



RESEARCH PAPER 02/17  
19<sup>TH</sup> MARCH 2002

# *The Relationships (Civil Registration) Bill and the Civil Partnerships Bill*

## **Bill 36 of 2001-02 and HL Bill 41 of 2001-02**

Two separate Bills before Parliament in this session propose reform of the law relating to cohabitants in England and Wales: Jane Griffith's *Relationships (Civil Registration) Bill*, Bill 36 2001-02 and Lord Lester's *Civil Partnerships Bill*, HL Bill 41 2001-02.

This research paper summarises some of the current law relating to cohabitants' legal rights in England and Wales, and sets out some of the situations in which unmarried couples have particular rights or duties.

The paper then analyses and compares the provisions of each Bill. Both Bills provide for a system of partnership registration for same and opposite sex cohabitants. Following registration, both partners are entitled to rights and duties as specified in the Bills. Both Bills also provide for dissolution of the partnership akin to divorce.

The paper goes on to compare the approach of other jurisdictions. Firstly, developments in Scotland and Northern Ireland are discussed. Secondly, systems of partnership registration which have already been introduced in other countries are examined.

Madeleine Shaw

HOME AFFAIRS

HOUSE OF COMMONS LIBRARY

**Recent Library Research Papers include:**

<b>02/01</b>	Social Indicators	08.01.02
<b>02/02</b>	House of Lords Reform: the 2001 white paper	08.01.02
<b>02/03</b>	The <i>Office of Communications Bill</i> [Bill 73 of 2001-02]	14.01.02
<b>02/04</b>	The <i>State Pension Credit Bill [HL]</i> [Bill 30 of 2001-02]	15.01.02
<b>02/05</b>	The <i>Employee Share Schemes Bill</i> [Bill 13 of 2001-02]	16.01.02
<b>02/06</b>	Unemployment by Constituency, December 2001	16.01.02
<b>02/07</b>	The <i>Justice (Northern Ireland) Bill</i> [Bill 75 of 2001-02]	18.01.02
<b>02/08</b>	The <i>Industrial and Provident Societies Bill</i> [Bill of 2001-02]	23.01.02
<b>02/09</b>	Economic Indicators [This month's article: The Introduction of the Euro]	01.02.02
<b>02/10</b>	Taxing company cars	05.02.02
<b>02/11</b>	Alternative Vehicle Fuels	12.02.02
<b>02/12</b>	Unemployment by Constituency, January 2002	13.02.02
<b>02/13</b>	Economic Indicators [This month's article: London Underground & PPP]	01.03.02
<b>02/14</b>	The Laeken Declaration and the Convention on the Future of Europe	08.03.02
<b>02/15</b>	The <i>Police Reform Bill [HL]</i> [Bill 48 of 2001-02]	14.03.02
<b>02/16</b>	Financing for Development	19.03.02

*Research Papers are available as PDF files:*

- *to members of the general public on the Parliamentary web site,*  
*URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,*  
*URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

## Summary of main points

Cohabitation is defined as an unmarried couple living together in a long-term sexual relationship. This encompasses a heterosexual couple living together as husband and wife, and a homosexual couple living together in similar circumstances. The number of cohabiting couples in the U.K. is increasing steadily. This has been attributed to a number of factors including secularisation and the perceived lack of any financial benefit from marriage.

According to the Law Commission, the law in relation to cohabitants in England and Wales is widely accepted as complex, arbitrary and uncertain. Contrary to popular belief, cohabitants have no legal status in English law. There has been ad-hoc reform in recent years in response to perceived injustices. This research paper examines various areas of law where cohabitants have rights and duties.

Recommendations for reforming the law have come from the Law Society and the Solicitors' Family Law Association. In addition, the Law Commission is due to publish proposals for the reform of cohabitants property rights this year.

Two Bills before Parliament seek to reform the law relating to cohabitants: Jane Griffith's *Relationships (Civil Registration) Bill*, Bill 36 of 2001-02 and Lord Lester's *Civil Partnerships Bill* Bill 41 of 2001-02. On 11<sup>th</sup> February, Lord Lester indicated that he would not be proceeding with the Bill this session while the Government is reviewing the issues raised. However, this paper still presents a comparative analysis of both Bills to show how different approaches may be taken to the question of reform.

Both Bills provide for a system of partnership registration for opposite and same sex cohabitants. They have the same three part structure. Part one provides that a relationship can be registered by an eligible couple who must follow the specified procedure. Part two sets out what rights and duties follow from the registration of a partnership. Part three provides for the dissolution of a partnership and the consequent allocation of property. However, both Bills have some differences in terms of style and content. This is analysed in detail in section VI.

The Government's has responded to the Bills with interest, but is not prepared to support either of them until their financial and administrative implications have been assessed. A cross-departmental review of the issues raised is being co-ordinated by the Cabinet Office.

The official Opposition also do not support the Bills. They state that the rights provided for in the Bills are already available to mixed sex couples through the existing civil registration marriage procedure. However, the opportunity to review the rights of those who cannot marry, such as homosexual couples, is welcomed. An in-depth analysis of the issues raised is advocated.

The legal position in Scotland is broadly similar to England and Wales, although there is some limited scope for recognising informal marriages. Family law is now a devolved matter. The Scottish Executive has published a white paper based on the report of the Scottish Law Commission. A Bill implementing the suggested reform is expected to be available by November 2002. Similarly, in Northern Ireland, there have been recent proposals for reform.

The research paper goes on to compare systems of partnership registration which have been introduced in other countries including France, Denmark, Norway, Sweden, Hungary, Belgium, The Netherlands, Spain, and Iceland.

