Question1: What tests must cohabitants satisfy to claim remedies? How effective are these tests?

I assume that the question only refers to the recognition of what is commonly referred to as *de facto* relationships but in England and Wales usually is called cohabitants: relationships that have not been formalised by public registration or contract but where the recognition of the relationship is based on the fulfilment/proof of specific facts.

1. *Interconnectivity of qualifying criteria and remedies; discretionary remedies*

The first – and crucial – point that needs to be made here that there of course is a direct correlation between the qualifying criteria and the remedies. Qualifying criteria and remedies are inextricably linked, and therefore it is difficult to provide an answer on the former without taking into account the latter.

As a general rule, it can be said that the narrower the qualifying criteria, the wider the remedies tend to be. That said, unlike civil law jurisdictions, common law jurisdictions – and particularly England and Wales – of course are used to wide-reaching discretionary remedies marriages following divorce. This therefore, in principle, would more readily allow for a wider definition of the qualifying criteria as the discretionary nature of the remedies would allow for appropriate and fair responses in each and every case (just as it does for marriage/divorce), but particularly – where appropriate – taking into account that the couple have not made a formal commitment to each other.

The discretionary nature of the remedies by many is regarded as the prime virtue of the English law on financial remedies (and admittedly as a major problem by others). The Law Commission of course not only addressed the discretionary remedies in their report on cohabitation but also, and more recently (albeit in the context of marriage), in its project on Matrimonial Property, Needs and Agreements | Law Commission.

2. *Common qualifying criteria*

In the following, I will list and comment on criteria commonly used in the legal regimes for de facto relationships/cohabitants in different jurisdictions. Again, it is important to keep in mind that there is an interconnectivity between the criteria and the remedies and neither of them therefore can be fully understood and appreciated without the other. In addition, the precise policies pursued by the regime in question is equally crucial to the qualifying criteria (and the remedies), and these underlying policies obviously differ from jurisdiction to

jurisdiction. The spectrum ranges from schemes that aim to create a legal regime that is akin

or very similar to marriage (often referred to as the 'assimilation approach') to those that (like the Law Commission's proposals) deliberately set up a regime that is different to that of marriage (often referred to as the 'difference approach').[1]

Irrespective of whether the legal regime in question follows the 'assimilation' or the 'difference' approach, its purpose is to create a specific *family law* regime to deal with issues faced by some families because the remedies under the general law were deemed insufficient. Thus, the purpose of all these regimes is to extend some form of protection to the weaker party and the children in a cohabitation relationship in family law.

The following are criteria commonly found in legal regimes created specifically for cohabitation relationships:

a) Gender

In jurisdictions where same-sex relationships are not socially and legally accepted, the statutes expectedly and expressly stipulate that the cohabitation regime only applies to a relationship between a man and a woman. Obviously, this is of no relevance for England and Wales.

I am not aware of any legal regimes that specifically address non-binary legal genders although they of course exist, as e.g. in Germany and Austria.

b) Age

In several jurisdictions a minimum age is stipulated, which not in all cases correlates with the minimum age for marriage. The reason for this is that the social interdependence and resulting consequences and thus the need to protect the weaker party and/or any children may arise even when the persons concerned are younger. However, this is relatively uncommon. It is worth noting, however, that the possibility to take into account a relationship from an earlier age may have an influence on the minimum duration requirement (on which see f) below).

c) Consanguinity/affinity; sexual intimacy

In many jurisdictions (and not necessarily only those that follow the 'assimilation' approach) the prohibited degrees for marriage based on consanguinity and affinity are applied to cohabitants as well. The reason for this of course is that many jurisdictions not only see the relationships as comparable (i.e. based on sexual intimacy), but also

[1] On the overarching principles, see e.g. J Miles, "Unmarried cohabitation in a European perspective", in JM Scherpe (ed.) *European Family Law vol III* (2016), pp. 82-115.

pursuing similar underlying policies. However, it is worth noting that some jurisdictions will recognise non-conjugal cohabitation relationships, particularly so-called carer-relationships (as for example in several Australian jurisdictions).

d) <u>'Living together'/sharing of a household</u>

In many jurisdictions, there is an express stipulation that the couple must 'live together' or 'share a household', even though such a legal requirement does not exist for marriages. Interestingly, this often is interpreted fairly widely and can accommodate not only couples who do not live together for external reasons (such as hospitalisation, imprisonment or work commitments at different locations) but also those who do so by choice, so called (as for example Australia). 'Living-apart-together' for long periods of time but nevertheless regarding themselves as a couple is particularly common with older couples who have been in other relationships (and especially marriages) before.

