



House of Commons
Women and Equalities
Committee

The rights of cohabiting partners: Government response to the Committee's Second Report

Third Special Report of Session 2022–23

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Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office (GEO).

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Committee staff The current staff of the Committee are, Hasan Al-Babib (Committee Specialist) James Clarke (Committee Specialist), Chloë Cockett (Senior Committee Specialist), Mark Earl (Safeguarding and Witness Support Officer), Matthew Eaton (Committee Specialist), Roberta Guerrina (Parliamentary Academic Fellow), Radhika Handa (Second Clerk), Michelle Garratty (Committee Operations Officer), Fraser McIntosh (Committee Operations Manager), Margaret McKinnon (Clerk) and Heather Proctor (Committee Specialist)

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You can follow the Committee on Twitter using [@Commonswomequ](https://twitter.com/Commonswomequ).

Third Special Report

The Committee published its Second Report of Session 2022–23, [The rights of cohabiting partners](#) (HC 92), on 4 August 2022. The Government response was received on 4 October 2022 and is appended below.

Appendix: Government Response

Recommendation 1: *The Government should conduct a public awareness campaign to highlight the legal distinctions between getting married, forming a civil partnership, or choosing to live together as cohabiting partners* (paragraph 24)

Responsible organisation: Ministry of Justice

We partially accept this recommendation. The Government agrees that it is important that people are aware of the legal distinctions between getting married, forming a civil partnership and living together as cohabitants.

The Government further agrees that it is a concern that so many people believe there is such a thing as a ‘common law marriage’, which is an erroneous belief that after a certain amount of time living together, the law treats cohabitants as if they were married.

The Government has already demonstrated commitment in this area. The Department for Education’s statutory guidance on relationships education includes the need for schools to ensure that pupils should be aware of what marriage is, including its legal status (for example, that marriage carries legal rights and protections not available to couples who are cohabiting or who have married in an unregistered religious ceremony), why marriage is an important relationship choice for many couples and the characteristics and legal status of other types of long-term relationships.

Given the existing action in this space, the Government does not consider a national campaign necessary, however we commit to take further action to consider the best ways to raise awareness about this issue within the context of existing frameworks. This will include considering a review of the information currently available to the public in this sphere, including on Gov.uk, and considering whether better signposting for further information and support could be made available.

Recommendation 2: *The Government should undertake a targeted information campaign aimed at women in religious communities where religious-only marriages are commonplace, highlighting the risks of not having a ceremony which meets legal formalities. Such a campaign will need to consider the Law Commission’s recommendations for weddings law reform* (paragraph 32)

Responsible organisations: Ministry of Justice

We partially accept this recommendation. The Government agrees that it is important to reach out to women in religious communities where religious-only (and non-legally binding) marriages are commonplace, to highlight the different consequences of having a non-legally binding wedding and a legal marriage.

The recent Law Commission report on weddings law, published on 19 July 2022, includes consideration of this issue and recommendations to ensure that fewer weddings conducted according to religious rites result in a marriage that the law does not recognise. The Government must now take the time to consider all 57 report recommendations fully and will publish a response to the report in due course. The Government will consider the question as to whether it is premature to carry out a targeted information campaign before a decision is made on what marriage law reform, if any, will be pursued.

Recommendation 3: *The Government should reform family law to better protect cohabiting couples and their children from financial hardship in the event of separation. We recommend an opt-out cohabitation scheme as proposed by the Law Commission in its 2007 report on the financial consequences of relationship breakdown. The Government should make a commitment to publishing draft legislation for pre-legislative scrutiny in the 2023–24 Session of Parliament. In the meantime, the Ministry of Justice should commission a refresh review of the Law Commission's 2007 proposals to see if they need updating* (paragraph 64)

Responsible organisation: Ministry of Justice

We reject this recommendation. The Government has given careful consideration to this recommendation but consider that existing work underway on the law of marriage and divorce, which are directly relevant to issues concerning cohabitants, must conclude before considering any change to the law in respect of the rights of cohabitants on relationship breakdown. The Government cannot therefore commit to publishing draft legislation for pre-legislative scrutiny in the 2023–24 session of Parliament.

In particular, the Government must focus on its commitment to conduct a review of the law of financial provision on divorce and is currently undertaking work as to how this review should best take place. The Government is of the view that it could not fully reconsider the Law Commission's 2007 recommendations on the law relating to relationship breakdown of cohabitants before the review on financial provision for divorce has reached its conclusions and made its recommendations. This is because any new legal rights and obligations afforded to cohabitants would necessarily need to be considered against a baseline of rights afforded to married parties or civil partners on divorce or dissolution.