## CONTENTS

<b>I</b>	<b>Introduction</b>	<b>9</b>
	<b>A. Defining Cohabitation</b>	<b>9</b>
	<b>B. Statistics</b>	<b>9</b>
	<b>C. Reasons for and Incidence of Cohabitation</b>	<b>10</b>
<b>II</b>	<b>Cohabitants' Rights in England and Wales</b>	<b>12</b>
	<b>A. Property Rights</b>	<b>12</b>
	<b>B. Transfer of Tenancies</b>	<b>14</b>
	<b>C. Succession to a Tenancy upon the Death of a Cohabitant</b>	<b>14</b>
	<b>D. Domestic Violence</b>	<b>16</b>
	<b>E. Death and Inheritance</b>	<b>16</b>
	<b>F. Mutual Support</b>	<b>17</b>
	<b>G. Social security</b>	<b>17</b>
	<b>H. Pensions</b>	<b>17</b>
	<b>I. Taxation</b>	<b>17</b>
	<b>J. Immigration</b>	<b>17</b>
<b>III</b>	<b>Proposals for Reform</b>	<b>18</b>
<b>IV</b>	<b>The <i>Relationships (Civil Registration) Bill</i></b>	<b>21</b>
	<b>A. The Content of the Bill</b>	<b>21</b>
	<b>B. The First Reading Debate</b>	<b>21</b>
	<b>C. Progress of the Bill</b>	<b>26</b>
<b>V</b>	<b>The <i>Civil Partnerships Bill</i></b>	<b>26</b>
	<b>A. The Content of the Bill</b>	<b>26</b>

B.	The Second Reading Debate	28
C.	Progress of the Bill	33
VI	Comparative Analysis of the Bills	33
A.	Registration	34
B.	Rights and Duties	35
1.	Rights and Duties Common to Both Bills	35
2.	Rights and Duties Provided by Jane Griffith’s <i>Relationships (Civil Registration) Bill</i> only.	40
3.	Rights and Duties provided by Lord Lester’s <i>Civil Partnerships Bill</i> only	40
C.	Dissolution of the Partnership	41
D.	Other Differences in the Content of the Bills	42
VII	Responses to the Bills	42
A.	The Government’s Position	42
B.	The Opposition’s Position	44
C.	Media and Other Responses	47
1.	The Daily Telegraph	47
2.	The Guardian	47
3.	The Independent	47
4.	The Times	48
VIII	Cohabitants’ Rights in Scotland	49
IX	Cohabitants’ rights in Northern Ireland	51
X	Cohabitation legislation in other countries	52
A.	France	52
B.	Denmark	53
C.	Norway	53

<b>D.</b>	<b>Sweden</b>	<b>53</b>
<b>E.</b>	<b>Hungary</b>	<b>55</b>
<b>F.</b>	<b>Belgium</b>	<b>55</b>
<b>G.</b>	<b>The Netherlands</b>	<b>55</b>
<b>H.</b>	<b>Spain</b>	<b>55</b>
<b>I.</b>	<b>Iceland</b>	<b>56</b>



# I Introduction

## A. Defining Cohabitation

The starting point in any discussion on cohabitation is to define exactly what cohabitation means.<sup>1</sup> At its simplest, cohabitation means “living together. This includes a wide variety of living arrangements such as friends who rent a flat together, siblings or other family members who live in the same house, and a married couple living together in the matrimonial home.

However, “cohabitation” usually refers to an unmarried couple who are living together in a long term, stable sexual relationship. This includes heterosexual couples living together as husband and wife, but also homosexual couples in a similar relationship.

Cohabitation relationships do not follow an identical pattern. At one end of the spectrum, a couple may live together for many years, effectively as husband and wife, in a joint family home with children. At the other end is the case of a couple sharing a sexual relationship and a home, but without children and leading largely independent lives. Cohabitation may be a precursor to marriage (for heterosexual partners), or it may be an end in itself. Couples also cohabit following divorce or the death of a spouse.

## B. Statistics<sup>2</sup>

It is clear that cohabitation is increasing, as recent studies indicate.

The proportion of women who are cohabiting has climbed steadily over the last 25 years. Between 1976 and 2000, women under 50 who were cohabiting as a percentage of all those were currently not living as married rose from 9% to 30%. In contrast the proportion of women aged under 50 who are married has slipped downwards at a steady pace, from 75% in 1976 to around half (51%) in 2000.<sup>3</sup>

The peak age group who cohabit is couples in their mid to late 20s. Pre-marital cohabitation has become increasingly common, so that around 77% of women in 1996 reported that they had lived together with their first husband. In the late 1950s the equivalent proportion had been negligibly small – around 1 in 50, but rose in the 1960s to one in 20.<sup>4</sup>

Results from the 1998 British Household Panel Survey indicate that nearly three-quarters of never-married childless people aged under 35 who were cohabiting

---

<sup>1</sup> See Introduction, Law Society Report, “Cohabitation Proposals for Reform” available from [www.lawsoc.com](http://www.lawsoc.com) for further discussion on the definition of cohabitation.

<sup>2</sup> Provided by Richard Cracknell, Social and General Statistics, House of Commons Library.

<sup>3</sup> ONS *Population Trends Spring 2001* updated with data from ONS *Living in Britain 2000*

expect to marry each other. Thus for most people, cohabitation is perceived as part of the process of getting married and is not a substitute for marriage. About two-fifths of the cohabiting adults perceived advantages to just living together rather than marrying.<sup>5</sup>

Cohabitation does not always lead to marriage. In 2000, of adults aged 16 to 59, 14% reported a cohabiting union that did not end in marriage.<sup>6</sup> The duration of these periods of cohabitation tends to be longer for first cohabitations than second. Of 16-59 year olds who had past cohabitations which had not ended in marriage, for first cohabitations 22% lasted less than one year (compared to 32% for second cohabitations); a further 22% for between 1 and 2 years; 18% between 2 and 3 years and 37% for 3 years or more.

