victim-survivors of domestic abuse (including economic abuse) whilst preserving the unique status of marriage. The government believes it is vital the cohabitation framework is straightforward, clear and accessible. Attempting to capture all eventualities in the model would risk creating an overly complex and unwieldy framework.

³¹ *Standish v Standish* [2025] UKSC 26.

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Core features of the model:

- **Only available to committed relationships:** claims will be limited to adults in committed, romantic relationships who have lived together for at least three years, or who live together and share a child. As with divorce, shorter relationships will probably attract more limited awards.
- **Default protection with choice to opt out:** protections will apply automatically to cohabitants who meet the eligibility criteria, with the option for couples to opt out of the framework if they choose, ensuring individuals are protected but preserving individual choice.
- **Children first:** as with divorce, children's needs must come before those of the separating adults, ensuring their welfare is protected where resources are limited.
- **Legal ownership as a starting point:** each person keeps what they legally own and the court will depart from this only where required to meet defined needs. There is no default 50:50 split, as the sharing principle would not apply to cohabitants.
- **A "needs-led" framework, less generous than on divorce:** where legal ownership is not sufficient to meet needs, court's focus would be on meeting the parties' future financial requirements. "Needs" would be assessed more narrowly than on divorce and would not extend to discretionary needs.
- **No better outcomes than marriage:** cohabitants will not be entitled to a more favourable financial outcome than a divorcing couple in similar circumstances.
- **Strong emphasis on clean breaks:** the court will be expected to end financial obligations between former cohabitants as soon as it is just and reasonable to do so. This is a sharper focus on clean breaks than on divorce, where the focus will be on a transition to independence.

Part 1: Reforming the law of financial remedies on divorce

Consultation questions

The government welcomes views on the following questions set out in this part of the consultation paper.

The proposals set out below are intended to illustrate the government's underlying policy intention and the broad structure of a "codification-plus" model. The proposals are not draft legislative text, but rather wording to show our policy intentions. Consultees are therefore invited to focus their responses on the substance and policy objectives of the proposals, rather than on the specific formulation of the wording used in this document.

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Introducing an overarching objective

In setting out these proposals, this first section begins by setting out a proposed overarching objective for the court when it considers applications for financial orders. This section then explains the “sharing” and “needs” principles which form part of the overarching objective, how these should be applied and factors for the court to consider when applying these principles.

The current law set out in the MCA 1973 does not contain an objective for the court when dividing property and assets on divorce. Case law has, however, developed its own objective for the court: to produce a “fair” outcome.³²

Current legislation does not therefore explain the ultimate outcome the court should achieve. This absence of direction has been referred to by way of the analogy of a bus driver who has a large number of instructions on how to drive the bus, but no information on where to take the bus.³³ The government considers that an overarching objective would promote certainty and accessibility, as divorcing couples would have greater clarity as to the outcome the court is aiming to achieve.

It is, however, also the government’s view that an overarching objective which refers only to “fairness” may be vague and unhelpful, because fairness is an elusive concept and can mean different things to different people. The objective should have clear guidance on how fairness should be achieved.

The government’s view is that a fair outcome should be achieved through the application of the “sharing” and “needs” principles.

The government is of the view that framing an overarching objective of fairness through the lens of sharing and needs will provide clarity about how fairness is to be achieved. This will be supported by codifying the established principles of sharing and needs, with which practitioners are already very familiar.

The government does not consider that “compensation” as a core principle, separate from needs and sharing, is appropriate for codification. It is, therefore, not included in the overarching objective. This is because we agree with the Law Commission’s conclusion that the principle lacks a clear and settled definition in case law.³⁴ We consider that codification of compensation as a core principle would introduce significant uncertainty, encourage divergent judicial approaches and materially increase the risk of litigation.

³² *White v White* [2000] UKHL 54, [2001] 1 AC 596, paras 23-24.

³³ Law Commission, *Matrimonial Property, Needs and Agreements* (Law Com No 343, 2014), para 2.5.

³⁴ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), para 4.41.

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This consultation will consider compensation further, but specifically as a factor that may be relevant when applying the needs and sharing principles. More detail on this proposal can be found on page 45.

Codifying “sharing” and “needs”

The government recognises that codifying an overarching objective would provide greater clarity and transparency within the law. However, it considers that codification of an overarching objective alone would not go far enough to deliver the increased certainty that reform seeks to achieve. The government therefore proposes that there should be distinct objectives for both the sharing and needs principles.

Objective of the sharing principle

This section covers the sharing principle and the assets that are included within this. A further section on the needs principle is on page 41.

The Supreme Court has confirmed that the sharing principle applies only to matrimonial property and that equal sharing is the appropriate and principled starting position for the court, unless there is justification for departure.³⁵ A departure may be required, for example, to meet the financial needs of individuals.

To reflect case law, the government proposes that a reformed model should make clear that the court is to apply the sharing principle as the starting point and only turn to the needs principle where needs cannot be met through equal sharing.

The government’s view is that the objective of sharing is to give equal benefit to the parties of matrimonial property by dividing matrimonial assets equally.

The government considers that introducing this objective for the sharing principle would make the law clearer and more accessible for divorcing couples. In explaining both why the court should apply sharing and how it should be applied, this objective will provide guidance for divorcing couples. The government also believes that this objective recognises the interdependence and joint decision-making that typically characterises marriage.³⁶

³⁵ *Standish v Standish* [2025] UKSC 26, para 50.

³⁶ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), para 2.45.

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Question 1

Do you agree with the government's view that the objective for the sharing principle is to give equal benefit to the parties of matrimonial property by dividing matrimonial assets equally? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 2

Do you agree with the government's view that the court should consider the sharing principle as the starting point and consider the needs principle where equal sharing would not allow needs to be met? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

The type of property to which "sharing" applies: "matrimonial property"

There is no statutory definition of either matrimonial property nor non-matrimonial property, nor statutory provision setting out how the court should approach division of these types of property. Case law dictates that the sharing principle applies to matrimonial property only and concepts of matrimonial and non-matrimonial property are also derived from case law.³⁷ However, due to the lack of definitions in legislation, divorcing couples may find it difficult to understand how their assets will be characterised and treated on separation.

The government considers that clear statutory definitions of matrimonial property and non-matrimonial property would offer guidance on how couples might think about their property and indicate how a court would probably deal with the available assets.³⁸

As part of a codification-plus model, we consider that such definitions would be reflective of *Standish*, which clarified the approach to matrimonial and non-matrimonial property as previously developed in case law.³⁹

³⁷ *White v White* [2000] UKHL 54, [2001] 1 AC 596.

³⁸ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), para 4.19.

³⁹ *Standish v Standish* [2025] UKSC 26.

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In *Standish*, the Supreme Court set out the following conceptual distinction between matrimonial and non-matrimonial property:

Distinction between “matrimonial property” and “non-matrimonial property”

- “Matrimonial property” comprises the fruits of the marriage partnership, reflects the marriage partnership or is the product of the parties’ common endeavour.
- “Non-matrimonial property” is typically pre-marital property brought into the marriage by one of the parties or property acquired by one of the parties by inheritance or gift.

As outlined previously on page 39, our proposed objective for sharing reflects the case law principle that sharing applies **only** to matrimonial property. We further intend for reform to include the established principle that non-matrimonial property may be available to meet financial needs where matrimonial property alone is insufficient.

The Supreme Court in *Standish* also confirmed that non-matrimonial property may become matrimonial property through a process known as “matrimonialisation”. In determining whether this has occurred, the court considers how the married couple have dealt with and treated the asset over time.

Where there is a dispute about whether property is matrimonial or non-matrimonial, the government believes that the court should consider relevant factors, including how the property has been used, shared and treated by the couple and over what time period. For example, if one partner receives an inheritance that is later used to fund improvements on the family home, the court may determine that the inheritance has become “matrimonialised” by its use.

Question 3

Do you agree with the government’s view that it should codify the distinctions between matrimonial and non-matrimonial property, in line with the Supreme Court’s decision in *Standish*? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

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Question 4

Should the court be able to consider how the property has been used, shared and treated by the parties, and over what time period, when deciding whether non-matrimonial property has become matrimonial? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

The “needs” principle

The government intends that the needs principle should be clear and accessible. To that end, the government proposes:

- A clear objective for the principle of meeting need;
- A clear way in which the objective should be applied; and
- A list of factors for the court to consider when applying the objective.

This section considers the government’s proposals in relation to how the court should consider applying the needs principle. The majority of cases will be assessed primarily on the basis of need, as most couples will have insufficient resources for needs to be met through sharing of matrimonial property.

Objective for meeting needs

Although “need” is referred to in statute as a relevant factor under section 25 of the MCA 1973, its meaning is largely derived from case law.⁴⁰ The Law Commission considered the needs principle in its 2014 report *Matrimonial Property, Needs and Agreements* and identified that the objective of meeting needs was based on enabling a transition to independence, to the extent possible in the circumstances.⁴¹

The Law Commission also recommended guidance to set this out, which the Family Justice Council (“FJC”) published in 2016 and updated in 2018. This guidance was aimed principally at practitioners and the judiciary. A version of the guidance aimed at divorcing

⁴⁰ Matrimonial Causes Act 1973, section 25(2)(b).

⁴¹ Law Commission, *Matrimonial Property, Needs and Agreements* (Law Com No 343, 2014), para 3.67.

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couples was also published in 2018, by the charity AdviceNow.⁴² Returning to this issue in 2024, the Law Commission noted varying degrees of use of the guidance.⁴³

The government considers that the absence of a clear statutory objective for needs has led to a lack of transparency and consistency in how needs are interpreted. We consider that having a clear statutory objective, supported with further provisions, will better support couples in understanding how best to allocate finite resources so that the needs of their children, as well as their own, are met.

The government’s view is that the needs of the parties should be met in such a way as to enable transition to independence for both parties, as far as resources allow.

The government’s view is reflective of the Law Commission’s 2014 conclusions and the subsequent guidance published by the FJC. The government believes that this objective captures the core purpose of financial orders designed to meet needs: supporting individuals as they move from shared lives and joint finances towards financial independence.

Question 5

Do you agree with the government’s view that the overarching objective of the court when making a financial order should be to reach a fair outcome through the application of the sharing and needs principles? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free Text]

⁴² Family Justice Council, Guidance on “Financial Needs” on Divorce, 2nd Edition (April 2018); Advicenow, ‘Sorting out your finances when you get divorced; available at: <https://www.advicenow.org.uk/guides/sorting-out-your-finances-when-you-get-divorced/>.

⁴³ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report, Law Com No. 417, HC 460 (18 December 2024), para 3.40.

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Question 6

Do you agree with the government's view that the objective for meeting needs should be to enable both parties to transition to independence, as far as resources allow? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

How the court would apply the needs objective

In addition to setting out an objective for meeting needs, the government proposes a clear three-stage approach for the court. We believe that by setting out an explanatory approach for addressing need, there is greater transparency in the law about how the court will approach application of the needs principle, thereby enabling increased certainty of outcome.