It is also worth noting that other jurisdictions do not have a requirement to 'live together' or 'share a household'.

Whether or not a couple was living together/sharing a household can create a significant evidentiary burden in some cases, particularly when combined with a minimum duration (on which see f) below). It is worth noting that many jurisdictions – unlike England and Wales – legally require registering one's home address with the authorities, which often is seen as sufficient evidence.

For the vast majority of cases there generally is little doubt that the living together/sharing a household criterion as such is fulfilled as there is ample evidence/sufficient number of witnesses. Yet issues often arise in combination with the minimum duration requirement because pinpointing the precise starting date of living together/sharing a household can be difficult (on which see f) below).

The precise starting date may also be relevant for the nature and extent of the available remedies, depending on how the remedies are set up – and particularly if they are not discretionary in nature.

e) Marital comparison

A minority of jurisdictions seeks to supplement or replace criteria such as 'living together' and sexual intimacy by requiring the persons in question 'to live as if they were a married couple' or 'as if they were husband and wife' (like in Scotland). Obviously, there is a huge diversity on how married couples live, and thus it seems like a rather vaguely defined standard to meet. More crucially, the marital comparison seems rather misplaced because the legal regime is meant to deal with persons who – for whatever reason – are *not* married. The marital comparison arguably is particularly inappropriate when the remedies awarded are designed to be deliberately different (and significantly less) than those for marriage (which presumably is one of the reasons Scotland is reviewing its marital comparison criterion).

f) Minimum duration

Many legal regimes specify a certain minimum duration of the relationship, whereas others just require a 'significant duration' or use comparable wording, essentially to exclude merely transient relationship. Where there is no express stipulation of a minimum duration, the *travaux préparatoires*/explanatory notes often offer guidance for the interpretation such as 'this typically will be x years'.

Again, the interconnectivity of the qualification criteria and the remedies needs to be emphasised here. If the remedies are based on advantages/disadvantages accrued during the relationship (like in the Law Commission proposal) or more broadly on 'compensation', then it is unproblematic that the regime potentially already applies after a short period as the remedies are 'self-regulating': usually only limited advantages/disadvantages/compensation needs will have accrued for relationships of shorter duration. Similarly, if the remedies are discretionary, the duration of the relationship can and will be taken into account through the exercise of the discretion.

One pertinent argument against 'hard' duration minimum duration is that this can incentivise certain litigation strategies, namely disputing that a relationship was a qualifying one at a specific point in time already (see especially the living together/shared household criterion discussed under d) above) if the duration is close to the minimum duration specified. The incentive exists because, if their argument succeeded, this would allow a party to 'get out' of their obligations under the scheme. Indeed, there are a relevant number of cases in many of the jurisdictions that operate 'hard' minimum duration requirements. By contrast, if only a 'significant duration' is

required, it factually will not matter whether it was February or March and indeed arguments regarding the duration often are given short shrift by the courts and the focus – arguably rightly – is put on the nature of the relationship.

Another argument against 'hard' duration minimum duration requirements is that this may create hardship in case the relationship duration only just fails to meet the criterion because despite the short duration one of the parties has incurred significant disadvantage. Some jurisdictions who nevertheless wanted to maintain a minimum duration therefore have included hardship clauses to deal with such cases (on which see h) below).

g) Joint children

Many jurisdictions will either shorten minimum duration requirements (see f) above) or set them aside completely if the couple have joint children. This recognises the fact that children and childcare duties often cause a significant shift in the nature of the relationship and create situations of dependency. This means that frequently one of the parties – and more often than not the mother – incurs greater detriment to their income and pension capacity which in the eyes of these regimes merits the application of the cohabitation regime and this make the remedies available from this point on, irrespective of how long the relationship lasted.