Cohabitation is not just restricted to periods before first marriage. In 2000, 11% of separated women and 35% of divorced women were cohabiting.<sup>7</sup>

In addition, 40% of births are now registered outside marriage. This rate is around 4 times that of the late 1970s. Of births outside marriage, the mother and father jointly registered 81% in 2000 in England and Wales. Of these around three-quarters were registered by parents who had the same address. This suggests that a high proportion of births outside marriage is to parents who are cohabiting and this accounts for much of the growth in births outside marriage.<sup>8</sup>

### C. Reasons for and Incidence of Cohabitation

Although cohabitation is increasing, Parker in *Informal Marriage, Cohabitation and the Law 1750-1989* shows that cohabitation has always existed.<sup>9</sup> However, the reasons for cohabitation and incidence of it have changed over the last 250 years. For example, pre-marital cohabitation took place in the mid 18<sup>th</sup> century, but the reason was to ensure fertility. Once a pregnancy had been confirmed the couple would formally marry. It has been suggested that the reason couples cohabit today is because they either do not wish to marry, or in order to test the long term viability of their relationship.<sup>10</sup>

Parker identifies general factors that determine the incidence of cohabitation. They include the definition and effect of marriage, the effects of any alternatives, economic conditions and social acceptability.<sup>11</sup>

---

<sup>4</sup> *Ibid.*

<sup>5</sup> *ONS Social Trends 32 2002.*

[http://www.statistics.gov.uk/downloads/theme\\_social/Social\\_Trends32/Social\\_Trends\\_32.pdf](http://www.statistics.gov.uk/downloads/theme_social/Social_Trends32/Social_Trends_32.pdf)

<sup>6</sup> *Living in Britain 2000* ONS – figures for 2000 include same sex couples who said they were cohabiting – no separate figures for this group however are available.

<sup>7</sup> *op cit* Table 5.7

<sup>8</sup> *ONS Population Trends*

<sup>9</sup> Introduction, paragraph 5, Law Society Report “Cohabitation Proposals for Reform,” cites Parker “*Informal Marriage, Cohabitation and the Law 1750-1989.*” See [www.lawsoc.com](http://www.lawsoc.com)

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

A change to the definition of marriage occurred in the mid 18<sup>th</sup> Century, with a consequent effect on the incidence of cohabitation. Before Lord Hardwicke's Marriage Act 1753, couples could marry in various informal ways which were legally recognised. This gave rise to the term "common law wife/husband." One example of this involved a couple jumping over a broom leant against the front door of their house. In order to get divorced, all the couple had to do was jump back over the broom in the presence of witnesses. However, from 1753, a marriage had to be conducted in a church or public chapel.

The effect of changing social circumstances on the relative incidence of cohabitation and marriage can be seen from the 19<sup>th</sup> Century. From this time, the concept of marriage expanded to recognise non-Christian religions and registry office weddings. This reflected an increasing acceptability of other faiths, and increasing secularisation.<sup>12</sup>

Economic factors also affect the incidence of cohabitation. One of the main aims of the Act in 1753 was to regulate the increase in marriages between families that had derived their wealth from agriculture and commerce respectively. On the other hand, during the 19<sup>th</sup> century, the increased economic independence of women and increased mobility of the population caused by the Industrial Revolution led to an increase in cohabitation. This desire for economic independence may well be reflected in the trend towards increased cohabitation today.<sup>13</sup>

It has been suggested that factors which explain the rise in cohabitation today include:

- increasing secularisation,
- the increase in divorce and separations,
- changes in respect of the permanence of marriage and the marriage commitment,
- the perceived lack of any great financial or fiscal advantage in marriage as opposed to cohabitation; cohabitants often believe they will acquire rights after living with each other for a certain time,
- the increase in the number of economically active women and the changes in patterns of child bearing and child bearing age.<sup>14</sup>

---

<sup>12</sup> Parker, *Ibid.*

<sup>13</sup> Parker, *Ibid.*

<sup>14</sup> Northern Ireland Law Reform Advisory Committee "Matrimonial Property" - Discussion Paper Number 5 available from the Belfast Stationary Office or [www.olrni.gov.uk/advisory-site/home.htm](http://www.olrni.gov.uk/advisory-site/home.htm) Para 4.5

In addition, homosexual partners cohabit because, apart from other considerations, marriage is impossible.

## II Cohabitants' Rights in England and Wales

A man and woman living together in a stable sexual relationship are often referred to as 'common law' spouses. This term has not been recognised in law in England and Wales since informal marriages were abolished by Lord Hardwicke's Marriage Act in 1753. In general, cohabitation gives no special legal status to a couple, unlike marriage from which legal rights and duties follow. However, many cohabiting couples are unaware of this fact. According to the latest report from the National Centre for Social Research, more than half of the population (57%) falsely believe there is something called 'common law marriage' which gives cohabiting couples the same rights as married couples.<sup>15</sup>

The current legal position relating to cohabitants' legal rights in different situations is explained below.

### A. Property Rights

Unmarried couples have no guaranteed rights of ownership of each other's property on relationship breakdown. If a cohabiting couple separate, the courts have no power to override the strict legal ownership of the property and divide it as they may do on divorce.

If a property is bought jointly by the cohabitants, it is possible to make clear the basis of joint ownership, and whether the property is owned equally or, say, in 30/70 shares. The property would then be divided according to these shares upon the breakdown of the relationship.

Problems arise when the property is in the sole name of one of the partners. This often occurs when one of the partners moves into a property which is legally owned by the other. The court may only determine that the other cohabitant has a share in the property in very specific circumstances. This is when the law of trusts or proprietary estoppel apply. The rules are technical, but essentially, the party who has no *legal* interest in the home (often the woman in a heterosexual relationships) may be found to have a *beneficial* or equitable interest in the property that gives her certain rights to it. The apparent intentions of the parties are relevant in deciding the proportion of the property owned by each party.<sup>16</sup>

---

<sup>15</sup> National Centre for Social Research, 18<sup>th</sup> Report, 2001-02 edition *British Social Attitudes: Public Policy Social Ties* at:

[www.natcen.ac.uk/news/news\\_bsa\\_pr2001.htm](http://www.natcen.ac.uk/news/news_bsa_pr2001.htm)

<sup>16</sup> For a more detailed summary of the law of trusts and proprietary estoppel in this context see Paragraph 17 *et seq*, Law Society Report "Cohabitation Proposals for Reform," at [www.lawsoc.com](http://www.lawsoc.com)

It may be open to cohabiting couples to enter into a contract regulating their relationship and in particular, their property rights. It is not clear whether **general** cohabitation contracts are legally enforceable, although they are useful to remind the parties of their original intentions. In practice, instead of a cohabitation contract, it is possible to make a series of legally enforceable agreements on specific matters, for example, how a jointly owned house is shared.<sup>17</sup> To be valid, a contract must comply with the formalities of contract law.<sup>18</sup>

The court has greater powers to intervene if the cohabiting couple have children. Under Schedule 1 to the Children Act 1989 the court has the power to make transfers of capital (whether in the form of property or a lump sum) for the benefit of the children. Clearly, some of these transfers, particularly if a transfer of the family home is involved, will benefit the other former cohabitant incidentally.