Stage 1: Children's needs come first

Reflecting current law, the court should consider the welfare of a child of the family and consider their needs first.

Stage 2: Consider divorcing couples' capital and income needs, including their housing and pension needs

After considering the needs of any child of the family, the government proposes that the court should then consider divorcing couples' housing, income and pension needs, as far as resources allow. These needs may be linked to a child's needs.

Stage 3: Consider discretionary needs

After completing Stage 2, where resources permit, the court would consider discretionary needs. We consider these needs to be lifestyle 'luxuries'. For example, luxury items could include expensive cars or designer items including clothing or accessories. As part of reform, the government intends for the distinction between Stage 2 and Stage 3 to be clearly set out.

The government proposes that needs as outlined in Stages 1, 2 and 3 are assessed against the benchmark of the standard of living during the marriage, as far as resources allow. An example of meeting Stage 2 needs, such as housing needs, against standard of living might be a spouse continuing to be housed in the same or similar area as during the marriage, to enable easy access to their work.

In relation to Stage 3 discretionary needs, assessment against standard of living would ensure there is an appropriate benchmark against which discretionary needs may be met. For example, if a couple during a marriage did not enjoy specific luxuries, there could be

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no reasonable expectation that these discretionary needs would be met post-divorce, even if resources would allow for this.

The government considers that separating out Stage 2 and Stage 3 would improve accessibility and certainty for couples. In particular, it would benefit divorcing couples to understand that discretionary needs will be secondary to essential requirements such as housing, income and pension provision.

Needs including circumstances not directly linked to the relationship

The government also considers that it should be made clear that needs are not limited to those arising directly from the relationship, but all needs including wider circumstances, such as illness or disability. This approach is not clearly settled in case law. The government is therefore of the view that it would benefit the court and parties to have clarity on this point and to ensure protection for the financially vulnerable.

Question 7

Do you agree with the government's view that the court should apply the needs objective using a three-stage hierarchical approach? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 8

Do you agree that the stages should be focused on the following:

- 1) first consideration to the welfare of any children of the family;
- 2) capital and income needs, including their housing and pension needs in keeping with the standard of living during the marriage; and
- 3) where resources allow, discretionary need, in keeping with the standard of living during the marriage?

You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

List of factors the court should use when assessing needs and sharing

The current law requires the court to have regard to a list of statutory factors (the "section 25 factors") when making financial orders. Examples of these factors include the age of the parties and the length of the marriage.

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Under this codification-plus model, these factors would continue to inform how the court makes decisions, including how to apply the needs and sharing principles. The government is of the view that these factors, when considered alongside the proposed objectives for needs and sharing, make potential outcomes clearer and more accessible.

We propose that the factors be retained largely as currently set out in section 25, but with one significant difference: adding in a new compensation factor. This would require the court to take account of any economic disadvantage suffered by a party during the marriage when assessing needs and sharing. This could include a situation where one party (often the wife) steps back from a career to care for children. This can further aid clarity as to why the court will meet needs, including discretionary needs, in higher value cases.

The government does not intend this factor to imply that one party should remain indefinitely dependent on the other. Rather, it recognises that, when assessing a spouse's financial needs, including discretionary needs, it is fair to take into account that they may have been unable to provide for their own lifestyle because they stepped away from a career to care for children.

Question 9

Do you agree with the government's view that there should be a checklist of factors that the court must consider when applying the needs and sharing objective? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 10

Do you agree that this checklist should include an explicit reference to any disadvantage suffered as a result of the relationship? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

This section explained the government's proposals regarding codification of an overarching objective for financial remedies and how the principles of sharing and needs could be codified in a way that will improve understanding of the law for divorcing couples.

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The next section will set out the government's proposals in relation to specific targeted areas of reform which we believe will further improve certainty and accessibility.

Domestic abuse

Domestic abuse is an abhorrent crime and tackling violence against women and girls (VAWG) is a top priority for this government. In its manifesto, the government has committed to halving violence against women and girls in a decade.⁴⁴ This means overhauling every aspect of society's response to these crimes, including a relentless pursuit of dangerous perpetrators and sustained support for victim-survivors from their first report and throughout the justice system.

On 18 December 2025, the government published its VAWG strategy, which sets out our plans to achieve this mission.⁴⁵ Amongst these was a commitment to consider how victim-survivors of domestic abuse, including economic abuse, can be better protected through cohabitation reform. It is therefore right that, alongside this, the government also considers how the law of financial remedies on divorce can more effectively recognise and respond to the impact of domestic abuse.

There is increasing recognition that domestic abuse can have profound and long-lasting effects on a victim-survivor's financial security. As understanding of domestic abuse, including economic abuse, has developed, it has prompted growing calls for reform. Stakeholders have argued that the law should enable the impact of domestic abuse to be more readily taken into account when the court distributes assets in financial remedy proceedings. The government is considering this question both in relation to divorce and as part of the proposed framework for cohabitants, focusing on how the legislative framework could be strengthened. **Given the significance of this issue, the government is seeking further evidence and views, to ensure its approach is informed by a robust understanding of the experiences of victim-survivors.**

Equally, the government acknowledges that there is clear evidence of challenges faced by victim-survivors in financial remedy proceedings, including issues relating to procedural protections, how economic abuse is addressed within the court process and the effectiveness of enforcement where perpetrators do not comply with financial orders. Enforcement in particular is a critical issue within the wider context of domestic abuse, including economic abuse, as failures to secure compliance can perpetuate harm and undermine the intent of court orders.

⁴⁴ The Labour Party, Labour Party Manifesto 2024: Change (2024).

⁴⁵ Home Office, Freedom from Violence and Abuse: A Cross-Government Strategy (Policy Paper, 18 December 2025), accessible at: <https://www.gov.uk/government/publications/freedom-from-violence-and-abuse-a-cross-government-strategy>.

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The Law Commission published a report in 2016 on enforcement of financial remedy orders and made recommendations for primary and secondary legislative change.⁴⁶ Stakeholders have highlighted the need for change in this area. For example, Surviving Economic Abuse has called for improved enforcement of financial disclosure in the Family Courts and Resolution has recommended strengthening enforcement of financial remedy orders.⁴⁷ The government recognises the importance of these issues and will give further careful consideration to how they might best be addressed.

Current legal context

In general terms, domestic abuse is not usually taken into account by the court as a relevant factor within financial remedy proceedings. Currently, section 25(2)(g) of the MCA 1973 states that one of the factors which the court must consider when making a financial remedy order is “the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.” The MCA 1973 does not define “conduct”.

“Conduct” refers to whether there has been misconduct (bad behaviour) by either of the spouses during the relationship or the financial remedy proceedings.⁴⁸ This consultation will therefore largely refer to conduct as “misconduct”.

For example, personal misconduct has generally been understood to refer to serious wrongdoing or bad behaviour by one of the spouses. Case law has established that the threshold for personal misconduct to be taken into account is very high. The misconduct must be both “obvious and gross” and the court has suggested that the behaviour should provoke a “gasp”, rather than merely a “gulp”.⁴⁹ Examples of personal misconduct have included attempted murder, serious violence and “grave marital misconduct”.⁵⁰ Case law also indicates that such misconduct will usually only affect a financial award when there has been a financial consequence.⁵¹

The high threshold developed in case law in part emanates from the court’s desire that financial remedy proceedings should not be used to punish misconduct during a marriage.

⁴⁶ Law Commission, *Enforcement of Family Financial Orders* (HC 862, Law Com No 370, 15 December 2016).

⁴⁷ Surviving Economic Abuse (2026), Written evidence submitted by Surviving Economic Abuse (ATJ0091). UK Parliament, accessible at: [https://committees.parliament.uk/writtenevidence/149038/default/Resolution,DomesticAbuseinFinancialRemedyProceedings\(2024\),accessibleathttps://resolution.org.uk/wp-content/uploads/2024/10/Resolution_DAFRP_Report_ONLINE.pdf](https://committees.parliament.uk/writtenevidence/149038/default/Resolution,DomesticAbuseinFinancialRemedyProceedings(2024),accessibleathttps://resolution.org.uk/wp-content/uploads/2024/10/Resolution_DAFRP_Report_ONLINE.pdf).

⁴⁸ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report* (HC 460, Law Com No 417, 17 December 2024), para 9.3.

⁴⁹ *Wachtel v Wachtel (No 2)* [1973] Fam 72, para 80; *S v S (Non-matrimonial Property: Conduct)* [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496, para 46.

⁵⁰ See, for example, *H v H (financial relief: attempted murder as conduct)* [2005] EWHC 2911 (Fam); *H v H (financial provision: conduct)* [1994] 2 FLR 801; *Clark v Clark* [1999] 2 FLR 498).

⁵¹ *OG v AG* [2020] EWFC 52, [2021] 1 FLR 1105 paras 34-39 and *N v J* [2024] EWFC 184, [2024] 4 WLR 64.

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Case law has also highlighted concern about the impact on the court of extended litigation, if accusations of abuse were more frequently litigated within financial remedy proceedings.

The debate

In recent years, stakeholders have raised concerns that domestic abuse is not sufficiently taken into account in financial remedy proceedings. As understanding of domestic abuse, including economic abuse, has developed, its relevance to financial remedy proceedings is now clearer and more widely recognised. Stakeholders have highlighted controlling or coercive behaviour and economic abuse as prevalent forms of abuse that can significantly undermine a victim-survivor's ability to acquire and use money or property. A report published by Surviving Economic Abuse found that around 4.1 million women (one in seven in the UK) experienced economic abuse from a partner or ex-partner in the past year.⁵²

The Law Commission's 2024 report noted that stakeholders in favour of reform often make the principled argument that the consequences of abuse should fall on perpetrators rather than victim-survivors and that recognising domestic abuse more readily within financial remedy proceedings reflects growing awareness of its potentially long-lasting effect. The report referred to research indicating that female victim-survivors of domestic abuse were more likely than other divorcing women to be in financially precarious situations up to five years after their divorce.⁵³

Whilst the Law Commission's 2024 report highlighted stakeholder calls for reform, it also sets out concerns from others about changes to the law in this area. In particular, concerns were raised that more readily taking into account domestic abuse in financial remedy proceedings could increase conflict between divorcing couples and lead to longer and more costly litigation. Furthermore, some stakeholders highlighted that extended proceedings may place an additional emotional burden on victim-survivors by prolonging stress and uncertainty. Stakeholders have also raised concerns that victim-survivors might take longer to achieve financial independence owing to the need for fact-finding hearings to establish the existence of abuse. Increased litigation would increase legal costs and reduce the assets available for division.

⁵² Surviving Economic Abuse, *Counting the Cost: The Scale and Impact of Economic Abuse in the UK* (July 2025), available at: <https://survivingeconomicabuse.org/wp-content/uploads/2025/07/Counting-the-Cost-report-Surviving-Economic-Abuse-July-2025.pdf>.

⁵³ Hitchings, E. et al., *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), pp.56-57.