It is also worth noting that some jurisdictions do not restrict considerations regarding to children to *joint* children, but will take into account the care and support of any children in the relationship, i.e. including those that the partner had with another person.

h) Concurrent relationships/marriage

Several schemes will not apply if one or both of the partners still are in a marriage (or civil partnership or equivalent) with a third party. This is meant to show clearly that marriage is to take precedence, but neglects to sufficiently accommodate the actual purpose of the legal regime for cohabitants, namely to protect people who are in a de facto relationship. The need for protection of these persons is not diminished if there is a pre-existing marriage (or indeed another concurrent cohabitation relationship). Thus concerns about 'clashing' relationships are better addressed by creating a hierarchy for the remedies rather than excluding one of the relationships in full, or simply be acknowledging that concurrent relationship can exist that may all require remedies in certain situations such as separation or death.

For these reasons many legal regimes for cohabitants do not preclude their application in case there are concurrent relationships, and thus can be applied if one or both of the parties are married to someone else.

i) Hardship clauses

Mindful of the overall purpose of the scheme that recognises cohabitation relationships, hardship clauses are being used by some schemes. This acknowledges the difficulties that tight qualifying criteria (and especially minimum duration requirements) might bring with them, namely that some individuals who may need the protection of the law (and thus essentially are the people the scheme was designed for) may just fall outside of the scheme because they fail one or more of the qualifying criteria. Essentially, these hardship clauses allow the court to disregard some of the qualifying criteria if their application would result in hardship.

The precise nature of the hardship itself can be qualified by terms such as 'unjustifiable' or 'significant' to limit the use of the hardship clause.

Hardship clauses can – and do – also serve an important function in terms of avoiding litigation regarding the minimum duration, especially when the time-frame is close to the stipulated minimum duration. Then the court is free to indicate that they are minded to rely on the hardship clause and disregard the minimum duration requirement, thus rendering any further consideration of the issue nugatory.

3. Efficacy of the qualifying criteria and legal certainty

The above criteria are one commonly found as qualifying criteria for cohabitation relationships. In several jurisdictions (for example Australia) such (and comparable) criteria are part of 'list' that the courts need to consider when determining whether the relevant legal threshold for the legal regime is met. Crucially, where such a 'list approach' is taken the criteria themselves are regarded as neither necessary nor sufficient, and the courts are required to take a holistic view in order to come to their conclusion.

On the whole, the above-mentioned criteria do not seem to create major difficulties in practice, with the minimum duration and the living together/sharing a household as possible exceptions.

As outlined above, where the duration of the relationship in question is close to the stipulated minimum duration, there may be an incentive to litigate, and therefore we have seen a relevant number of cases in jurisdictions that have minimum durations. I have outlined above

(at 2. f) and h)) how such incentives to litigate can be countered/prevented by not mandating a specific minimum duration requirement or by having a hardship clause. Similarly, the courts generally have taken a pragmatic approach to the interpretation of 'living together'/sharing a household and thus been able to deal with difficult cases. This pragmatic approach could be supported/guided by including remarks on the intended approach for voluntary (e.g. living-apart-together) and involuntary (e.g. hospitalisation, imprisonment) living in separate places in *travaux préparatoires*/explanatory notes.
Otherwise, the normal rules of proof in civil proceedings apply, and generally lead to satisfactory results.

Finally, is worth noting that some jurisdictions (as for example Catalonia and Australia) offer the possibility for the couple to 'opt-in' to the legal regime (by contract or registration) that otherwise would only be applicable if certain fact patterns are fulfilled. The reasons for this is that the jurisdictions in question want to offer the couple in question the possibility to create legal certainty, and also for the legal regime to apply by choice if, for example, the criteria would not by met (e.g. because the relationship has not yet lasted long enough). But crucially, the basis for the regime remains that it applies without any formalisation if the criteria are met and thus is capable of addressing the needs of all cohabitants. Thus the registration is entirely optional and its absence not seen as any indication that the couple did not want the regime to apply to them. Arguably, this 'hybrid-approach' combines the best of two worlds.

Question 2: How do cohabitation regimes balance respect for party autonomy and protection of vulnerable individuals?

1. *Faulty premises based on 'autonomy'*

In all jurisdictions that have legal regimes in place for cohabitants, the opponents of such legislation particularly relied upon the argument that 'imposing' such a legal regime on the persons concerned would be a violation of their autonomy. On the whole, such arguments have gained little traction (apart from a very specific court decision in Spain, on which see 4. below) as they rely on a number of faulty premises.