Other 'home-sharing part-owners' such as single people sharing resources in order to obtain a mortgage and buy a home instead of renting one, same sex partners, or elderly parents sharing a home with their children, are also treated as unconnected individuals as regards home ownership.

The Law Commission suggests that the law relating to cohabitants' property rights is widely seen to be complex, arbitrary and uncertain. The Commission has for some years been examining the law, and expects to publish a consultation paper in the first half of this year. The Commission anticipates that the full report will be available in 2003. It would then be for the Government to decide what further action to take as a result. The following extract from the Law Commission's *Eighth Programme of Law Reform*<sup>19</sup> sets out the framework of its review of the property rights of home-sharers:

*The property rights of those who share homes*

We are reviewing the property rights in relation to those who share a home, except for example where a person's occupancy is attributable to a tenancy, contractual licence, or his or her employment. Our review, therefore, covers a broad range of people including friends and relatives who share a home, as well as unmarried couples and married couples (other than on the breakdown of the marriage).

---

<sup>17</sup> Citizens Advice Bureau guidance available from [www.adviceguide.org.uk/nacab/plsql/nacab.homepage](http://www.adviceguide.org.uk/nacab/plsql/nacab.homepage) under Family Matters.

<sup>18</sup> For example, the parties must intend to create legal relations, and consideration (value) must be provided.

<sup>19</sup> [www.lawcom.gov.uk/library/lc274/lc274.pdf](http://www.lawcom.gov.uk/library/lc274/lc274.pdf)

At present, a person who is not the legal owner of a shared home will only be able to claim an interest in the home in certain limited circumstances. Principally these are when they can establish:

- a) an equity arising by proprietary estoppel
- b) that a resulting or constructive trust has arisen in their favour
- c) that they are a beneficiary under an express declaration of trust.

It is widely accepted that the present law is ... ill-suited to determining the property rights of those who, because of the informal nature of their relationship, may not have considered their respective entitlements.

We wish to encourage people to make their own arrangements, and ensure that where such arrangements have been made they should be enforceable and only disturbed in accordance with normal principles of law (such as, for example, those induced by fraud or undue influence). In addition, we have considered various options for reform of the existing law where no such arrangements have been made.

## **B. Transfer of Tenancies**

Under Schedule 7 of the Family Law Act 1996, the court may order that a tenancy in the name of one of the cohabitants be transferred into the name of the other after the breakdown of the relationship. This only applies to couples of the opposite sex living together as husband and wife.

## **C. Succession to a Tenancy upon the Death of a Cohabitant<sup>20</sup>**

The rights of a cohabitant to succeed to a tenancy upon the death of a partner vary depending on the nature of the tenancy.

The majority of tenants who have exclusive occupation of private rented accommodation and who entered into their agreements on or before 15 January 1989<sup>21</sup> are regulated tenants under the *Rent Act 1977*. On the death of a regulated tenant their spouse has priority for succession to the tenancy provided they lived with the tenant at the time of death. Paragraph 2 of Schedule 1 to the 1977 Act provides that couples living together as husband and wife should be treated in the same way as married couples for succession purposes. Cohabitants, like spouses, would succeed to a statutory tenancy<sup>22</sup> in these

---

<sup>20</sup> Provided by Wendy Wilson, Social Policy Section, House of Commons Library.

<sup>21</sup> The date on which Part I of the *Housing Act 1988* came into force.

<sup>22</sup> The rights of these tenants are still governed by the 1977 Act.

circumstances. Other members of a tenant's family<sup>23</sup> (in the absence of a spouse) would succeed to an assured tenancy.<sup>24</sup>

In October 1999 the House of Lords upheld a claim for succession to a private tenancy under the *Rent Act 1977* by Martin Fitzpatrick. Mr Fitzpatrick had lived in a homosexual relationship with Mr John Thompson, the late tenant, since 1976. Sterling Housing Association, a charitable body,<sup>25</sup> refused an application by Mr Fitzpatrick to succeed to Mr Thompson's tenancy on the grounds that he was not a member of the late tenant's family. On an appeal to the House of Lords Mr Fitzpatrick's claim was upheld.<sup>26</sup>

Private sector tenants who entered into their tenancy agreements on or after 15 January 1989 (and who do not have assured shorthold tenancies) are likely to be assured tenants. Tenants of Registered Social Landlords ("RSLs") who entered into their tenancies on or after this date are also assured tenants. Succession to these tenancies is governed by the *Housing Act 1988*. As with Rent Act protected tenancies, a spouse can succeed to an assured tenancy provided that they were occupying the dwelling as their only or principal home immediately before the tenant's death. For these purposes 'spouse' is not limited to persons legally married but includes persons who have been living together as husband and wife.

Sections 87 and 88 of the *Housing Act 1985* govern the rules regarding succession to a council tenancy.<sup>27</sup> A member of a council tenant's family may succeed to the tenancy on their death if they resided with the deceased tenant for at least 12 months before the death. Section 113 of the 1985 Act defines members of a tenant's family for the purposes of succession and includes 'persons living together a husband and wife'.

The case of *Harrogate BC v Simpson [1986]* established that a homosexual couple could not be considered to be living together as husband and wife for the purposes of succeeding to a council tenancy.<sup>28</sup> However, after *Fitzpatrick v Sterling [2000]* it was suggested that local authorities and RSLs could face problems if they refused to grant succession rights to same-sex partners on the grounds that the ruling only applied to private sector tenancies.<sup>29</sup> In fact a majority of local authorities are reported to already allow same-sex partners to succeed to tenancies as a matter of policy.<sup>30</sup>

---

<sup>23</sup> Provided they fulfilled the relevant residence criteria, i.e. they must have resided in the dwelling house at the time of the tenant's death and for two years beforehand.