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Government position

As set out in the recently published VAWG strategy, the government is determined that the Family Courts should be places of safety and fairness and must not become a forum in which victim-survivors are re-victimised.⁵⁴ Given the importance and complexity of this issue and the range of views set out above, this consultation provides an opportunity to engage with stakeholders and build a robust evidence base to inform our approach.

The government is particularly interested in views about how domestic abuse, including economic abuse, could be more effectively recognised in financial remedy proceedings, in a way that supports and empowers victim-survivors without creating further disadvantages by increasing conflict or prolonging proceedings.

Finally, the so-called “gasp factor” is an inappropriate way of articulating the threshold test for misconduct. This formulation risks trivialising domestic abuse and does not reflect the seriousness of such behaviour. As the Law Commission highlighted, for judges who frequently deal with domestic abuse, abusive behaviour may be less likely to cause a “gasp” than it otherwise might.⁵⁵ However, the question of a replacement cannot be addressed until the wider policy question of the extent to which misconduct, including domestic abuse, should play a role in financial remedy proceedings has been resolved.

The government considers that misconduct should be treated consistently by the Family Courts across both financial remedies law and its proposed cohabitation framework. The following questions therefore refer both to financial remedy proceedings and future cohabitation proceedings.

Question 11

Do you think that domestic abuse should more readily be taken into account in relation to the distribution of assets by the court in financial remedy and cohabitation proceedings? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

⁵⁴ Home Office, Freedom from Violence and Abuse: A Cross-Government Strategy (Policy Paper, 18 December 2025), accessible at: <https://www.gov.uk/government/publications/freedom-from-violence-and-abuse-a-cross-government-strategy>.

⁵⁵ Law Commission, Financial Remedies on Divorce and Dissolution: A Scoping Report, Law Com No. 417, HC 460 (18 December 2024), para 9.93.

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Question 12

To what extent should domestic abuse, if established, influence the court's decision-making in financial remedy and cohabitation proceedings?

- It should only be considered in exceptional circumstances
- It should be considered where it has had a clear financial impact
- It should generally be considered where domestic abuse has occurred
- It should not be considered in financial remedy or cohabitation proceedings
- Other (please explain)
- [Free text]

Question 13

If domestic abuse were more routinely considered in financial remedy and cohabitation proceedings, how do you think this should affect the *division of assets* between parties? For example, what principles should guide how misconduct is reflected in financial outcomes and how should this be applied in practice?

- [Free text]

Question 14

If courts were more readily able to take domestic abuse into account in financial remedy and cohabitation proceedings, what impact do you think this would have on those *proceedings* (for example, the length of cases, evidential requirements, costs to parties and the overall experience of victim-survivors)?

- [Free text]

Question 15

Do you agree that the language currently used to describe the threshold for considering misconduct in financial remedy proceedings (sometimes referred to as the "gasp factor") is inappropriate and should be replaced? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

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Misconduct generally

When considering the issue of misconduct, the government's priority is domestic abuse. The section above considers domestic abuse within the context of personal misconduct. However, case law has established that there are also other forms of misconduct:

- Wanton and reckless dissipation of assets that might otherwise have formed part of matrimonial property;
- Litigation misconduct; and
- Failure to give full and frank disclosure of finances.⁵⁶

These forms of misconduct may also be categorised as domestic abuse, depending on the particular case. For example, non-disclosure, dissipation of assets and general litigation misconduct have been cited by stakeholders as being forms of economic abuse. Given this, it is worth exploring whether it would be beneficial for the law to state clearly what forms of behaviour will be considered as misconduct and the impact this will, or may have, on a financial remedies claim.

When considering these issues, the government remains mindful of the principle behind the introduction of no-fault divorce under the Divorce, Dissolution and Separation Act 2020. The Act aimed to reduce conflict by no longer making it a legal requirement for someone seeking a divorce to apportion blame to a respondent, if they wished to divorce within two years of separation. For the avoidance of any doubt, the government is clear that the reasons for a breakdown of a marriage (for example, adultery) should not be considered relevant within financial remedy proceedings. Considering such behaviour would run contrary to the principle behind no fault divorce, which removes blame from the legal process of getting a divorce.

Question 16

What forms of behaviour do you think should be considered as "misconduct"? You may wish to give reasons in the text box.

- [Free text]

Question 17

What sort of impact do you think misconduct should have on a financial remedies claim or a cohabitation claim?

- [Free text]

⁵⁶ *N v J* [2024] EWFC 184, [2024] 4 WLR 6 [24-29].

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Question 18

If you believe misconduct should be more readily taken into account by the court, do you think misconduct which has financial consequences should be treated by the court in the same way as misconduct without financial consequences?

- Yes
- No
- Undecided
- [Free text]

Pension sharing

Pensions built up during a marriage can represent a significant matrimonial asset and may be divided through a pension-sharing order. However, research suggests that pensions are commonly overlooked during financial remedy proceedings. The Law Commission's 2024 report noted widespread stakeholder concern about this issue. Academic studies have highlighted limited awareness of the value of pension assets, particularly among women, who often have lower pension savings due to career breaks and caring responsibilities.⁵⁷

As part of the government's approach to assessing financial needs, as outlined earlier on page 43, the government proposes that the court must specifically consider the pension needs of both parties. The government considers that this proposal could support a cultural shift towards more consistent consideration of retirement needs when financial orders are made and may help address wider gender imbalances following divorce.

Whilst the court must currently consider all relevant assets of a divorcing couple, including pensions, the government also proposes that reform should include a specific obligation on the court to consider pensions accrued during the marriage when making financial orders. We consider that this would also support a cultural shift to ensure that pensions are not inadvertently overlooked by divorcing couples or the court.

The Law Commission's 2024 report identified suggestions for reform which would go further, including that pensions accrued during the marriage should be equally shared by the court by default.⁵⁸ Whilst such an approach could ensure that pension provision is at the forefront of the court's mind when making its order, the government is mindful that it could have unintended consequences, taking reform beyond a codification-plus model. In particular, default equal sharing of pensions would probably limit the court's discretion in determining the appropriate distribution of resources when seeking to address the couple's individual needs. The Law Commission noted that such an approach could increase the

⁵⁷ Hitchings, E. et al., *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), p.61.

⁵⁸ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), paras 10.89-10.90.

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likelihood of more couples having immediately to sell the matrimonial home to achieve a fair outcome, which could have a significant impact on children's housing.⁵⁹

Question 19

Do you agree with the government's view that the court should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders? Please explain your answer in the text box.

- Yes
- No
- Undecided
- [Free text]

Qualifying nuptial agreements

Nuptial agreements are agreements made by a couple in relation to a marriage in anticipation of a future divorce. They can either be "pre-nuptial" agreements, agreed before a marriage takes place, or "post-nuptial" agreements, agreed after the marriage. Current case law governs the legal status of nuptial agreements. The case of *Radmacher v Granatino* set out that the court will uphold a nuptial agreement unless it is unfair to do so.⁶⁰ There therefore remains a degree of uncertainty about when and how a nuptial agreement might be upheld.

In 2014, the Law Commission in its report *Matrimonial Property, Needs and Agreements* made recommendations for the introduction of legally binding nuptial agreements ("qualifying nuptial agreements") and published a draft Bill. The Law Commission's 2024 report re-confirmed support for these proposals, subject to which proposed model for reform the government may choose.

The Law Commission proposed that qualifying nuptial agreements should be enforceable contracts that are not subject to substantive scrutiny by the court. This would enable couples to make binding contractual arrangements about the financial consequences of divorce. For agreements to qualify as a "qualifying nuptial agreement", certain safeguards would need to be met. However, such agreements would not allow individuals to contract out of meeting each other's financial needs.

The government plans to include qualifying nuptial agreements as part of its reforms and has noted overwhelming stakeholder support for this. These agreements have the advantage of providing greater certainty and autonomy for couples who wish to make their

⁵⁹ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), paras 10.89-10.90.

⁶⁰ *Radmacher v Granatino* [2010] UKSC 42.

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own financial arrangements in the event of divorce. They will reduce family conflict and decrease the number of contested applications to the court. This will also benefit families and children by preventing litigation.

Safeguards

The government is, however, of the firm view that there must be clear statutory safeguards to prevent the vulnerable from being coerced into signing nuptial agreements and to make sure individuals understand the legal consequences of the agreement.

The government proposes the following safeguards, broadly in line with the Law Commission's 2014 recommended safeguards:

Safeguards Required for a Qualifying Nuptial Agreement

- **Contract Validity:** the agreement must be a valid contract without, for example, undue influence or misrepresentation.
- **Execution as Deed:** the agreement must have been made by deed and must contain a statement signed by both parties that they understand the agreement is a qualifying nuptial agreement that will partially remove the court's discretion to make financial orders.
- **28-Day Period:** the agreement must not have been made within the 28 days immediately before the wedding or the celebration of civil partnership.
- **Material Financial Disclosure:** each party to the agreement must have received, at the time of making of it, disclosure of material information about the other party's financial situation.
- **Independent Legal Advice:** independent legal advice for each party signing the nuptial agreement, to ensure each understands the legal effect and consequences of the agreement.
- It should not be possible for a party to waive their rights to disclosure and legal advice.
- Any variation of an agreement must meet the requirements listed above.

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Question 20

Do you consider that these proposed safeguards will ensure individuals understand the consequences of their agreement and provide sufficient protection against coercion?

You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Effect of a qualifying nuptial agreement

In 2014, the Law Commission recommended that qualifying nuptial agreements should be legally binding. Under its proposed scheme, a qualifying nuptial agreement would be enforceable as a contract and would not be subject to the court's usual discretionary redistribution of assets. However, the Law Commission also made clear that couples should not be able to use such agreements to contract out of meeting each other's financial needs. Where a qualifying nuptial agreement does not make adequate provision for needs, the court would retain jurisdiction to make orders to meet those needs.

In its 2024 scoping report, the Law Commission revisited this issue and noted that future implementation of qualifying nuptial agreements may require further consideration of how "needs" should be defined.

Case law is not consistent on the meaning of "needs" in the context of a nuptial agreement. Some decisions have taken a more restrictive view of needs in the context of an agreement, for example, considering whether the agreement meets basic needs.⁶¹

The government considers that legislation should clearly define "needs" for the purposes of determining whether a qualifying nuptial agreement meets the needs of the couple and any children.

In practical terms, this means clarifying what level of financial provision the court may still require one party to make to the other, where a qualifying nuptial agreement exists but does not make appropriate provision for needs.

This is important to ensure that the framework is accessible and that individuals and their lawyers understand the scope of the needs that the court will still protect, even where a qualifying nuptial agreement is in place.

⁶¹ See *Cummings v Fawn* [2023] EWHC 830 (Fam).

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While the government is clear that qualifying nuptial agreements must not be used to contract out of meeting individuals' needs, it considers that the definition of "needs" applied by the court in these circumstances should be narrower than the definition used in financial remedy cases more generally. This reflects the importance of respecting the autonomy of couples who chose to enter into these agreements.

