# Cohabitation Rights Bill [HL]
# HL Bill 34 of 2017–19

## Summary

The Cohabitation Rights Bill [HL] is a private member's bill introduced by Lord Marks of Henley-on-Thames (Liberal Democrat). The bill had its first reading in the House of Lords on 5 July 2017 and is due to receive its second reading on 15 March 2019. The bill proposes to establish a framework of rights for cohabiting couples following the breakdown of the relationship or the death of one of the cohabitants.

Figures from the Office for National Statistics show that the number of cohabiting families in the UK has more than doubled in the last two decades, from 1.5 million families in 1996 to 3.3 million families in 2017.[1] The increase in cohabitation as a form of living arrangement has led to calls for the law in this area to be reformed to provide cohabitants with a range of rights similar to those of married or civil partnered couples. At present cohabitants have no automatic right to the equitable division of property or other assets following the breakdown of the relationship, as would be the case with divorce. Similarly, in the case of the death of one of the cohabitants, their partner has no automatic right to register the death or succeed to the deceased's estate if they died intestate (without having made a valid will).

The bill's provisions would apply only to those cohabiting couples who either had a dependent child or who had been living together as a couple for a minimum of three years. The bill would provide the right for either cohabitant, upon the breakdown of the relationship, to apply to a court for a financial settlement order to redress a financial benefit or an economic disadvantage resulting from the period of cohabitation. The bill would provide the right for cohabitants to opt-out of the financial settlement provisions, if they both agreed. In addition, the bill would provide cohabitants with the right to succeed to their partner's estate under the intestacy rules and the right to have an insurable interest in the life of their partner, similar to the rights of married and civil partnered couples.

## Bill Provisions

The bill consists of 30 clauses (in four parts) and two schedules. Part 1 (clauses 1 to 5) sets out the general purpose of the bill and defines various terms used within it. Clause 1 states that the bill would establish a framework of rights for cohabitants in the event of:

- the cohabitants ceasing to live together for reasons other than death;
- the death of one of them;
- either party wishing for their life to be insured by or for the benefit of the other or a relevant child.

Clauses 2 to 5 define various terms, such as "cohabitant", "relevant child", and the "prohibited degrees of relationship" between the cohabitants. For the purposes of the bill, cohabitants are defined in clause 2(1) as two people (of either the same sex or opposite sex) who live together as a couple and

who meet the two further conditions set out in clauses 2(2) and 2(3). Clause 2(2) would provide that both cohabitants must be either the parents of the same minor child or have been living together as a couple for a minimum of three years. Clause 2(3) would provide that the cohabiting couple must not be either married or in a civil partnership, or within certain "prohibited degrees of relationship" to each other. Clause 5 defines the prohibited degrees of relationship to include cases in which one cohabitant is the other's "parent, grandparent, sister, brother, aunt or uncle".

Part 2 (clauses 6 to 15) relates to the financial rights and obligations of former cohabitants. Clause 6 would provide that relevant clauses in part 2 relating to the award by a court of a financial settlement order would not apply to former cohabitants:

- where the individuals had ceased living together prior to the bill's commencement date; or
- to the extent specified in an opt-out agreement or a deed of trust in force between the former cohabitants.

Clause 7 would provide former cohabitants with the right to make an application to a court for a financial settlement order under section 8 of the bill. Clause 7 further specifies that such an application may only be made: within a period of 24 months of the date the former cohabitants ceased living together; and only one application may be made by one former cohabitant (the applicant) in relation to the other former cohabitant (the respondent) unless, since the first application was determined, the former cohabitants had resumed living together for a minimum of two years. Clause 8 would empower a court to make a financial settlement order in relation to the former cohabitants, if the court were satisfied:

- that the cohabitants had ceased living together;
- that the respondent had retained a benefit resulting from the relationship;
- that the applicant had an economic disadvantage resulting from the relationship.

Clause 8(2) defines a "retained benefit" as a financial benefit acquired by the respondent during the cohabitation in the form of capital assets, income (either actual or potential), or earning capacity. The clause defines "economic disadvantage" as a financial loss resulting from "qualifying contributions" (either financial or other contributions) made by the applicant in relation to the parties' shared lives during the cohabitation. Clause 8(3) would empower the court to reverse a retained benefit in so far as it was reasonable or practicable to do so. Clause 8(4) would provide that, were a retained benefit reversed and the court still considered the applicant at an economic disadvantage, the court could ensure the disadvantage was shared equally between the former cohabitants.