<sup>24</sup> The rights of these tenants are governed by the *Housing Act 1988*.

<sup>25</sup> This association did not qualify as an association under the terms of the *Housing Act 1985* hence it was a private sector landlord.

<sup>26</sup> *Fitzpatrick v Sterling [2000]* 1 FLR 271

<sup>27</sup> Council tenants occupy as 'secure' tenants.

<sup>28</sup> 2 FLR 91

<sup>29</sup> see 'We are family', *Inside Housing*, 5 November 1999

<sup>30</sup> *Ibid*

The Department of the Environment (now the DTLR) issued a circular in 1996 in which it advised that it was good practice for local authorities to offer joint tenancies to adults sharing accommodation as friends where ‘the members of the household have a long-term commitment to the home’.<sup>31</sup> A joint tenancy ‘side-steps’ the question of succession on the death of one of the tenants. The circular also noted:

Where a member of a household dies and there is another member of that household who does not have the right to succeed to the tenancy, who either:

- had been living with the tenant for the year before the tenant’s death, or
- had been looking after the tenant, or
- had accepted responsibility for the tenant’s dependants

The local authority should normally grant a tenancy to the remaining person or persons, either in the same home or in suitable alternative accommodation, subject to the local authority’s being satisfied that there are no adverse implications from the joint tenancy for good use of their housing stock and for their ability to continue to provide for housing need.

## **D. Domestic Violence**

Cohabitants do benefit, in a broadly similar way to married couples, from the protection available under Part IV of the *Family Law Act 1996*, which is designed to deal with domestic violence. The Act allows home-sharers and former home-sharers (including homosexual partners) to apply for non-molestation orders and/or court orders regulating the occupation of the family home. However, same sex partners have fewer rights as “associated persons” rather than heterosexual “cohabitants” under the Act.

## **E. Death and Inheritance**

Unmarried partners have no automatic inheritance rights over their partner's assets on death. There are special provisions in the *Inheritance (Provision for Family and Dependants) Act 1975*<sup>32</sup> allowing heterosexual cohabitants to make a claim against the estate of their partner on his or her death. A claim can be made if inadequate provision has been made for the surviving cohabitant, either by will or by operation of the rules of intestate succession.

A cohabitant is able to apply to the court if he was living in the same household as the deceased for the two years immediately before the deceased died, as the husband or wife of the deceased. However, the cohabitant is not treated in exactly the same way as a spouse. Same sex partners who wish to claim would have to establish that they were dependants of the deceased. It must be shown that they were

---

<sup>31</sup> Circular 7/96

<sup>32</sup> As amended by *Law Reform (Succession) Act 1995*

being maintained by the deceased immediately before death. As such, same sex cohabitants have fewer inheritance rights than opposite sex cohabitants.

The Fatal Accident Act 1976 does not allow same-sex partners to claim bereavement damages for the wrongful death of a partner.

Furthermore, a cohabitant cannot register a partner's death or sign for the funeral.

## **F. Mutual Support**

Although unmarried parents are both required to support their children financially, there is no obligation for the cohabitants to support each other unless one of them applies for means tested benefits such as income based Jobseeker's Allowance.

## **G. Social security**

Under social security law, for means-tested benefits, the unit of claim is a family. This includes an unmarried (heterosexual) couple living together as husband and wife.<sup>33</sup> Such a couple would have their resources aggregated when benefit is calculated.

## **H. Pensions**

A cohabitant cannot rely upon her former partner's contributions for the purposes of state retirement pensions, whereas a widow or divorcee may. Otherwise, entitlement to pension benefits will depend on the rules of the scheme concerned.<sup>34</sup>

## **I. Taxation**

Cohabiting couples are generally treated as unconnected individuals for taxation purposes. Importantly, transfers of property between married couples are exempt from inheritance tax and capital gains tax, whereas unmarried couples are not.

## **J. Immigration**

The legal position of cohabitants seeking to remain in the UK with their partner is explained in the standard note entitled "Immigration: Spouses and Partners" which is available from the Library intranet.<sup>35</sup>

---

<sup>33</sup> Section 137, *Social Security Contributions and Benefits Act 1992*; section 35 *Jobseekers Act 1995*.

<sup>34</sup> For more detailed information on cohabitants and pensions see Standard Note "Survivor Benefits for Unmarried Partners" SN/BT/1208 available on the library intranet pages at: <http://hcl1.hclibrary.parliament.uk/notes/bts/unmarried.pdf>

<sup>35</sup> SN/HA/862 available from <http://hcl1.hclibrary.parliament.uk/notes/has/spouses.pdf>

### III Proposals for Reform

In addition to the forthcoming review by the Law Commission of cohabitants' property rights discussed above,<sup>36</sup> there have been other proposals for wider reform.

In September 1999 the Law Society published recommendations for reform of the law relating to cohabitants.<sup>37</sup> The report considered a number of areas of law affecting cohabitants including:

- the definition of cohabitation,
- financial provision on separation,
- pensions,
- children,
- succession and
- taxation.

It identified problems with the current law and suggested solutions.<sup>38</sup>

In its proposals for reform, the Law Society adopted a specific policy. It aimed to protect cohabitants from the worst excesses of the law which would otherwise apply to them, but without equating cohabitation with marriage. By adopting this policy, the Society intended to introduce a rational system of regulating cohabitants' rights without undermining the institution of marriage. Also, the society did not want to impose legal consequences akin to marriage on those cohabitants who choose not to marry to avoid precisely those legal consequences. The Society saw that there was scope in their recommendations to increase the protection offered to homosexual couples to equal that available to heterosexual cohabitants.<sup>39</sup>

After a thorough review of the law and its disadvantages, the Society reached the following conclusions:

The Society believes that the current law affecting cohabitants fails to provide them with adequate protection, particularly on relationship breakdown. The Society believes the law should be reformed. In coming to this view the Society has been influenced by the great increase in cohabitation in recent years, the practical effects of the current law and developments in other jurisdictions. In future the Society believes that:-

---

<sup>36</sup> See above under Part II(A) Property Rights.