The government therefore proposes that, where a qualifying nuptial agreement is challenged on the basis that it does not meet one party's needs, those needs should be assessed on a narrower basis, similar to those proposed for cohabitants in Part 2 of the consultation (see page 69).

Under this approach, when determining whether to depart from a qualifying nuptial agreement to meet needs, discretionary needs would not be considered. Instead, as with cohabitants, "needs" such as housing, capital, income and pension would be met, so far as resources allow, with reference to the lifestyle enjoyed during the marriage.

In keeping with prioritising fair outcomes for children, the government proposes that it should not be possible to use a qualifying nuptial agreement to opt out of children's needs.

Question 21

Do you agree with the government's view that when considering meeting "needs" under the qualifying nuptial agreement model proposed, this should exclude discretionary needs, in the same way as proposed for cohabitants? Please explain the reason for your answer in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 22

Beyond housing, capital, income and pension, are there any other elements that you think should be included in, or excluded from, the assessment of "needs" within the context of qualifying nuptial agreements? Please explain the reason for your answer in the text box.

- [Free text]

Seamless cohabitation prior to marriage

In many relationships, couples live together for several years before they marry. Case law has established that the court may consider the duration of a pre-marital cohabiting relationship as counting towards the length of marriage, where that relationship moves

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seamlessly from cohabitation to marriage.⁶² The length of the marriage can have an impact on the financial outcomes. However, many couples do not realise that the court can treat this period of cohabitation as part of the marriage.⁶³

The government recommends codification of this established case law principle. It considers that doing so would improve clarity and transparency in the law, helping individuals better understand how the duration of their relationship may be assessed by the court. Codification of seamless cohabitation would also reflect the reality of how modern relationships develop, as many couples may cohabit for a number of years prior to marriage.

The government agrees with the Law Commission's view that, given this is a principle about which divorcing couples do not seem to be aware, codification could make the law clearer.⁶⁴ To provide greater clarity about what constitutes "seamless cohabitation", the government also agrees with the Law Commission's view that codification should set out the key factors relevant to determining whether seamless cohabitation had taken place prior to the marriage.

The government therefore proposes including a non-exhaustive list of factors to guide the court in making this assessment. The government notes that the Law Commission's 2007 report *Cohabitation: The Financial Consequences of Relationship Breakdown* set out helpful indicators of cohabitation, many of which are reflected in existing case law, particularly *Kimber v Kimber*.⁶⁵

Using the factors set out by the Law Commission would provide clear criteria for the court, while maintaining the flexibility needed to reflect the circumstances of individual cases. This would also align with the approach being taken in Part 2 of this consultation, where the government proposes that the definition of "cohabitant", for the purposes of its separation framework, should have regard to the same factors.

The government therefore invites views on whether these factors are appropriate and whether additional factors should be included.

⁶² *GW v RW* [2003] EWHC 611 (Fam), [2003] 2 FLR 108.

⁶³ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), para 4.49.

⁶⁴ Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Report*, Law Com No. 417, HC 460 (18 December 2024), para 4.49.

⁶⁵ Law Commission, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No 307, 2007, Cm 7182); *Kimber v Kimber* [2000] 1 FLR 383.

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Question 23

Do you agree with the government's view that the court should consider a pre-marital cohabiting relationship as counting towards the length of a marriage, where that relationship moves seamlessly from cohabitation to marriage? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 24

Which factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when assessing whether there has been seamless cohabitation prior to the marriage? Please tick all that apply.

- Existence of a joint household
- Stability of the relationship
- Financial arrangements
- Responsibility for children
- Presence of a sexual relationship
- Public recognition of the relationship
- Other (please specify) [Free text]

Other issues

The government is aware that there are topics explored by the Law Commission in its 2024 scoping report in relation to its codification-plus model which are not covered in this consultation.

Notably, this includes whether there should be restrictions on spousal maintenance, whether reform should include changes to financial provision for children over the age of 18 and whether limitation periods should be introduced.

The government has concluded that reform is not needed in these areas.

The government does not consider that there is an obvious policy justification for placing restrictions on spousal maintenance orders, when evidence from the *Fair Shares Project* clearly shows that "joint lives" spousal maintenance orders, or significant term orders, are very rare.⁶⁶

⁶⁶ Hitchings, E. et al., *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), p.20.

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The government does not plan to make changes to provision in respect of children over the age of 18. This is because the court rarely makes lasting maintenance provision specifically in relation to children under the age of 18. In most cases, child maintenance is within the jurisdiction of the Child Maintenance Service (“CMS”), not the court. Payments can continue until a young person finishes education or training, or turns 20, whichever comes first. Because of this, the government does not think it is right to give the court further powers to order financial support after this point.

Finally, the government does not consider limitation periods to be a necessary reform; the case of *Wyatt v Vince* clearly shows that if a financial claim is made many years after a divorce, the court will take into account the passage of time since separation when considering what orders to make.⁶⁷ The government is further of the view that not undertaking reform in these areas upholds its core approach to retain the distinct status of marriage. Consultees are referred to page 72 in Part 2 which sets out proposals to restrict maintenance and introduce a limitation period for cohabitants.

This consultation also deliberately does not explore the role that Artificial Intelligence (“AI”), or any future formula, could play in calculating outcomes in financial remedy proceedings. This is because the government is of the view that reform must be made to the substantive law before any consideration could be given to whether AI or a formula-based approach could be appropriate.

⁶⁷ *Wyatt v Vince* [2015] UKSC 14.

Part 2: Reforming the law for cohabitants on separation

Defining a “cohabitant”

Core definition

The government is of the view that the proposed framework should apply only to relationships where two people are living together as a couple in an enduring family relationship.⁶⁸

The government’s policy intention is to ensure the framework applies to cohabitants who are in romantic, committed, long-term interdependent relationships.

The government considers that legal protection should be targeted at relationships which demonstrate stability, mutual commitment and a shared life, rather than more casual or short-term arrangements. This means that other shared living arrangements, such as siblings or flatmates, would not fall within scope. The framework would cater only to partnerships that demonstrate commitment and interdependence.

This policy aim is already reflected in existing legislation, including adoption legislation, which defines cohabitants as “two people living together as partners in an enduring family relationship”.⁶⁹ A similar approach has also been proposed for use in Scotland by its Law Commission in updating the Family Law (Scotland) Act 2006.⁷⁰

Question 25

Do you agree that cohabitants captured within the framework should be two people living together as a couple in an enduring family relationship?

- Yes
- No
- Undecided
- [Free text]

Factors the court should consider

To support the proposed definition of “cohabitant”, the government considers that the court should have a clear but flexible framework for assessing whether a relationship is within scope of the scheme. This is essential in ensuring protections are targeted at genuinely committed partnerships while allowing flexibility for diverse circumstances.

⁶⁸ “family” includes those with or without children.

⁶⁹ Adoption and Children Act 2002.

⁷⁰ Scottish Law Commission, Report on Cohabitation (Scot Law Com No 252, 2009), pg. 30.

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The government proposes a non-exhaustive checklist of factors that the court may use to guide them when considering whether individuals are cohabitants, whilst providing sufficient flexibility to reflect the facts of each individual case.

In considering this issue in 2007, the Law Commission proposed a set of factors it considered to be particularly relevant in meeting a cohabitation definition.⁷¹ Similar approaches are used in other jurisdictions, such as in Scotland and Australia.⁷² The government is open to views on which factors would be most relevant for the court to consider in determining whether a relationship meets the definition of cohabitants.

Question 26

What factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when considering whether individuals are cohabitants? Please tick all that apply.

- Existence of a joint household
- Stability of the relationship
- Financial arrangements
- Responsibility for children
- Presence of a sexual relationship
- Public recognition of the relationship
- Other (please specify) [Free text]

Automatic exclusions

The government proposes that couples who are married or in a civil partnership with each other and those too closely related to marry, should be excluded from the cohabitation framework.

Married and civil-partnered couples already have access to comprehensive statutory regimes, so allowing them to use this framework would duplicate legal routes and undermine the distinct legal status of marriage and civil partnership. This exclusion would not prevent a person from bringing a claim against someone who is married, where the applicant is in a cohabiting relationship with that person.

For close relatives, the proposals mirror the long-established prohibited degrees of relationship set out in the Marriage Act 1949, ensuring consistency across legal

⁷¹ Law Commission, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No 307, Cm 7182, 2007), pg. 50.

⁷² Family Law (Scotland) Act 2006; Family Law Act 1975.

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frameworks.⁷³ Prohibited degrees of relationship already apply to cohabitants in other scenarios, such as in social security legislation.⁷⁴

Question 27

Do you agree that those who are already married or in a civil partnership with each other, or those who are too closely related to each other to have married, should be ineligible for the framework?

- Yes
- No
- Undecided
- [Free Text]

Age

The government proposes that the minimum age to apply under the cohabitation framework should be 18. This approach is consistent with the current age of marriage.⁷⁵ Similar to marriage, setting a minimum age of 18 would serve a protective function.

Question 28

Do you agree that the minimum age to be eligible for the framework should be 18?

- Yes
- No
- Undecided

Eligibility criteria for making an application

Minimum duration period

The government proposes that couples must have lived together for a **minimum of three years** before they can access the rights and protections offered by the cohabitation framework. The exception to this would be if the couple live together and have had a child, or if there is a child present who is considered a member of the family (a “child of the family”). A child of the family would be considered on a similar basis as on divorce and would include a child of both individuals or any child whom both individuals have treated

⁷³ Marriage Act 1949.

⁷⁴ Department for Work and Pensions, Decision Maker’s Guide: Volume 3, Chapter 11 – Living Together as a Married Couple (DWP, 2017).

⁷⁵ Marriage and Civil Partnership (Minimum Age) Act 2022.

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as a child of the relationship, excluding foster children who have been placed by a local authority.⁷⁶

The government believes that these legal protections should only extend to relationships where there is a clear demonstration of commitment so believes a minimum duration period is needed. A minimum duration period would also help reduce public confusion by making clear when legal protections can start to apply, helping to counter the myth of common law marriage.

The proposed period sits within the two-to-five-year range recommended by the Law Commission in its 2007 report on cohabitation and aligns with the existing law in New Zealand.⁷⁷

In setting the threshold at three years, the government aims to strike a balance between capturing relationships that demonstrate commitment and interdependence, while avoiding a threshold so high that it may exclude vulnerable individuals in need of protection.

A three-year minimum duration period would not mean that the court cannot distinguish between couples who only just meet this threshold, and those in longer relationships. As with existing law on divorce, the length of the relationship will be taken into account when determining any award.

Where a couple is cohabiting and have a child together, or there is a dependent child of the family, the government considers that no minimum duration requirement should apply. The government believes it is important to remove this requirement to ensure that the child's needs can always be met. A child's welfare is of utmost importance, and supporting both parents in these situations helps to safeguard the child's wellbeing.