Clause 9 sets out a range of discretionary factors to be considered by the court in determining whether to make a financial settlement order. The discretionary factors include:

- the welfare of any minor child of both parties;
- the income and other financial resources of both parties;
- the financial needs and obligations of both parties;
- the conduct of either party, if the court considers it inequitable to disregard it;
- the circumstances in which any qualifying contributions were made by the applicant (for example, if it could be shown that the respondent had expressly disagreed to the contribution being made).

Clause 10 would make provision that, in order to implement the requirements of the financial settlement order specified in clauses 8(3) and 8(4), the order may require the following:

- payment of a lump sum;
- transfer of property;
- property settlements;
- sale of property; or
- pension sharing.

Clause 11 would provide that schedule 1 of the bill would make supplementary provisions to clause 10, concerning payments or property transfers required by a financial settlement order.

Clause 12 would make provision that cohabitants aged 16 years or above may enter into an opt-out agreement concerning the bill's provisions relating to financial settlement orders. The clause specifies that the agreement must include statements that both cohabitants have separately received legal advice from a qualified practitioner and that both parties agree that a financial settlement order will not be available if the cohabitants cease living together. Clause 12 further states that an opt-out agreement must:

- be in writing;
- be signed and dated by both cohabitants;
- be witnessed by at least one person; and
- be accompanied by a certificate by a qualified practitioner that legal advice has been provided to each cohabitant.

Clauses 13 and 14 would make provision for the variation or revocation of opt-out agreements by the cohabitants or by a court, respectively. Clause 15 would make provision for the variation or revocation by a court of cohabitation agreements or deeds of trust entered into by the cohabitants prior to the bill's commencement date.

Part 3 (clauses 16 to 22) relates to provisions concerning the insurance and the death and intestacy of cohabitants. Clause 16 would make provision that for the purposes of section 1 of the Life Assurance Act 1774, each member of a cohabiting couple is presumed to have an insurable interest in the life of the other cohabitant. Clause 17 relates to section 11 of the Married Women's Property Act 1882, which specifies that monies payable as part of a policy of assurance established by a husband or a wife for the benefit of their spouse (and/or their children) shall not form part of the estate of the insured. Clause 17 would make provision for section 11 of the Married Women's Property Act 1882 to apply to assurance policies established by cohabitants for the benefit of the other cohabitant or their children.

Clause 18 relates to the registration of deaths. The clause would make provision that, were a member of a cohabiting couple to die, for the purposes of part 2 of the Births and Deaths Registration Act 1953 the surviving cohabitant would be treated as if they were a relative of the deceased.

Clause 19 relates to the succession of the estate of a cohabitant if they had died intestate. The clause would amend section 46 of the Administration of Estates Act 1925 to extend to cohabitants the right as currently exists for spouses or civil partners to succeed to an estate under the intestacy rules.
Clause 20 would amend schedule 2 of the Intestates' Estate Act 1952 to extend to cohabitants the

rights as currently exist for spouses and civil partners to inherit the family home. Clause 21 would amend section 1 of the Inheritance (Provision for Family and Dependents) Act 1975 to provide a right for a surviving cohabitant to make an application for financial provision from the estate of the deceased with whom they were living as a cohabitant immediately before their death. Clause 22 would provide that schedule 2 of the bill would make additional provisions in connection with the death of a cohabitant, including the amendment of the Fatal Accidents Act 1976 and the Civil Partnership Act 2004.

Part 4 (clauses 23 to 30) would make a number of miscellaneous provisions relating to: the general interpretation of terms used in the bill; the jurisdiction of the courts referred to in the bill; empowerment of the Lord Chancellor to make consequential regulations under the provisions of the bill. Part 4 also extends the bill to England and Wales only and makes provision for the bill's commencement and short title.