<sup>37</sup> "Cohabitation proposals for reform of the law" - available from the Law Society web-site at [www.lawsoc.com](http://www.lawsoc.com) under Family Law.

<sup>38</sup> *Ibid.* Para 14

<sup>39</sup> *Ibid.* Para 13

- (a) There should be a standard definition of cohabitation based on the Department of Social Security criteria for determining entitlement to benefits;
- (b) Any reforms of the law should provide both heterosexual and homosexual cohabitants with increased protection, while not equating the remedies available with those available for married couples;
- (c) Cohabitants should have the right to apply for capital provision on separation. Applications should be determined having regard to the principle that "fair account should be taken of any economic advantage derived by either party from contributions by the other, and of any economic disadvantages suffered by either party in the interests of the other party or of the family." Any contributions made should include domestic contributions and should not be limited to contributions made to any property acquired by the parties;
- (d) The law relating to tenancies should be changed to place heterosexual and homosexual cohabitants in the same position as regards transfer of and succession to tenancies;
- (e) Cohabitants should have the right to apply for maintenance on separation. This should be designed to provide resources for training and retraining and reflect any economic advantages and disadvantages which cannot be catered for through an award of capital. Only in exceptional cases should a maintenance order last for longer than four years;
- (f) Cohabitation contracts should be explicitly recognised as being enforceable subject to safeguards designed to ensure that the contract is fair when it is entered into and any major changes of circumstances can be catered for during the lifetime of the contract;
- (g) Cohabitants should be able to opt to take advantage of pension earmarking and, in future, sharing on separation;
- (h) Changes should be made to the law on life assurance to provide that cohabitants have an insurable interest in the life of their partners and that a cohabitant should be able to take out a life insurance policy on his or her own life for the benefit of a partner;
- (i) Changes should be made to nationality and immigration law so that a child can inherit British nationality through either parent whether or not they are married. Immigration law should be relaxed so that more long-term cohabitants are permitted to apply for leave to enter/remain in this country;
- (j) Homosexual cohabitants should be entitled to make applications for provision on death under the Inheritance (Provision for Family and Dependants) Act 1975 according to the same criteria as apply to heterosexual cohabitants;
- (k) Consideration should be given to changes to the law on taxation to improve the position of cohabitants in this regard.

The Solicitors' Family Law Association also advocates a new cohabitation law, separate from matrimonial legislation, in order to "achieve fairness and to protect vulnerable cohabitants."<sup>40</sup>

On its web-site, the SFLA makes the following recommendations:<sup>41</sup>

The legislation should define cohabitation as a 'personal relationship (other than a legal marriage) between two adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other'.

The proposed new law should:

- allow the courts to take into account all the circumstances to do what is fair and reasonable between the couple. The court should take into account the level and extent of the commitment between the couple. There should be a presumption that, as far as possible, both people should be self-supporting.
- enable cohabitants to apply to the court for financial relief where cohabitation has continued for a minimum period of two years. Where there are children there should be no minimum period.
- provide for the courts to make lump sum and property adjustment orders and award short-term financial support for not more than three years from the date of separation.

Further, the SFLA proposes that cohabitants should be able to "opt out" of the legal rights and duties through a cohabitation contract.

In a separate development the Greater London Authority created London's Partnership Register in September 2001. The register is intended as a public statement of a couple's commitment to each other. It is open to both heterosexual and homosexual couples upon payment of a fee. One partner must live in London. However, the register does not confer any additional legal rights.<sup>42</sup>

---

<sup>40</sup> [www.sfla.co.uk/factsheetdisplay.php?id=11](http://www.sfla.co.uk/factsheetdisplay.php?id=11)

<sup>41</sup> *Ibid.*

<sup>42</sup> "Is it time to bring non-married couples in from the cold?" *The Times* 11<sup>th</sup> September 2001; "After 28 years, the union of Alex and Ian has finally got official blessing." *The Independent* 6<sup>th</sup> September 2001.

## IV *The Relationships (Civil Registration) Bill*

### A. The Content of the Bill

In response to the perceived inadequacy of the law as it stands in relation to cohabitants in England and Wales, Jane Griffiths has introduced, under the ten minute rule, the *Relationships (Civil Registration) Bill*, Bill 36 2001-02.

The Bill would allow otherwise single individuals to register a relationship akin to marriage (**clause 1**). The individuals would not have to be of opposite sexes. **Clause 2** gives effect to responsibilities and benefits which are listed in the **Schedule**. These cover inheritance, housing succession, incapacity (a registered partner would become next of kin), pensions and social security, tax, compensation, domestic violence, and immigration. **Clause 3** provides for dissolution of registered partnerships, which could have effect twelve months after application for such an order of the court. The clause provides for additional orders to protect the best interests of any children.

A copy of the Bill is available from the Parliamentary web-site at:

[www.publications.parliament.uk/pa/cm200102/cmbills/036/2002036.pdf](http://www.publications.parliament.uk/pa/cm200102/cmbills/036/2002036.pdf)

The content of the Bill is analysed in greater detail below under **Part VI** of this paper.

### B. The First Reading Debate

The first reading debate of 24 October is reproduced in part here:<sup>43</sup>

**Jane Griffiths (Reading, East):** I beg to move,

That leave be given to bring in a Bill to provide for civil registration of a relationship between two people who are cohabiting, and for such registration to afford certain legal rights; and for connected purposes.

The terms "common law wife" or "common law husband" are frequently used to describe people who live together. There are various urban myths about what the terms mean and about what rights people have over one another or over one another's property after they have lived together for a period of time. The time could be six months or two years--it all depends on what one hears. However, in British law there is no such person as a common law wife or husband; no legal

---

<sup>43</sup> HC Deb 24 October 2001 cc 321-5

Available at:

[www.publications.parliament.uk/pa/cm200102/cmhansrd/cm011024/debtext/11024-15.htm#11024-15\\_head1](http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm011024/debtext/11024-15.htm#11024-15_head1)

rights or responsibilities are earned by people who live together in a relationship...

