

## **The Cohabitation Bill, or...**

### **What every cohabitant has been waiting for!**

It was not so long ago that simply “living together” with one’s partner, as an unmarried couple, was frowned upon by society in general. There was an assumption that the couple in question should and would marry eventually. This was especially the view if there were children of the relationship. Having a child out of marriage was effectively stigmatising the child for life.

This bias in favour of marriage, shaped the law which currently governs cohabitant disputes.

The myth of the “common law wife/husband” gave the applicant cohabitant false hope. This misconception was thought to attribute some sort of quasi legal status to a co-habitant, thus entitling him or her to an automatic claim to financial assistance from their partner, somewhat akin to claims which can be made by spouses. Statistical evidence produced by British Social Attitudes Report 2007/2008 edition, says that half of the British public believed that cohabiting couples have such rights.

For an increasing number of people, cohabitation is the ultimate relationship status they wish to achieve, and not marriage. In 2006, only 56% of cohabiting relationships in England and Wales ended in marriage. The proportion of children born outside of marriage in that same year was 43.5%. This is in stark contrast to the 1980 figure of 12%.

Few cohabitants put measures in place to protect their rights or those of their children. Only one in six have a written agreement setting out their ownership in a property. Only one in five have sought advice about their legal position. Contrast this with the fact that Experian, the credit status report company, say that one in five adults admit they haven’t told their partners how much debt they’re in and 15% haven’t told their partners what they earn.

Most significantly, nine out of ten people believe that a cohabiting partner should have a claim for financial provision if their relationship is a long-term one, and there are children, and/or they have prioritised one partner’s career/business whilst in that relationship.



The current law does not accommodate this expectation, but the new Cohabitation Bill will.

The Bill extends to England and Wales only and attempts to address the current legal shortcomings.

A former cohabitant will be able to make a claim so long as their previous relationship included a period of at least two years of living together and/or there are children of that relationship.

The court will be able to make a financial settlement if it is “just and equitable”, that is fair, to do so.

One main aim will be to achieve financial independence for both co-habitants, as early as possible. Claims must be brought within two years of separation.

Another aim is that only the applicant co-habitants’ “reasonable needs” are met by a settlement.

In achieving a settlement, it will not be assumed that the assets should be divided equally.

All of the circumstances of the case will be taken into account, including any written agreements as to how the finances should be divided.

It will be possible to have an “opt out agreement” drawn up if cohabitants do not want the usual rules of the Bill to apply. The parties must take legal advice if they choose to opt out.

Where there are children, the first consideration will be the welfare of those children, regardless of the terms of any opt out agreement.

In particular, the following will be considered:-

the length of the relationship;

the inter-dependence of the parties;

financial and non-financial contributions;

the economic advantage to one party of the other adding value to a property, and

the needs and resources of both.



At present, a cohabitant cannot make a claim for maintenance in his or her own right, independent of the needs of a child. The Bill will allow short-term maintenance (a maximum of three years) to be paid to a party. The principle that parties should become self-supporting as soon as possible dictates that the maintenance will not run on without limitation. Maintenance for a child would be claimed as it is now, with the option of claiming childcare costs also.

There is no current basis for a cohabitant to make a claim for a share of their former partner's pension. The Bill allows such a claim to be entertained and evaluated by the Court.

The Bill allows cohabitants to have insurable interests in each other's lives.

Watch this space for updates as to the progress of the Bill, and the changes in this crucial, and ever relevant, area of the law.