Internationally, cohabitation combined with the presence of children often lowers or removes minimum duration requirements. In Australia and New Zealand, having a child together removes the requirement entirely, while in Ireland it reduces the period from five years to two.⁷⁸ The government's proposal is also in line with the Law Commission's 2007

⁷⁶ Matrimonial Causes Act 1973, section 52.

⁷⁷ Cohabitation: The Financial Consequences of Relationship Breakdown Cm 7182; Property (Relationships) Act 1976 (New Zealand).

⁷⁸ Federal Circuit and Family Court of Australia, De facto relationships (FCFCOA) <<https://www.fcfoa.gov.au/fl/pubs/defacto>>; New Zealand Ministry of Justice, Relationships covered by law (NZ Ministry of Justice, updated 19 December 2023) <<https://www.justice.govt.nz/family/separation-divorce/divide-relationship-property/relationships-covered-by-law/>>; Law Society of Ireland, Cohabiting couples <<https://www.lawsociety.ie/public/legal-guides/family-law/cohabiting-couples>>.

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report, which recommended removing a minimum duration requirement where children of cohabitants are present.⁷⁹

Question 29

Do you agree with the government's proposal that couples without children must have lived together for a minimum of three years, before they can access the cohabitation framework?

- Yes
- No
- Undecided

If you disagree with the three-year minimum duration period suggested above, what period would you propose having instead?

- None
- 1 Year
- 2 Years
- 4 Years
- 5 Years
- More than 5 Years

If you disagree with the three-year minimum duration period, and chose a different period, please explain why below:

- [Free Text]

Question 30

Do you agree that where cohabitants are living together and there is a child of the family, the minimum duration requirement should be disapplied?

- Yes
- No, but the minimum duration should be lowered
- No, the minimum duration should not be altered as a result of children
- Undecided

Time limits

The government proposes a **two-year time limit** for bringing a financial claim after a cohabiting relationship has ended.⁸⁰ This means that individuals would need to make an application within two years of separation for the claim to be considered by the court. The

⁷⁹ Law Commission's final report Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182, Law Com No 307, 2007).

⁸⁰ This would apply even where the individuals continue to live in the same property, even though their relationship has ended.

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time limit seeks to balance giving individuals sufficient time to bring a claim whilst providing certainty and finality for both individuals. The government's decision aligns with approaches taken in other jurisdictions such as Australia and Ireland.⁸¹

Question 31

Do you agree that a time limit should be introduced to prevent claims being made after two years have passed since the relationship ended?

- Yes
- No
- Undecided

If you disagree with the two-year period suggested above, what period would you propose having instead?

- No Time Limit
- 1 Year
- 3 Years
- 4 Years
- More than 5 Years

If you disagree with the two-year period, and chose a different period, please explain why below:

- [Free Text]

“Needs”: the principle guiding the court’s decisions

A “needs-based” approach

Headline approach

The government proposes that “**needs**” should be the guiding principle for determining outcomes when cohabitants separate. This approach most clearly aligns with the four principles underpinning this consultation as explained below:

The needs-based approach will **prioritise fair outcomes for children**, who are often the most affected by instability following separation despite not having an influence over their parents’ relationship choices. Financial vulnerability in the primary carer can directly affect a child’s wellbeing and long-term outcomes. By ensuring that the primary caregiver has the resources to meet their housing and living needs, a “needs” model promotes continuity and stability for children, reducing the risks associated with financial disruption.

⁸¹ Federal Circuit and Family Court of Australia, De facto relationships <<https://www.fcfcoa.gov.au/fl/pubs/defacto>>. ; Law Society of Ireland, Cohabiting couples: Time limits <<https://www.lawsociety.ie/public/legal-guides/family-law/cohabiting-couples/#timelimits>>.

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In **protecting the vulnerable**, the government believes a “needs-based” approach is the best way to deliver its manifesto commitment to strengthen the rights and protections available to women in cohabiting couples.⁸² Women are disproportionately more likely to reduce their earnings or leave the workforce to take on caring responsibilities, leaving them financially exposed if a relationship ends. A needs-based approach ensures they are not left unable to secure housing or maintain a reasonable standard of living because of that choice. It also offers victim-survivors of domestic abuse, including economic abuse, a realistic pathway to safety by ensuring they can access support after leaving a relationship.

Equally, a needs-based approach supports the government’s objective of **preserving the distinct legal status of marriage** by defining “needs” more narrowly than on divorce, excluding discretionary needs (see page 69). To maintain this distinction, the government proposes that the sharing principle should not be applied to cohabitants, meaning there would be no starting assumption of a 50:50 split of relationship assets.

In line with the government’s objective of creating a **clear and accessible framework**, a needs-based approach is simple, predictable and easy to understand. The concept of “needs” is already central to existing financial remedies law. Drawing on this familiar principle, while defining it more narrowly for cohabitants, should help individuals understand probable outcomes, reducing uncertainty and avoiding lengthier and more costly litigation.

Compensation model

The government is aware that other jurisdictions apply, and the Law Commission proposed in its 2007 report, a “compensation” based approach when determining how assets should be divided on separation.⁸³ This approach would give the court the objective of compensating disadvantage suffered by one partner for the benefit of the other as a result of decisions arising from their relationship. For example, a partner who gave up a lucrative career to care for their child, and consequently experienced relationship-generated disadvantage, may be compensated by the other partner whose career advanced because they did not take on the caregiving role.

However, the government has decided against pursuing this approach. Its primary concern is that a compensation model does not reliably ensure that needs, particularly those of children, are met. For example, a compensation model might fail to account for hardship arising from circumstances not directly caused by the relationship, such as serious illness

⁸² The Labour Party, Labour Party Manifesto 2024: Change (2024).

⁸³ Law Commission’s final report Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182, Law Com No 307, 2007).

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or disability. This could result in awards that are insufficient to meet housing or caring needs, which could potentially lead to financial hardship.

The government considered whether this limitation could be mitigated through existing provision for children under Schedule 1 to the Children Act 1989.⁸⁴ However, Schedule 1 is designed to make financial orders solely for the benefit of the child and does not allow a parent to claim for their own financial needs. This would therefore fall short of meeting the government's manifesto commitment to protect women and may also undermine a child's stability by leaving their primary carer (most commonly women) without direct support. It would also place parents in the unfair position of having to apply to the court twice.

The government is also concerned that a compensation model would require the court retrospectively to examine and quantify every decision that created an advantage and disadvantage during the relationship.⁸⁵ This would be complex, hard to assess and probably increase conflict between individuals. It could lead to unpredictable outcomes and longer, more expensive cases, which may discourage those most in need from applying.

Whilst the government recognises the compensation principle aims to reflect choices made during a relationship, it considers these issues would be better addressed through a needs-based framework. Consultees are referred to page 70 which sets out how the government proposes to include compensation within a checklist which the court would consider when assessing needs.

The proposed needs-based framework

The government intends that its needs-based framework is clear and accessible to those who use it. To that end, the government proposes:

- An overarching policy aim for the court when making financial orders;
- A clear objective for the principle of meeting need;
- A clear way in which the objective should be applied; and
- A list of factors for the court to consider when applying the objective.

Overarching policy aim

As with financial remedies on divorce (see page 37), the government proposes the overarching aim of the court in dealing with an application should be to achieve a fair outcome.

The government's view is that for cohabitants a fair outcome is achieved through the application of the needs principle.

⁸⁴ Children Act 1989.

⁸⁵ *Gow v Grant* [2012] UKSC 29, para 53.

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Objective for meeting needs

It follows from the overarching policy aim that reforms should include a clear objective for meeting need.

The government intends for needs to be deliberately different and distinct from the proposed policy intention for financial remedies on divorce. This distinction reflects the presence of an explicit legal commitment in marriage, where meeting needs on divorce may support a more gradual transition to financial independence.⁸⁶

By contrast, where individuals have cohabited without such a commitment, the aim is more firmly directed towards achieving an earlier clean break. **It is the government's view that the needs of cohabitants should be met in such a way as to enable the termination of dependence and obligations as soon as is just and reasonable.**⁸⁷

How the court would apply the government policy intention in relation to needs

In applying the objective in practice, the government proposes a clear two-stage approach for the court:

Stage 1: Children's needs come first.

As in divorce cases, children's needs would come first. Children have no control over their parents' relationship or financial decisions, but they can be directly affected by them. This approach ensures they are not disadvantaged.

Stage 2: Consider the individuals' own financial needs.

These needs may be linked to children's needs. They would include housing, capital, income and pension needs, so far as resources allow. The aim would be to ensure that each person can secure suitable housing and meet living costs.

In assessing those needs, the court could take into account the standard of living during the relationship, as this provides a helpful benchmark. A committed relationship often shapes financial arrangements and future expectations, and that reality should be recognised.

However, the focus would remain on meeting needs. Discretionary needs beyond what is necessary would not be included, even if resources are available.

⁸⁶ Section 25A(1) of the MCA 1973 reflects this, by providing a clear discretion for the court to consider whether it would be appropriate to exercise its powers so as to terminate financial obligations as soon as is just and reasonable.

⁸⁷ This dispenses the court's discretion to consider *whether it would be appropriate* to terminate financial obligations, giving clear direction that it should do so.

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Exclusion of discretionary needs

The government proposes excluding discretionary needs from the court's assessment of needs for cohabitants. Discretionary needs concern comforts rather than necessities, and may include, for example, luxury items such as a high value car, non-essential home improvements or private club memberships. As part of reform, the government intends for the distinction between Stage 2 needs and excluded discretionary needs to be clearly set out.

Exclusion of such needs creates a further clear and principled distinction from divorce, reflecting the different levels of legal commitment and obligations. This approach also supports the clean break objective. By limiting financial support to essential needs, the court can avoid ongoing or unnecessary obligations, helping both people move on more quickly.

A further distinction from the approach on divorce is that ongoing maintenance orders between cohabitants would only be available in exceptional circumstances. In most cases, the court's focus would be on meeting needs through capital provision rather than continuing income payments. Further detail on this proposal can be found on page 72.

Needs including circumstances not directly linked to the relationship

Without the ability of the court to take these circumstances into account when assessing need, individuals could be left financially vulnerable even after a long and committed relationship, during which the couple have financially relied on each other. For example, a partner with a deteriorating health condition who has been financially supported during the relationship may need on separation provision to meet their specific health needs.

The government therefore proposes, as with divorce, that the court should be able to take account of such circumstances when assessing needs, so that outcomes are focused on avoiding hardship. This is consistent with the government choosing not to adopt a compensation-based framework. However, in line with the proposed position on maintenance (see page 72), ongoing financial support between cohabitants would remain exceptional.

List of factors the court should use when assessing needs

To help the court apply a needs-based approach fairly and consistently, the government proposes a list of factors the court must consider when deciding what is a fair needs-based assessment. The factors are intended to help the court build a clear picture of how each person's circumstances shape their financial needs following separation.

Examples of some of the factors would probably include:

- Earning capacity;
- Financial resources of each individual;
- Any physical or mental disability;

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- Age; and
- Length of relationship.