The first – implicit– premise is that when people enter into marriage it is justified to impose all the legal consequences upon them because they actively chose them, i.e. 'opted in'. While couples indeed have opted into marriage and its legal regime, there is ample evidence that they generally are not fully aware of the legal consequences of that choice; at best, there is a general idea about the legal consequences. Hence arguments 'they actively chose these legal consequences' are significantly weakened for marriages, as is the reverse argument concerning cohabitants.

The second premise is that the couple actively chose not to get married/not to have a legal framework for their relationship. Again, empirical evidence clearly shows that in most cases there is not necessarily such an active choice, and even where the is, it is not always a choice of both partners. Moreover, and this is particularly prevalent in England and Wales, couples often believe that legal rules already apply to them by virtue of living together etc. ('common law marriage myth'), further weakening any argument based on 'autonomy' and that the couple actively opted against legal rules applying to them.

The third premise is that not 'imposing' rules protects the autonomy of *both* partners. This is a rather obvious fallacy, as inevitably any rules on cohabitation are created so that one cohabitant could have claims against the other. Effectively, therefore, these rules only protect the autonomy of one of the cohabitants, namely the one who would be subject to claims by the other. The person protected by the autonomy argument, therefore, would generally be the financially stronger cohabitant; thus the effect of the autonomy argument is to protect *one* of the partners. One might add, somewhat cynically, that this protection of the stronger not only comes at the expense of the weaker (and often children, who did not have any 'autonomous' choices in the matter), but also at the expense of the public purse who may have to step in to

address the needs of the weaker/vulnerable cohabitant after the end of the relationship in the absence of any legal remedies.

2. *Legal rules generally; presumed and actual choices*

In any event, arguments based on 'autonomy' must acknowledge that ultimately almost all legal rules are – and are meant to be – infringements of autonomy. Statutes applicable between private persons generally are created with a specific policy in mind, and inevitably create an advantage for one and a disadvantage for the other that otherwise would not exist. In many areas of law (contract law generally, but especially consumer law, labour law, insurance law, unfair contract terms acts etc.), these legal rules are created to address an imbalance of power and/or pursue an important social policy aim, usually the protection of a structurally or actually weaker/vulnerable arty. These policy aims thus always (and deliberately) override any arguments based on autonomy, and family law is no exception.

That certain legal rules apply (i.e. are 'imposed') if specific fact patterns are fulfilled certainly is not alien to the law – on the contrary. Neither is this 'imposition' alien to specific relationships of two people; for example the acceptance or factual creation of a duty of care or acting in the interest of another will lead to legal duties and/or claims. Hence the assumption of responsibility and creating an expectation/reliance are perfectly reasonable bases for attaching legal rules in line with autonomy arguments and not necessarily an 'imposition' or an infringement of autonomy.

The autonomy arguments against recognition of cohabitation relationships are based on the absence of an *active positive* choice for such rules (i.e. an 'opting in'), or – to put it differently – a presumed or actual *active negative* choice against legal rules. However, in reality in many cases it actually is a *passive* negative choice. While the couple have not 'signed up' for a legal regime, whatever the reasons may be (and whether both made that choice or not), cases where the couple actively discuss a legal framework and expressly and actively reject it, are rare exceptions (and even then these often mere 'not yet' decisions). Thus, in many cases it is inaction rather than an express active choice against legal rules/marriage, and the active negative choice actually does not exist. Moreover, active negative choices can be respected and protected through allowing an opt-out (on which see 4. below).

In any event, even where a negative choice is presumed/the basis for the reasoning against legal recognition of cohabitants, reliance on this *negative* choice alone neglects the fact that at

the same time the couple may have made many, many positive *active* choices as well: to be together as a couple, to live together, to share their finances, to have a child together, to raise a child together, to forego better employments prospects because of the relationship/child care etc. Some of these decisions may be unilateral, others will be joint decisions. The couple 'own' these actions, and they ought to assume responsibility for their actions. These are *active positive choices*, expressions of autonomy that – somewhat ironically – the opponents of cohabitation regulation seem to disregard.

The existing legal regimes for cohabitants focus on these active positive choices that have created the fact patterns for the relationship and allow the legal consequence to flow from them – thus respecting the autonomy of the couple and the individuals in question with regard to their life choices.

Finally, the full justification for the creation of legal regimes for cohabitants acknowledges not only these choices but also that this is an area of (family) law where there are good social policy reasons to have such legislation. The combination of the two, recognition of the couple's actions as well as overarching social policy aims, thus is seen as sufficient to justify legislative intervention.