What do I seek to do through the Bill? In July, my constituent, Rose Green, visited my advice surgery. She had lived with John Pendlebery for more than 12 years; they were engaged but they had never married--they never got around to it. They loved each other and saw no reason to change their situation. They expected to spend the rest of their lives together, but in September last year John Pendlebery died tragically and suddenly from a brain haemorrhage. That is when Rose found out that people who live together have no rights or responsibilities towards each other. She was not allowed to register John's death. She was not allowed to sign for his funeral. She even had to get his family's permission to make an entry in the book of remembrance.

Rose said:

"It was as though I didn't exist, that I had never been part of his life. It was very hurtful. He was my common law husband, my partner, my best friend, my soulmate. I feel that I am John's widow, though technically I'm not. I have no status. There's no word in the English language to describe what I am to John."

That is why I seek leave to bring in the Bill, so that people like Rose and John who live together can have some rights and responsibilities towards each other...

I have recently been contacted by the Solicitors Family Law Association which also proposes that there should be a new cohabitation law, separate and distinct from matrimonial law. Those proposals are based on the experience of the association's 5,000 members in dealing with the breakdown of families, both married and unmarried. They are members of the legal professions who work daily with people in the same situation as Rose and John, their children and families. Members of the association say that the existing law is unclear, uncertain and inadequate.

I am also pleased to have the support of the Thames Valley Police Federation. It is campaigning against inequality in the police pension scheme. If unmarried police officers die, their pension dies with them, whereas if they are married an annual pension of one half of their final pension is payable to their spouse.

That inequality does not affect only a few people, as some have suggested. A recent survey showed that 52 per cent. of the 6,000 employees of Thames Valley police are unmarried; 40 per cent. of that number have said that they have no intention to marry. That means that 600 Thames Valley police officers, or 10 per cent. of that force's employees, would benefit from the Bill.

I also pay tribute to WPC Alison Brown of Thames Valley police. Alison has been in a stable relationship for more than a decade and, like all Thames Valley police officers, pays 11 per cent. of her salary into the scheme, yet should she die her partner would not be looked after. Alison has been leading a campaign for a change in the police pension scheme.

It is ironic that that situation is reflected throughout public sector pension schemes, while many private sector schemes recognise the rights of partners and allow people to nominate whomever they wish to receive benefits if they should die. Although I said that the situation for Thames Valley police is reflected throughout the public sector, that is not quite true. In July, hon. Members voted for our own scheme to allow pension benefits to be paid to unmarried partners. I supported that change and voted for it. It would be ironic if hon. Members opposed the Bill, thus denying others the rights we so recently gave ourselves. I ask hon. Members to consider how that might look outside the House.

Can we learn from the rest of the world? Is there anything similar elsewhere? In some parts of the world, people are considered to have a de facto marriage after they have lived together for a certain period. That is the case in most states in Australia. I considered that option, which would automatically cover all people who live together, but I rejected it. It is important that people choose to have rights and responsibilities towards each other and that they opt in.

If we look closer to home and to Europe, we see a different model of people who live together earning rights and responsibilities. People have to choose to opt in. The model is one of partnership registration, as I propose today. It already exists in Denmark, Norway, Sweden, Iceland, France, Germany, Belgium and the Catalonia region of Spain. Denmark has had a scheme for registration of partnerships since 1989, with the other countries following on at intervals. Virtually all our near European neighbours have introduced the change and the sky has not fallen in.

One concern about the Bill is the financial implication. It would amend social security legislation to place registered partners in the same position as spouses and unmarried heterosexual partners. At present, lesbian and gay partners are treated more generously under social security provision, and it seems likely that the savings to the Treasury that such a change would involve would offset any small costs arising from changes to inheritance tax and pensions.

I am also grateful for the support and help that I have had with the Bill from Stonewall and Angela Mason. Shortly after a piece appeared in my weekly newspaper, the Reading Chronicle, about Rose Green, the constituent I mentioned earlier, I was contacted by Ed and Tony who have been in a stable relationship for many years. Because he was a few years older than Tony, Ed was concerned about what would happen if he died first. I am grateful for the support that I have received from Ed and Tony in putting together the Bill, but they are not alone.

John is in a seven-year relationship. With his partner, he is buying a car, and the model comes with a year's free insurance, but that insurance applies only to what are described as "normal" couples. Therefore, John and his partner have to decide who can be insured for free--the other will have to pay.

Dick and Ben are in their 70s and have been together for 50 years. They have endured the general prejudice against the gay community, as well as some of the injustices that the Bill sets out to correct. They jointly own their home and most

other assets, so they will face massive inheritance taxes that might make it impossible for the survivor to remain in their home.

Rachel has been with her partner for 21 years, and they are life partners. Rachel has just been diagnosed with cancer and, because she is the breadwinner, that has brought home to both partners the financial, legal and other concerns that they have. Rachel says that the NHS has improved in its recognition of same-sex partners, although she has also said that one is left feeling grateful rather than with the feeling that one has the right to be recognised.

Mark wrote to me to support the Bill. He said:

"Many people criticise homosexual people for the alleged frequency and rapidity with which they change partners, yet still take the opinion that a measure to support enduring and meaningful gay relationships is also wrong."

I have introduced the Bill for that reason.

An article that appeared in The Times on Wednesday 17 October said:

"Anyone who registers a death on a death certificate must indicate the capacity"--

Mr. Deputy Speaker (Sir Alan Haselhurst): Order. I am afraid that the hon. Lady has had her allocated time.

**Mr. Stuart Bell (Middlesbrough):** I oppose this ten-minute Bill. [Interruption.] I oppose it notwithstanding the comments made behind me and I do so as a Member of Parliament, as the Second Church Estates Commissioner and on behalf of my constituents. My hon. Friend the Member for Reading, East (Jane Griffiths) knows that I hold her in the highest respect and I accept fully her right to introduce the Bill. She has mentioned a number of constituency cases, so I will mention some constituents of mine.