The approach would broadly mirror the factors set out in Part 1, which themselves largely align with the existing factors in section 25 of the Matrimonial Causes Act.⁸⁸ Many of the same factors are relevant at the end of a cohabiting relationship as a married one, and adopting a similar structure will support clarity across both frameworks.

As with financial remedies, we propose that the list of factors includes a new compensation factor. This would allow the court to consider, when assessing needs, decisions made during the relationship that might have affected a person's financial position, such as reducing hours to care for a child.

Domestic abuse

The government recognises that domestic abuse, including economic abuse, can be a significant cause of financial vulnerability for cohabitants. This is particularly problematic in a context where the prevalence of domestic abuse is twice as high for cohabitants as it is for married couples.⁸⁹

The government's intention is that misconduct should be treated consistently by the Family Courts across financial remedy proceedings on divorce and within the proposed cohabitation framework. Consultees are therefore invited to refer to Part 1 and the questions relating to this issue.

Question 32

Do you agree that "needs" should be the guiding principle the court follows for determining outcomes when cohabitants separate? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

⁸⁸ Matrimonial Causes Act 1973.

⁸⁹ Office for National Statistics, Domestic abuse victim characteristics, England and Wales: year ending March 2025 (26 November 2025) accessible at: <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2025>>.

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Question 33

Do you agree with the government's view that the objective for meeting needs should be to do so in such a way as to enable termination of dependence and obligations as soon as is just and reasonable? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 34

Do you agree that discretionary needs should be excluded from the consideration of needs for cohabitants? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 35

Do you agree that the court should be able to take account of needs arising from wider circumstances than the relationship (for example, serious health conditions or disabilities) when determining financial provision? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Question 36

Do you agree there should be a checklist of the matters the court must particularly consider when applying the needs principle? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

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Remedies available

Range of remedies available

The government proposes that, where cohabitants meet the qualifying criteria under the new framework, the court should have access to a broad set of remedies which reflect what is available on divorce, including property adjustment orders, lump sum orders and pension sharing orders. The court would also have access to maintenance orders, although the government proposes these would only be available in exceptional circumstances.

The purpose of making a wide range of remedies available is to allow the court to respond flexibly to the facts of each case, enabling them to meet the needs of couples. The government is therefore of the view that the court should not have its hands tied and should be able to select the remedy (or combination of remedies) that is most suitable to the circumstances of the case. Expressly ruling out particular remedies could have unintended consequences and result in the court making more generous awards from the remedies that remain available. For example, if pension sharing orders were excluded for cohabitants, the court may make more considerable capital awards than they might otherwise do.

While the government proposes cohabitants have access to the same remedies as divorcing couples, this does not mean there would be equivalent financial outcomes to divorce. As set out on page 65, the cohabitation framework would be needs-led, with needs assessed more narrowly than on divorce, and the court would not apply the sharing principle. This means that although the court would have access to the same types of remedies as on divorce, this does not mean the same awards would be granted.

Limits on maintenance payments

Maintenance (also known as periodical payments) would be regular payments made by one cohabitant to another following separation. In divorce proceedings, it is used to meet ongoing needs, particularly where one party has become financially dependent during the marriage.

The government proposes that maintenance should be available for eligible cohabitants in principle, but only on a more limited basis than on divorce. This reflects that cohabitants have not entered a legal union and that any ongoing financial obligations between former cohabitants should end as soon as is just and reasonable, in line with the objective the government is proposing for “needs.”

To support this aim, the government proposes that maintenance should only be awarded in cases in exceptional circumstances, such as serious health issues or disability.

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The government considers that, in most cases, needs should be met through other remedies (such as property adjustment orders or lump sum orders) rather than through ongoing maintenance. However, it recognises there may be exceptional circumstances where a defined period of maintenance is needed. As part of reform, examples could be considered of the types of exceptional circumstance that could warrant maintenance.

Where maintenance is granted, the government proposes that any order must be for a defined and limited duration, without possibility of extension of the term. The government also proposes that open-ended “joint lives” orders should not be allowed.

Question 37

Do you agree with our proposed approach in relation to remedies for cohabitants?

- Yes.
- No.
- Undecided
- [Free text]

Question 38

In relation to maintenance in particular, do you agree with the follow statements.

Please tick all that apply:

- Maintenance should be awarded in exceptional circumstances (such as serious health issues or disability).
- Any maintenance order should be time-limited, with no open-ended “joint lives” orders.
- A maintenance order term may not be extendable beyond the original period set by the court.

If you disagree with any of the proposals above, please explain why.

- [Free text]

Cohabitants’ awards not exceeding awards made on divorce.

As outlined previously, the government wants to protect the distinct status of marriage. To support this, it proposes an explicit safeguard that awards made to cohabitants by the court cannot exceed those that would have been reasonably ordered on divorce in otherwise identical circumstances.

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Question 39

Do you agree there should be an explicit requirement that the court cannot award cohabitants a higher award than one which would have reasonably been made if they were a married couple divorcing?

- Yes
- No
- Undecided

Opting out of the framework

The government is proposing an “opt-out” model under the cohabitation framework. Under this approach, qualifying cohabitants are covered by the statutory framework by default, but they can choose to opt out of these rights and protections if they mutually agree to do so.

The key advantage of an opt-out scheme is that it means protections apply automatically to those who may otherwise be left unprotected, including individuals who believe in the common law marriage myth and those who may be financially vulnerable. It also supports those who might have been deterred from forming a cohabitation agreement, on the basis they are often perceived as costly, unromantic, unnecessary or because couples to assume separation will never occur.⁹⁰ Crucially, an opt-out scheme ensures the economically weaker party is protected by default and can refuse to opt out where doing so would undermine their interests.⁹¹

At the same time, the government considers it important to preserve a clear choice for couples who do not wish to be covered by the cohabitation framework. Opt-outs mean couples can choose not to be covered by the automatic rights and responsibilities that come with cohabitation reform, giving couples control over how their relationship is arranged. For example, an older couple with children from previous relationships, with a clear sense of how they wish their independent assets to be passed on, may choose to opt out to ensure those arrangements are preserved.

⁹⁰ Professor Anne Barlow, Written Evidence Submission 38054 to the Women and Equalities Committee (UK Parliament Committees).

⁹¹ Professor Jens Scherpe, Written Evidence Submission 43563 to the Women and Equalities Committee (UK Parliament Committees).

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Safeguards

The government is of the firm view that there must be appropriate statutory safeguards to make sure that both individuals understand the decision they are making before they choose to opt out. Research shows that if opt-outs are not properly regulated, they can reinforce existing power imbalances in a relationship, such as where one partner may have greater legal knowledge than the other.⁹²

The government believes safeguards are needed to protect people, especially those who are financially vulnerable, from entering into agreements they do not fully understand or may not be in their financial interests. This is particularly important where there is domestic abuse, including economic abuse, where individuals may be coerced into opting out against their interests.

There is a careful balance to strike. Opt-outs should be informed and freely made, but the process should not be so complex or expensive that it becomes inaccessible. The government therefore proposes safeguards based on the Law Commission's recommendations in its 2014 Report on *Matrimonial Property, Needs and Agreements* (which considered pre-nuptial and post-nuptial agreements), as set out in Part 1.⁹³ The only exception is the 28-day requirement, which is specific to married couples.

Mirroring these safeguards for cohabitants, ensures a clear, robust and well understood framework for protecting individuals, particularly those who may be financially vulnerable or at risk of coercion. The safeguards are as follows:

Safeguards required to opt-out

- **Contract validity:** the agreement must be a valid contract without, for example, undue influence or misrepresentation.
- **Execution as a deed:** the agreement must have been made by deed and must contain a statement signed by both individuals that they understand that the agreement is an opt-out agreement that will remove the ability of either party to make an application under the cohabitation framework.
- **Material financial disclosure:** each party to the agreement must have received, at the time of the making of it, disclosure of material information about the other party's financial situation.

⁹² Professor Sharon Thompson, "The Role of Opt-out Agreements in Cohabitation Reform" (Financial Remedies Journal, 30 June 2025).

⁹³ Law Commission, *Matrimonial Property, Needs and Agreements* (Law Com No 343, 2014).

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- **Independent legal advice:** Independent legal advice for each party signing the opt-out, to ensure each understands the legal effect and consequences of the agreement.
- It should not be possible for a party to waive their rights to disclosure and legal advice.
- Any variation of an agreement must meet the requirements listed above.

Question 40

Do you agree that all of the safeguards listed above should be required in order for an opt-out agreement to be valid?

- Yes
- No
- Undecided
- [Free Text]

If you disagree, please explain which safeguards you would either add or remove and explain why.

- [Free text]

Interaction of the cohabitation framework with TOLATA and contract law

Under the cohabitation framework, the Family Courts would hear financial disputes between qualifying cohabitants. The government does not expect that qualifying cohabitants would make applications under TOLATA 1996, in the same way that divorcing couples currently do not do so. Third party TOLATA applications may, however, form part of cohabitation proceedings, for example, if there is a dispute about whether a person outside the relationship has a beneficial interest in a property owned by a cohabitant.

Cohabitants who do not meet the eligibility criteria or who are time-barred from making a cohabitation claim would be able to make claims under TOLATA 1996.

Where cohabitants opt out of the cohabitation framework, they would still be able to bring claims under TOLATA 1996 to resolve any property disputes, including in relation to jointly owned property.

Rights of a child

The government's view is that an opt-out agreement should not be able to prevent an application for child maintenance via the Child Maintenance Service, nor an application being made on behalf of a child via Schedule 1.

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Children are not party to these agreements. They have no say in them and no control over how they may be affected. The welfare of children is and will remain the primary consideration and legal protections for children should not be undermined by private agreements between adults.

Question 41

Do you agree an opt-out should not be able to prevent an application being made on behalf of a child?

- Yes
- No
- Undecided

Public engagement

The common law marriage myth remains deeply widespread, with nearly half of the public believing that living together gives couples the same legal rights as marriage.⁹⁴

Cohabitation reform provides an opportunity not only to improve legal protections, but also to align public understanding with legal reality.

New changes will only be effective if they are clearly communicated. It is important that people understand what rights cohabitants do and do not have, and how these differ from the rights of married couples.

Question 42

What do you think is the most effective way to communicate these reforms to the public, particularly to help dispel the common law marriage myth and raise awareness of the new legal rights?

- [Free text]

⁹⁴ John Curtice et al (eds), *British Social Attitudes: The 36th Report* (NatCen Social Research 2019).

Part 3: Reforming the law for cohabitants on intestacy

The government proposes introducing reforms to the intestacy rules so they better reflect the reality of modern relationships. Patterns of family life have changed significantly in recent decades, with long-term cohabitation now a common form of relationship. Despite this, the legal framework governing intestacy has not kept pace. When a person dies without a will, a cohabitant has no automatic entitlement to inherit, regardless of the length or stability of the relationship. In practice, this can leave bereaved partners without financial security, require them to bring a claim under the I(PFD)A 1975, and create uncertainty for wider families at an already difficult time.