**Background**

Lord Marks has introduced a similar private member's bill in every parliamentary session since 2013–14. The only occasion on which a previous bill received its second reading was in the 2014–15 session. Introducing that bill at second reading on 12 December 2014, Lord Marks stated that it was:

> Designed to right injustices that have long bedevilled our law and to ensure that people who live together will not be subjected to an unfair and invidious disadvantage by so doing […] Essentially, and simplifying them to the core, the bill's proposals aim to address economic unfairness at the end of a relationship that has enriched one party and impoverished the other in a way that demands redress.[2]

Lord Marks claimed that there was widespread confusion among the public regarding the legal status of cohabitants. He stated that "the myth of the so-called common-law marriage is widespread, but […] it is just that: a myth, without any foundation in law".[3] Lords Marks summarised what, in his view, were the inadequacies of the current law relating to cohabitants:

> On separation, there are no legal rights at all for the woman who has given up her career to look after her partner's children—or their joint children—once they are older and independent. There are no rights for the woman who gives up working to keep house for her family and then does so for many years before the relationship breaks down. There is no redress for the man who has worked for years and used up his savings to help establish his partner's business and is then left with nothing when they break up. Then again, if one partner dies without leaving a will, the other will inherit nothing as of right from the estate—not even the home they lived in together.[4]

Lord Marks stated that the intention of the previous bill was to implement the recommendations of two reports by the Law Commission: *Cohabitation: The Financial Consequences of Relationship Breakdown*, 2007; and *Intestacy and Family Provision Claims on Death*, 2011.[5] The report rejected the argument that cohabiting couples should be given the same rights as married and civil partnered couples.[6] However, the report concluded that reform of the law as it applied to cohabiting couples was necessary. It recommended the introduction of a "scheme of financial remedies which would lead to fairer outcomes on separation for cohabitants and their families".[7] The scheme would apply only to those cohabiting couples who had a dependent child or who had been living together for a minimum period of between two and five years. Couples could opt out of the scheme by a written agreement to that effect.[8]
The Labour Government's response in 2008 said that it intended to await the results of post-legislative scrutiny of similar provisions in Scotland, the Family Law (Scotland) Act 2006, before deciding whether

to implement the recommendations.[9] In September 2011, the Coalition Government announced that the findings of the research did not provide a "sufficient basis for a change in the law" and therefore the Government did not intend to implement the Law Commission's recommendations in that Parliament.[10]

The 2011 Law Commission report on intestacy had recommended that some cohabiting unmarried couples, who had lived together for five years or more, should have the right to inherit under the intestacy rules without having to go to court.[11] Some of the report's recommendations have been implemented in the Inheritance and Trustees' Powers Act 2014. However, in 2013, the Coalition Government announced that, "consistent with the Government's response to the Law Commission's [2007] report", the recommendation relating to cohabiting couples and intestacy would not be implemented in that Parliament.[12]

During the second reading debate for Lord Marks' bill in 2014, several Peers expressed their opposition to the bill. Baroness Deech (Crossbench) stated that if the bill were enacted:

> [M]arried couples, civil partners and same-sex couples would have the free choice of union, from which they may refrain or enter, but cohabiting couples […] will find that they are snared unaware in a trap of laws from which there is no escape, save for the opting-out provisions of the bill.[13]

Baroness Deech stated that the effect of the bill would be to apply "almost the entire panoply of marriage law" to cohabiting couples, making cohabitation "as expensive and legalistic as divorce".[14] She therefore claimed that the bill "would reduce willingness to commit long-term and would greatly increase the stress of couple breakdown".[15] Lord Farmer (Conservative) claimed that the bill would discourage marriage. He stated that "it would be far more beneficial to society, both economically and in order to rebuild the social fabric, to encourage marriage rather than cohabitation".[16] The bill was also opposed by the Bishop of Sheffield, who argued that any confusion about the rights of cohabitants should be dealt with by education not legislation. He said:

> One of the dangers of the present proposal is that it creates a quasi-legal matrimonial structure based on an arbitrary length of time of cohabitation—a concept which is itself very hard to define and has all kinds of unforeseen consequences.[17]