3. *Unawareness of legal regime applying*

Another counterargument against the legal recognition of cohabitation relationships based on 'autonomy' is that the legal rules may apply without one of both persons in question actually being aware that they are in a qualifying cohabitation relationship. This indeed is a possibility given the creation of legal duties based on specific facts. However, as explained above, the existing legal regimes accept this possibility because the regime applies based on fact patterns brought about by the active positive choices of the couple and because of the overarching social policy aims. Moreover, ignorance of the law only very rarely is an excuse against its application. For example, and as mentioned above, most people are only aware – if at all – of their legal rights and duties arising from marriage in rather broad terms and cannot be said to have knowingly and consciously signed up to all the details; nevertheless we hold them to all the details of the rules because of their positive choice to get married and thus the legal framework that comes with it. Furthermore, according to the research undoubtedly made available to you the significant and large number of couples in England and Wales already assume (wrongly) that some legal rules apply to them ('common law marriage myth'), so a legal framework would actually only put this expectation into legal practice. Where such legal frameworks have been introduced in other jurisdictions, the majority of the population very

quickly becomes aware that there are such rules (if they did not already assume such rules to be in place before), further weakening any argument based on an assumed 'ignorance of the law'. Finally, there are plenty of examples in the laws of every country (including but not limited to family law) where the social purpose pursued by the legislation supersedes any concerns about 'ignorance of the law'.

4. Protection of autonomy through opting out

While the majority of couples will not necessarily engage in an active debate about the legal consequences of their relationships, there undoubtedly are some that do – and reach the conclusion that they do not want any legal consequences. To force these couples into the full legal framework against their express decision indeed would be contravening their autonomous decision. Therefore, it is generally deemed as essential to have the possibility expressly to opt-out of the application of the legal regime (and indeed the proposals by the Law Commission included this). The absence of such a possibility was one of the key reasons for a decision in Spain which declared unconstitutional a cohabitation regime from the autonomous region of Navarre. The possibility of an opt-out also addresses any concerns arising from an actual *active negative choice* (against the application of a legal regime) by some *couples* (i.e. both of them) rather than merely presuming such a choice for all couples.

It is worth noting that the opt-out also shifts the power-balance in a relationship towards the weaker party which arguably is desirable.

Opt-in regimes generally require the stronger party to agree that a regime that is to their detriment to be made applicable to their relationship; thus often the stronger party will be less inclined to do so, and the weaker party is not in a position to actually 'force' their consent/the opt-in. As they are the weaker party, this leaves them with the choice to end the relationship and thus any factual (if not legal) protection that this relationship provides – or leave things as they are. Unsurprisingly most choose the latter, especially if there are children.

This is reversed in opt-out situations, as here the legal rules apply by default when no agreement is being reached. Thus, the party benefitting from the regime is in the position to 'veto' the opt-out by not agreeing. This leaves the stronger party with the choice to end the relationship if they absolutely do not want the legal rules to apply; as far as I can tell from the (admittedly limited) information available, this only happens very rarely (and arguably these probably were not the healthiest relationships to begin with).

In summary, the opt-out possibility is generally deemed to be a sufficient and satisfactory way to safeguard the autonomy of couples to take an active negative choice against the application of cohabitation regimes.

As regards the formalities required for an opt-out agreement, it is first worth pointing out that even for pre- and post-nuptial agreements the requirements differ significantly between jurisdictions, particularly between the approaches taken in common law and civil law jurisdictions. The same applies for cohabitation agreements and opt-out. However, given the significance of opting out of a protective framework, almost all jurisdictions require some level of formality and certainly that the agreement at least be in writing. Independent legal advice is required in some jurisdictions, or the involvement of a notary. In civil law jurisdictions notaries often are 'organs of the state' with specific duties and play an important and significant role in many legal transactions. They then are obliged to provide impartial advice to both parties, and indeed separate advice to each person where required.
In other jurisdictions, there is no need for specific and independent legal advice, as it is deemed sufficient that the persons in question freely entered into the agreement with a full appreciation of its implications.

A follow-up issue then is whether – in line with comparable agreements for opting out of the legal framework of marriage through pre-nuptial or post-nuptial agreements – it should be possible to opt out of the entire protective system created for cohabitants or whether there should be limits (just as they are for marriage), and whether the court therefore should have the power to set aside agreements under certain circumstances. This issue will be addressed in the answer to question 3 below.