The Law Commission's 2011 report *Intestacy and Family Provision Claims on Death* provides a strong foundation for reform in identifying a clearer, more predictable approach that better reflects modern relationships while ensuring fairness for children and other relatives who may also have an interest in the estate.⁹⁵

The government is also seeking views on an additional measure the Law Commission discussed but did not formally propose. This is with respect to how any extension of intestacy rights to cohabiting partners should interact with the order of priority for Grants of Administration.

This part of the consultation considers whether the law should recognise certain cohabitants within the intestacy framework and, if so, what form those rights should take. It does not address matters that sit with other government departments, such as inheritance tax or pension entitlements.

Rights of cohabiting partners upon intestacy

As set out earlier in this paper, cohabitants currently have no automatic entitlement to inherit any part of their partner's estate (including their personal chattels) when their partner dies without a will. Unless they have been provided for in their partner's will, their only remedy is to bring a claim for reasonable financial provision under the I(PFD)A 1975, a process that can be uncertain, stressful and costly at a time of bereavement. The government acknowledges these concerns and is proposing to extend intestacy rights to cohabitants provided that certain conditions are met.

The government broadly agrees with the Law Commission's recommendation that qualifying cohabitants should inherit under the intestacy rules in the same way as a spouse or civil partner, both in terms of the amount they may inherit and their position in the order of entitlement. The Law Commission's arguments in favour of such recognition:

⁹⁵ Law Commission, *Intestacy and Family Provision Claims on Death* (Law Com No 331, HC 1674, 2011).

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fairness, predictability and better alignment with the lived experience of long-term relationships, remain persuasive.

The government recognises, however, that many will disagree with extending rights so that cohabitants are treated in the same way as married couples for the purposes of intestacy. Concerns may arise particularly where intestacy would affect the entitlements of children, including those from previous relationships, or other relatives. This consultation therefore seeks a broad range of views on these issues.

In considering these concerns, the government has also assessed whether a more limited or partial form of entitlement might offer a workable alternative. The Law Commission examined such options and concluded that a “partial model” providing cohabitants with narrower rights than married couples would be difficult to design, harder to apply in practice and more probably generate disputes and litigation. Having considered this analysis, the government agrees with this assessment and is minded to adopt a clear and simple model under which qualifying cohabitants receive the same intestacy rights as spouses or civil partners.

It is important to remember that the intestacy rules are a legal ‘fallback’ should the deceased not leave a valid will. Their purpose is to reflect in law how an average person would choose to distribute their estate, while reducing uncertainty and the risk of disputes following death. As such, the intention behind the intestacy rules is not to provide for every potential situation, but to provide a stable, legally certain outcome. In many instances the effect of the intestacy rules is likely to match, or very closely match, what a testator would have dictated in a valid will. The government encourages all individuals to establish a valid will, but it is particularly important where individuals have specific and/or complex wishes for their estate.

Question 43

Should qualifying cohabitants receive the same intestacy rights as spouses or civil partners? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

Grant of administration: order of precedence

A further, consequential amendment the government is considering relates to the order of priority for applying for a Grant of Letters of Administration where a person dies intestate. A Grant of Letters of Administration is the legal authority issued by the probate registry permitting an individual to manage and distribute the estate of someone who has died

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without a will. At present, cohabitants have no standing to apply for such a grant and the law requires a relative (often a parent, child or sibling) to apply. Without amendment, under the proposed reforms to intestacy, they would inherit the whole or the majority of the estate, but not be able to apply for a grant to administer the estate. Instead, a separate relative would need to apply, perhaps even where they will not benefit from the estate.

The government recognises that this misalignment between who inherits and who has legal authority to administer the estate can lead to avoidable delay, conflict and distress. In some cases, relatives may be unwilling or slow to apply or may have a contentious relationship with the surviving cohabitant. This can impede the administration of the estate and may exacerbate family disputes at an already difficult time.

To avoid such situations, the government will ensure that in the Non-Contentious Probate Rules (NCPR) 1987 (as amended) qualifying cohabitants have the same priority to apply for a Grant of Administration as a spouse or civil partner. This would ensure consistency across the intestacy framework and provide a clearer, more predictable process for bereaved partners.

Question 44

Should qualifying cohabitants have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate?

- Yes
- No
- Undecided
- [Free text]

Who qualifies and benefits from these rights?

Extending inheritance rights on intestacy is a significant legal development. It is therefore essential that any reform provides a clear and workable definition of a cohabiting partner to minimise uncertainty, and reduce the risk of disputes among families, dependants and other potential beneficiaries.

Definition

The Law Commission recommended a “marriage-equivalence” definition for identifying cohabiting partners (i.e. defining cohabitation by reference to living in the same household as the deceased, and as the deceased’s spouses or civil partners for a continuous period of time). This approach was favoured because it provides clarity, predictability and aligns with the existing concepts used in the I(PFD)A 1975, which have been developed and tested through many years of case law. Under the I(PFD)A 1975 the court is required to assess the relationship holistically by reference to factors such as shared residence, financial arrangements, mutual commitment and the public presentation of the relationship.

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Given that the proposed intestacy rights would mirror those of a spouse or civil partner, the government further recognises the coherence of applying a definition that reflects this.

The government also acknowledges that, in the context of separation, defining cohabitants by reference to an “enduring family relationship” is more appropriate, as it better captures the types of long-term, interdependent and committed relationships the framework is intended to cover. A “marriage-equivalence” definition would also not be suitable in this context, as cohabitants will have access to a narrower set of rights and protections than offered on divorce.

On balance, the government’s view is that a marriage-equivalence definition for the purposes of intestacy rights may be more appropriate. This reflects three main considerations:

1. Distinct legal contexts

Although it may appear simpler to adopt a single definition across both separation and death, the legal and practical considerations are materially different. Separation involves the division of assets between partners, while under the proposed reforms, death may reallocate assets away from the deceased’s wider family. These circumstances justify different approaches. Existing legal frameworks across the wider law have a patchwork of definitions related to cohabitation to reflect the nature of the relevant responsibilities and obligations in the context of a more legally informal relationship. Defining cohabitation by reference to marriage would reflect the spousal equivalent rights cohabitants would receive.

2. The greater need for certainty in succession law

In some instances, intestacy may significantly differ from what the testator would have directed via a valid will, particularly in cases of blended families. As such it is particularly important that the definition for recognising a cohabiting partner is clear and aligned with established inheritance principles to minimise unnecessarily complex disputes.

3. Alignment with the I(PFD)A 1975

A marriage-equivalence definition maintains consistency with the existing framework governing claims for reasonable financial provision, reducing the risk of conflicting tests within succession law. The definition in the I(PFD)A 1975 has been tested and developed through decades of case law and provides a settled and equitable basis for cohabitants to make claim to the estates of their deceased partners.

The Law Commission highlighted this benefit in their 2011 report, noting there is already a substantial body of case law dealing with issues related to cohabitants. This includes issues such as involuntary absences from the shared household, particularly where a partner has spent time in hospital or a hospice either during the qualifying period or

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immediately before death. This existing jurisprudence will give the court valuable precedent and clearer guidance when considering similar circumstances in intestacy cases, reducing uncertainty for families and practitioners.

The government also recognises the possibility raised by the Law Commission that there could be competing claims to an estate as a qualifying cohabitant. Given this will probably be a relatively rare occurrence, the government believes the parties involved are best placed to come to a mutually beneficial agreement. If, however, this fails to deliver a resolution then the court is more than capable of adjudicating such a dispute and again have experience from balancing competing claims under the I(PFD)A 1975.

For these reasons, the government considers that a marriage-equivalence definition may be more appropriate for determining entitlement on death than the “enduring family relationship” approach proposed for cohabitants on separation. The government, however, is keen to hear a range of views on the best approach to this issue.

Question 45

What, if any, are the other factors the government should consider when deciding on the definition of a cohabitant for the purposes of intestacy rights? Please provide your answer in the box below.

- [Free text]

Minimum duration period

Granting automatic inheritance rights on intestacy to cohabitants is a significant legal step. To minimise unintended consequences and ensure that entitlement reflects genuinely committed and settled relationships, the government considers that a minimum qualifying period of cohabitation should apply to determine who qualifies as a cohabitant. In addition, these provisions would apply only where the deceased died intestate and was not married or in a civil partnership immediately before their death. The government agrees with the Law Commission’s conclusion that there are legal consequences of a marriage or civil partnership not ended by divorce or dissolution, and intestacy should not be an exception to that general rule.

In developing its proposals, the government has considered the Law Commission’s recommendation of a five-year minimum duration period ending only with the death of one of the partners in cases where the couple did not have a child together. While the Law Commission’s analysis provides a useful reference point, the government is reviewing whether that period remains appropriate considering contemporary family structures and the potential impact on dependants.

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An important factor for the government is the increasing prevalence of “blended families” and, in particular, the effect on children from previous relationships. In some cases, granting spouse-equivalent rights to a surviving partner may reduce in part, or entirely, what is available to those children. A minimum duration period may help to avoid diverting assets away from beneficiaries the deceased might reasonably have expected to inherit. If the minimum duration is too short, there is the risk of creating incentives for perpetrators of abuse within cohabiting relationships.⁹⁶

It is important to note that, under these proposals, should a cohabitant inherit the whole (or most) of their partner’s estate upon intestacy, any children from previous relationships would probably have standing under the I(PFD)A 1975 to bring a claim to the estate. This may be the inverse of what would happen in this situation currently, whereby the cohabiting partner is not entitled to the estate under intestacy rules, as it would go to the deceased’s children, but they could make a claim under the I(PFD)A 1975. Claims made under I(PFD)A 1975 are complicated and their merits depend on the facts of the specific situation. As set out above, the unwelcome consequences of intestacy can be avoided if individuals choose to make a will.

Ultimately, the government recognises that the law cannot anticipate every family arrangement, and some complex circumstances, particularly where multiple households or blended families are involved, may still need to be resolved through claims under the I(PFD)A 1975.

Question 46

What do you consider to be an appropriate minimum duration period where the couple do not have a child together?

- Less than 5 years
- 5 years
- More than 5 years
- Undecided
- [Free text]

What are the potential unintended consequences of setting either a shorter or a longer minimum duration period?

- [Free text]

⁹⁶ Being vulnerable is defined as in need of special care, support or protection because of age, disability, risk of abuse or neglect.

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Couples with children

Where a couple share a child, their relationship may demonstrate a different level of commitment and interdependence. The Law Commission proposed that where the principal definition of a qualifying cohabitant outlined above is met, and that person was also the parent of a child with the deceased that was living with them, there should be a shorter minimum duration period. A two-year minimum duration period was proposed in these circumstances (which is a reduction of the five years they recommended for couples without children). While the government sees merit in a shorter period where children are involved, it is seeking views on whether two years is the most suitable threshold.