Baroness Butler-Sloss (Crossbench) spoke in favour of the bill. She disagreed with Baroness Deech's statement that the bill applied the "full panoply" of marriage law to cohabiting couples. Regarding cohabiting couples who separate, Baroness Butler-Sloss thought the bill's provisions were "modest" adding "you have to show either a benefit acquired or an economic detriment".[18] Citing her experience as a judge in family law cases, Baroness Butler-Sloss highlighted two groups of women which she claimed would benefit from the bill's provisions. The first group, as referred to by Lord Marks, were women who had been in long-term unmarried relationships and who had foregone a working career to undertake caring responsibilities. Secondly, Baroness Butler-Sloss claimed that the bill would benefit Muslim women who had married under Sharia law:

> Many of them have little English and most of them have no knowledge whatever of English law […] They have married under Sharia law without any knowledge of the fact that there should be a registration of that marriage by a registrar at the registry office. They are completely stuck because they are not married. Sharia law is not the law of the land.[19]

Lord Aston of Hyde, then a Government Whip, said that while the Government would not oppose the motion to give the bill a second reading, it did not believe there was sufficient time remaining in that

Parliament to give the bill's proposals sufficient consideration:

> The Government have reservations about the Bill […] This Government's priority in family law matters has been to improve the family justice system […] We do not consider that the matters raised by my noble friend's Bill and by the Law Commission have yet been properly and fully considered to the extent that they ought to be. We therefore take the view that consideration of the question of rights for cohabitants is properly for the new Parliament.[20]

The bill completed second reading but did not progress to its committee stage due to the prorogation of the 2014–15 session.

In November 2018, the current Government was asked in a written parliamentary question whether it would introduce legislative proposals for cohabiting couples to share financial and property rights. In reply, Lucy Frazer, Parliamentary Under Secretary of State at the Ministry of Justice, stated:

> The Government's current priorities are to reform the law on the process for obtaining a divorce in order to reduce family conflict and to extend civil partnerships to opposite sex couples. The Government will be considering how to proceed in relation to proposals made by the Law Commission in the context of any further reforms to the family justice system.[21]

**Cohabitation Statistics**

The latest Office for National Statistics (ONS) report, *Families and Households*, published November 2017, stated that there were 3.3 million cohabiting couple families in 2017.[22] Cohabitation was the second largest family type in the UK, after married/civil partnered families (12.9 million).[23] Since the mid-1990s, the number of cohabiting couple families has more than doubled, from 1.5 million in 1996 to 3.3 million in 2017.[24] The table below provides further information on the number of cohabiting opposite- and same-sex couples and those with and without dependent children in 2017.

***Table 1: Cohabiting Couple Families (Thousands), 2017[25]***

| | With dependent children | Without dependent children | Total families |
|---|---|---|---|
| Cohabiting couple family | 1,251 | 2,040 | 3,291 |
| Opposite-sex couple family | 1,246 | 1,943 | 3,190 |
| Same-sex couple family | 4 | 97 | 101 |

[1] Office for National Statistics, 'Families and Households: 2017', 8 November 2017.
[2] HC *Hansard*, 12 December 2014, cols 2068–70.
[3] ibid, col 2068.
[4] ibid.
[5] ibid.
[6] Law Commission, 'Press Release: New Remedies for Cohabitants—Different from Divorce', 31 July 2007.
[7] ibid.
[8] ibid.
[9] House of Commons, 'Written Statement: Cohabitation (Government Response to Law Commission Paper)', 6 March 2008, HCWS122.
[10] House of Commons, 'Written Statement: Cohabitation: Financial Consequences', 6 September 2011, HCWS16.
[11] Law Commission, *Intestacy and Family Provision Claims on Death*, 13 December 2011, HC 1674 of session 2010–12, pp 160–7.
[12] House of Commons, 'Written Statement: Intestacy', 21 March 2013, HCWS60.
[13] HC *Hansard*, 12 December 2014, cols 2072.
[14] ibid.
[15] ibid.
[16] ibid, col 2077.
[17] ibid, col 2078.
[18] ibid, col 2079.
[19] ibid, col 2080.
[20] ibid, cols 2087–8.
[21] House of Commons, 'Written Question: Cohabitation', 29 November 2018, 195548.
[22] Office for National Statistics, 'Families and Households: 2017', 8 November 2017.
[23] ibid.
[24] ibid.
[25] ibid.