5. *The special case of inheritance and inheritance tax*

Finally, I would to bring to the attention of the Committee an additional issue that I hope may be considered more quickly and detached from a comprehensive regime for cohabitants as it arguably is less controversial in principle because it raises no objections from an autonomy point of view.

In some jurisdictions which have not created a comprehensive legal regime for cohabitants, there nevertheless are rules specifically for inheritance *tax* for cohabitants.

While whether or not cohabitants should be regarded as legal heirs and/or should be allowed to make claims against the estate of the estate under certain circumstances (as they are in England and Wales) may be a controversial issue and arguably should be resolved along the lines of the criteria discussed above, the issue of tax in principle is completely separate from this.

Crucially, in case where the surviving cohabitant is the beneficiary of the will of the deceased, none of the controversial issues, and especially the 'autonomy objection', arise: through the will there *is* an express legal declaration of the deceased.

That is why even in the absence of a wider legal regime concerning cohabitants, some jurisdictions (such as e.g. Norway) give cohabitants who are the beneficiaries of a will of their deceased partner a better position/one comparable to spouses with regard to inheritance tax. The underlying policy obviously is that in case of bereavement and loss of a life partner the surviving cohabitant is not just to be treated like any other third party for tax purposes, and that similar social policy reasons apply as for spouses/other family members to treat them more advantageously in inheritance tax law.
It is worth repeating that whether one agrees with the 'autonomy objections' against the recognition of cohabitants or not, these objections cannot apply here as there *is* a clear and express declaration of the deceased in the will that the surviving partner should be entitled. Thus, it arguably would be appropriate – and should be less controversial – to extend the commensurate inheritance tax benefits in such situations.

Notwithstanding the obvious effect this may have on the public purse, this nevertheless is a path worth considering for social policy reasons.

Question 3: Do the courts have the power to disapply alternative agreements between parties? If not, should they?

I assume that this question is meant to address cohabitation agreements in jurisdictions where there is a comprehensive regime governing cohabitation relationships, including opt-out agreements (i.e. an agreement not to have the legal regime apply at all).

As outlined under 4. in the answer to question 2 above, most existing regimes will allow the couple to opt out of its application by formal agreement. If the couple can agree to disapply in full, this generally then is understood that they can also choose to have the cohabitation regime apply in part, or that they can replace it with agreement on their own – which then are subject to the general contract law rules in the given jurisdiction.

Particularly in civil law jurisdictions, but also in many common law jurisdictions, the express statutory possibility to opt out often is understood to mean that the couples were meant to be able choose this option and that therefore the courts do not, in principle, have a power to interfere or set aside the agreement unless the challenge relates to the conclusion of the agreement (for example undue influence, duress etc.).

However, there also is the view that – just like for pre-nuptial and post-nuptial agreements in case of marriage[2] –there is an absolute core of the family law obligation that is not at the disposition of the parties. This then often relates to relationship-generated disadvantages/considerations of need and compensation. The extent of this varies according to the underlying social policy reasons for the regime in the first place and the legal and social structures in the jurisdiction generally.
Where this view prevails, the courts can then intervene and set aside the agreement in part or in full so that the minimum protection, i.e. the absolute core of the family obligation, will be upheld. However, such 'minimum rules' are relatively rare, given that the regime applies without the couples having opted in and thus considerations of autonomy are generally seen as requiring a full opt-out possibility.

That said, in many jurisdiction what might be seen as the core obligations, namely those resulting from the past, ongoing or future care of children, are covered not by rules relating to

[2] On this see in particular JM Scherpe, "Marital Agreements and Private Autonomy in Comparative Perspective" in JM Scherpe (ed.), *Marital Agreements and Private Autonomy in Comparative Perspective*, Hart Publishing, 2012, pp. 443-518, esp. pp. 483 ff.

the relationship of the couple as such but to those tied to the raising of children. These generally therefore are not at the disposition of the parties. Thus even those jurisdictions where the couple can opt out of the cohabitation regime as such and the courts have no power to disapply the agreement, the parties will nevertheless be held to certain minimum obligations arising from the cohabitation relationship by the courts. This certainly applies to many obligations arising as a result from childcare (including e.g. a personal maintenance claim by the primary carer in addition to child support claims), but can also (as mentioned above) include other obligations arising under the general law.

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