The Law Commission has also recently presented recommendations for reforms to modernise the law of marriage. The Government is currently considering the case for comprehensive and enduring reform to marriage law and will announce its intentions in due course. The Government is of the view that the law relating to the relationship breakdown of cohabiting couples could also not be considered outside the context of any wider reform to the law of marriage.

The Government also considers that, given the fact that the Law Commission's 2007 recommendations are now 15 years' old, such proposals could not be implemented without a review of the 2007 report, nor without a fresh consultation. The Government believes that any future review or fresh consultation of the 2007 proposals would need to take into account any changes which may be made to the law on marriage and the law of financial provision on divorce. A future review and consultation would also need to take into

account the fact that civil partnerships are now available for both opposite-sex and same-sex couples, allowing couples who do not wish to marry to enter into a legally recognised relationship which provides the same legal rights and responsibilities as marriage.

Recommendation 4: *The Government should immediately implement the Law Commission's 2011 recommendations concerning intestacy and family provision claims for cohabiting partners* (paragraph 73)

Responsible organisation: Ministry of Justice

We reject this recommendation. The Government is of the view that reform of inheritance and family provision rights for cohabitants needs to be considered as part of the wider approach to reform of the law on cohabitation rights, so that a consistent approach is taken. As the Law Commission commented in its 2011 report, 'this issue has the potential to be divisive and contentious', for example the recommended reform would have the effect of promoting the interests of cohabitants over family members of the deceased, potentially including their children. As a result, the Government intends to take a cautious approach in this area and would want to consult ahead of pursuing any reforms.

In the meantime, the principle of freedom of testamentary capacity means that anyone is able to make a will which ensures a cohabiting partner is made a beneficiary to their estate, and the extent to which they are. It is therefore open to individuals to set their affairs in order in a way that ensures provision is made for a cohabiting partner.

Cohabitants are also already able to make family provision claims (where a person dies intestate (without making a valid will) if they have been living in the same household as the deceased person and on the same basis as a spouse or civil partner for a two year period prior to their death.

Recommendation 5: *The Government should immediately publish clear guidelines on how pension schemes should treat surviving cohabiting partners, including what those partners are entitled to, and what evidence they will need to access survivor's pensions* (paragraph 73)

Responsible organisations: Department for Work and Pensions

We accept in principle this recommendation. The Government regards the diversity of pension offers as one of the strengths of the UK system. We therefore consider that it should remain up to employers and trustees to determine the right level and shape of benefits to offer, as schemes are best able to make this judgement themselves. The Government, however, appreciates the Committee's aspiration to see more guidance, enabling citizens to make informed choices. We will thus consider whether non legislative broad guidance would be appropriate, having assessed the matter with the Pensions Regulator and key stakeholders first. Although the rules will vary from scheme to scheme, many occupational schemes provide some form of benefit for dependants in the event of a member's death. These may be payable to surviving spouses, civil partners or unmarried partners (often with a financial dependency or inter-dependency requirement for the latter), and dependent children, depending on the scheme rules. There are already minimum legal requirements around these schemes, beyond that it would not be right for the Government to mandate their administration as they are provided as part of an employer's reward and retention strategy.

It is for the scheme trustees or managers of individual schemes to determine who is entitled to inheritance rights, the level of these benefits and what information or evidence they need to enable them to pay benefits under the scheme rules. The Government considers this appropriate because schemes need to balance the cost they would incur in providing benefits for survivors and the protection this provides. Money purchase pensions are individual savings pots in the accumulation phase. Members have choices about the way they use that pot in retirement, and they can choose a decumulation vehicle that includes benefits for survivors should they so wish. The Government sees no reason to move away from a system of informed choice in money purchase arrangements.

Recommendation 6: *The Government should immediately review the inheritance tax regime so it is the same for cohabiting partners as it currently is for married couples and civil partners* (paragraph 73)

Responsible organisation: HM Treasury

HM Treasury rejects this recommendation. The Government has no plans at present to extend the longstanding treatment of spouses and civil partners to cohabiting partners. While the Government is understanding of the issue, the inheritance tax treatment of married couples and civil partners reflects their unique legal relationship. However, the Government will keep inheritance tax, including the issue of cohabitation under review.