The government notes that the legal contexts for cohabitants on separation and on death are different and often occur at different points in life. For separation, where a child is involved, the government proposes removing the qualifying period entirely. This reflects the policy aim of prioritising fair outcomes of any children of the family, which may require resources being reallocated between partners to ensure their needs are met. In contrast, intestacy reallocates assets away from the deceased's wider family, which may include children from previous relationships. The children of the cohabitants will, themselves, stand to inherit a share of the estate upon intestacy if their surviving parent did not meet the criteria to be a qualifying cohabitant. This distinction makes it more difficult simply to mirror the approach being explored for separation. Any surviving cohabitant in this situation may also have recourse to make a claim on the estate through the I(PFD)A 1975.

Question 47

What do you consider to be an appropriate minimum duration period where the couple have a child together?

- No minimum period
- 2 years
- More than 2 years
- Undecided
- [Free text]

Are there any specific risks or benefits you have identified that the government should consider when setting a minimum duration period for couples with a child together?

- [Free text]

Changes to eligibility under the I(PFD)A 1975

The government agrees with the Law Commission's recommendation to extend eligibility for family provision claims under the I(PFD)A 1975 for cohabitants with children. The current criteria allow cohabitants who had lived with the deceased, as if they were spouses or civil partners, for at least two years prior to death to make a claim on the estate. The

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proposed reform is to remove this two-year minimum duration period where the cohabiting partner meets the above definition but was also the father or mother of a child of a deceased person (including a child “en ventre sa mere”, or a child who was born alive but predeceased both parents).

This ensures that surviving partners from short cohabiting relationships involving children can still make a claim against their partner’s estate, because they would not otherwise qualify for provision under our proposed intestacy reforms. The children of the deceased would, in these situations, probably inherit some or all of the estate depending on the broader family situation of the deceased. They would also retain the ability to make a I(PFD)A 1975 claim. This reflects the reality of financial dependence of having children and ensures that provision under the I(PFD)A 1975 extends to those who may reasonably have expected ongoing financial support from the deceased. A surviving cohabitant in any situation may have a claim under the I(PFD)A 1975, regardless of duration or nature of relationship, if they can prove they were being maintained, either wholly or partly, by the deceased immediately before their death. The government welcomes views on any additional impacts this amendment may have.

Question 48

Do you agree with the government’s proposal to extend eligibility for I(PFD)A 1975 claims where cohabitants have shared children?

- Yes
- No
- Undecided
- [Free text]

Question 49

Are there any wider impacts of extending eligibility for I(PFD)A 1975 claims where cohabitants shared children that the government should consider?

- [Free text]

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Part 1: Reforming the law of financial remedies on divorce

1. Do you agree with the government's view that the objective for the sharing principle is to give equal benefit to the parties of matrimonial property by dividing matrimonial assets equally? You may wish to give reasons in the text box.
2. Do you agree with the government's view that the court should consider the sharing principle as the starting point and consider the needs principle where equal sharing would not allow needs to be met? You may wish to give reasons in the text box.
3. Do you agree with the government's view that it should codify the distinctions between matrimonial and non-matrimonial property, in line with the Supreme Court's decision in *Standish*? You may wish to give reasons in the text box.
4. Should the court be able to consider how the property has been used, shared and treated by the parties, and over what time period, when deciding whether non-matrimonial property has become matrimonial? You may wish to give reasons in the text box.
5. Do you agree with the government's view that the overarching objective of the court when making a financial order should be to reach a fair outcome through the application of the sharing and needs principles? You may wish to give reasons in the text box.
6. Do you agree with the government's view that the objective for meeting needs should be to enable both parties to transition to independence, as far as resources allow? You may wish to give reasons in the text box.
7. Do you agree with the government's view that the court should apply the needs objective using a three-stage hierarchical approach? You may wish to give reasons in the text box.
8. Do you agree that the stages should be focused on the following:
 - 1) first consideration to the welfare of any children of the family;
 - 2) capital and income needs, including their housing and pension needs in keeping with the standard of living during the marriage; and
 - 3) where resources allow, discretionary need, in keeping with the standard of living during the marriage?You may wish to give reasons in the text box.

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9. Do you agree with the government's view that there should be a checklist of factors that the court must consider when applying the needs and sharing objective? You may wish to give reasons in the text box.
10. Do you agree that this checklist should include an explicit reference to any disadvantage suffered as a result of the relationship? You may wish to give reasons in the text box.
11. Do you think that domestic abuse should more readily be taken into account in relation to the distribution of assets by the court in financial remedy and cohabitation proceedings? You may wish to give reasons in the text box.
12. To what extent should domestic abuse, if established, influence the court's decision-making in financial remedy and cohabitation proceedings?
13. If domestic abuse were more routinely considered in financial remedy and cohabitation proceedings, how do you think this should affect the *division of assets* between parties? For example, what principles should guide how misconduct is reflected in financial outcomes and how should this be applied in practice?
14. If courts were more readily able to take domestic abuse into account in financial remedy and cohabitation proceedings, what impact do you think this would have on those *proceedings* (for example, the length of cases, evidential requirements, costs to parties and the overall experience of victim-survivors)?
15. Do you agree that the language currently used to describe the threshold for considering misconduct in financial remedy proceedings (sometimes referred to as the "gasp factor") is inappropriate and should be replaced? You may wish to give reasons in the text box.
16. What forms of behaviour do you think should be considered as "misconduct"? You may wish to give reasons in the text box.
17. What sort of impact do you think misconduct should have on a financial remedies claim or cohabitation claim?
18. If you believe misconduct should be more readily taken into account by the court, do you think misconduct which has financial consequences should be treated by the court in the same way as misconduct without financial consequences?
19. Do you agree with the government's view that the court should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders? Please explain your answer in the text box.

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20. Do you consider that these proposed safeguards will ensure individuals understand the consequences of their agreement and provide sufficient protection against coercion? You may wish to give reasons in the text box.
21. Do you agree with the government's view that when considering meeting "needs" under the qualifying nuptial agreement model proposed, this should exclude discretionary needs, in the same way as proposed for cohabitants? Please explain the reason for your answer in the text box.
22. Beyond housing, capital, income and pension, are there any other elements that you think should be included in, or excluded from, the assessment of "needs" within the context of qualifying nuptial agreements? Please explain the reason for your answer in the text box.
23. Do you agree with the government's view that the court should consider a pre-marital cohabiting relationship as counting towards the length of a marriage, where that relationship moves seamlessly from cohabitation to marriage? You may wish to give reasons in the text box.
24. Which factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when assessing whether there has been seamless cohabitation prior to the marriage? Please tick all that apply.

Part 2: Reforming the law for cohabitants on separation

25. Do you agree that cohabitants captured within the framework should be two people living together as a couple in an enduring family relationship?
26. What factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when considering whether individuals are cohabitants? Please tick all that apply.
27. Do you agree that those who are already married or in a civil partnership with each other, or those who are too closely related to each other to have married, should be ineligible for the framework?
28. Do you agree that the minimum age to be eligible for the framework should be 18?
29. Do you agree with the government's proposal that couples without children must have lived together for a minimum of three years, before they can access the cohabitation framework? If you disagree with the three-year minimum duration period suggested above, what period would you propose having instead? If you disagree with the three-year minimum duration period, and chose a different period, please explain why below:

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30. Do you agree that where cohabitants are living together and there is a child of the family, the minimum duration requirement should be disapplied?
31. Do you agree that a time limit should be introduced to prevent claims being made after two years have passed since the relationship ended? If you disagree with the two-year period suggested above, what period would you propose having instead? If you disagree with the two-year period, and chose a different period, please explain why below:
32. Do you agree that “needs” should be the guiding principle the court follows for determining outcomes when cohabitants separate? You may wish to give reasons in the text box.
33. Do you agree with the government’s view that the objective for meeting needs should be to do so in such a way as to enable termination of dependence and obligations as soon as is just and reasonable? You may wish to give reasons in the text box.
34. Do you agree that discretionary needs should be excluded from the consideration of needs for cohabitants? You may wish to give reasons in the text box.
35. Do you agree that the court should be able to take account of needs arising from wider circumstances than the relationship (for example, serious health conditions or disabilities) when determining financial provision? You may wish to give reasons in the text box.
36. Do you agree there should be a checklist of the matters the court must particularly consider when applying the needs principle? You may wish to give reasons in the text box.
37. Do you agree with our proposed approach in relation to remedies for cohabitants?
38. In relation to maintenance in particular, do you agree with the follow statements. Please tick all that apply:
- Maintenance should be awarded in exceptional circumstances (such as serious health issues or disability).
 - Any maintenance order should be time-limited, with no open-ended “joint lives” orders.
 - A maintenance order term may not be extendable beyond the original period set by the court.
- If you disagree with any of the proposals above, please explain why.
39. Do you agree there should be an explicit requirement that the court cannot award cohabitants a higher award than one which would have reasonably been made if they were a married couple divorcing?

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40. Do you agree that all of the safeguards listed above should be required in order for an opt-out agreement to be valid? If you disagree, please explain which safeguards you would either add or remove and explain why.
41. Do you agree an opt-out should not be able to prevent an application being made on behalf of a child?
42. What do you think is the most effective way to communicate these reforms to the public, particularly to help dispel the common law marriage myth and raise awareness of the new legal rights?

Part 3: Reforming the law for cohabitants on death

43. Should qualifying cohabitants receive the same intestacy rights as spouses or civil partners? You may wish to give reasons in the text box.
44. Should qualifying cohabitants have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate?
45. What, if any, are the other factors the government should consider when deciding on the definition of a cohabitant for the purposes of intestacy rights? Please provide your answer in the box below.
46. What do you consider to be an appropriate minimum duration period where the couple do not have a child together? What are the potential unintended consequences of setting either a shorter or a longer minimum duration period?
47. What do you consider to be an appropriate minimum duration period where the couple have a child together? Are there any specific risks or benefits you have identified that the government should consider when setting a minimum duration period for couples with a child together?
48. Do you agree with the government's proposal to extend eligibility for I(PFD)A 1975 claims where cohabitants have shared children?
49. Are there any wider impacts of extending eligibility for I(PFD)A 1975 claims where cohabitants shared children that the government should consider?

Thank you for participating in this consultation exercise.

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About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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Contact details/How to respond

Please send your response by 14 August 2026 to:

Family Justice Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: frcohabconsultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from frcohabconsultation@justice.gov.uk

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

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If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact assessment, equalities and Welsh language

Impact assessment

The impact assessment is being published alongside this consultation paper at:
<https://www.gov.uk/government/consultations/a-fairer-end-to-relationships>

Equalities

The equalities statement is being published alongside this consultation paper at:
<https://www.gov.uk/government/consultations/a-fairer-end-to-relationships>

Welsh language impact test

We have considered the implications for Welsh language. A Welsh language version of the consultation will be published alongside this version at:
<https://www.gov.uk/government/consultations/a-fairer-end-to-relationships>

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Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

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