As the Second Church Estates Commissioner, I put my opposition to the Bill crisply and succinctly. Marriage, as the law and as the Church of England understands it, is a commitment between one man and one woman. There is no provision in the Church's understanding for anything other than such a union in marriage. As the House of Bishops makes clear, marriage is a pattern that is given in creation and is deeply rooted in our social instincts. Marriage is not, of course, the only pattern given us for a life of love. Unmarried people may have a different pattern of loving relationships that are also to be valued and appreciated.

The Church recognises that love is not only a question of intimate relationships. Married people love others as well as their partners; they love their children, their friends, strangers and sometimes even their enemies.

I respect my hon. Friend, but I wish to refer to some of the concerns of the constituents who have written me. Constituents from whatever constituency have equal rights and they are entitled to be heard in the House.

One constituent has written to say that the Bill is an attempt to bring in by another route what are, effectively, same-sex marriages. The briefing that my hon. Friend sent me on how civil partnership works in France confirms that. She says that, once registered, the partners enjoy virtually the same tax, social security and property and inheritance rights and obligations as married couples except for the fact that they are not allowed to adopt children. Couples who have a civil registration will, in reality, have all the rights of a married couple. That is also clear from the wording that states that Bill would provide

"for registration to afford certain legal rights".

Such registration is not needed for heterosexual couples and my constituent would not wish it be extended to same-sex couples.

My constituent also points out that there is nothing to prevent such couples from making wills in one another's favour and that my hon. Friend's Bill would bring about a major redefinition of what is involved in marriage.

Homosexual relationships are not new but--notwithstanding references to other jurisdictions-- every society has restricted marriages to heterosexual relationships that are intended to be monogamous and for life. Were there to be such a major change from that concept, there should be not only a public debate but a referendum. In any event, the Government's position is that marriage is the surest foundation for raising children and remains the choice of the majority of people in Britain.

I also draw the House's attention to the categorical assurance that the then Home Secretary, my right hon. Friend the Member for Blackburn (Mr. Straw), gave to me on the Floor of the House in the debate reported in Hansard on 25 June 1999, at column 22 of volume 324. He said that there would be no reduction in the age of consent to 14 for homosexual acts; that no legislation that suggested an acceptance of homosexual marriages would be proposed by the Government; and that there would be no legal adoption of children by homosexual couples. The former Home Secretary gave me undertakings on all three points and said that it was not the Government's intention to introduce legislation in respect of any of those matters. I shall seek the same undertakings from the current Home Secretary.

I am on public record as being totally opposed to any form of discrimination--whether in the work place or anywhere else--in relation to one's sexuality. However, I oppose the concept of civil partnership that my hon. Friend proposes. It would provide the same rights as those conferred by marriage, leading to an unravelling of the undertaking given to me by my right hon. Friend the Member for Blackburn.

I shall oppose the Bill for all those reasons. I urge all my right hon. and hon. Friends to follow me in the Division Lobby.

Question put, pursuant to Standing Order No. 23 (Motions for leave to bring in Bills and nomination of Select Committees at commencement of public business):--

The House divided: Ayes 179, Noes 59.

### **C. Progress of the Bill**

There is little chance of the Bill becoming law in this Session. It ran out of time during its second reading debate on 23<sup>rd</sup> November and a provisional date for resumption of the second reading debate has been set for 10<sup>th</sup> May 2002, when it is second in the list of Private Members' Bills due to be debated. Even if the Bill received a second reading on that date and went on to complete the rest of its Commons stages, there would probably be insufficient time for it to be passed by the Lords.

## **V The *Civil Partnerships Bill***

### **A. The Content of the Bill**

On 9<sup>th</sup> January 2002, also in response to concerns about the lack of legal recognition for cohabitants, Lord Lester introduced his *Civil Partnerships Bill* to the Lords.<sup>44</sup>

On 11<sup>th</sup> February, Lord Lester stated that he would not be proceeding with the Bill this session. This was to allow the completion of a cross-departmental Government review of the impact which the proposed reforms would have. The review is being co-ordinated by the Cabinet Office. Lord Lester stated that he would call for a Select Committee of the House of Lords to examine the question of reform once the Government has concluded its review in autumn 2002.<sup>45</sup>

However, this paper examines the provisions of Lord Lester's Bill in order to present an analysis of the different approaches that have been taken to the question of reform.

Lord Lester's Bill makes provision for the registration of partnerships between cohabitants of the same or opposite sex. The Bill sets out what rights registered partners will be entitled to, and also regulates the ending of a civil partnership.

**Part 1** deals with the formation of a civil partnership. It provides for the registration of a relationship between two individuals. Civil partnerships would be formed voluntarily by means of a procedure recorded by a registrar or other public official. Certain conditions must be satisfied before the relationship can be registered. A partner must be over the age

---

<sup>44</sup> HC Deb 9th January 2002 Col 561 available at:  
[www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20109-03.htm#20109-03\\_head0](http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20109-03.htm#20109-03_head0)

of 18, not already party to a marriage or civil partnership, and not a “close relative” within the prohibited categories.<sup>46</sup> If these requirements are not met, the partnership may be annulled.<sup>47</sup> Partners must apply to register their partnership with the Registrar General in the prescribed form.<sup>48</sup> A record would then be made of the civil partnership which would be available for public inspection.<sup>49</sup>

**Part 2** deals with the effect of a civil partnership. It sets out the legal framework within which civil partnerships will function. The general purpose of this part of the Bill is set out in an introductory paragraph:

This Part has effect for the purposes of establishing a framework for the mutual care and support of the partners to a civil partnership and includes provision—

- (a) with respect to the partners’ respective entitlements to the communal property belonging to them;
- (b) to enable the partners to organise their affairs with a view to securing protection for their interests by means of an agreement as to their respective entitlements to property;
- (c) to secure that a civil partner can, in the event of incapacity affecting the other partner, contribute to decisions affecting the well-being of the other partner;
- (d) to treat partners in a civil partnership as a single economic unit for the purpose of assessing their entitlement to means-tested benefits;
- (e) to provide the means for a civil partner to apply to the court for protection in the event that the other partner behaves in a manner that is threatening, violent or otherwise unreasonable;
- (f) to secure a certain level of security for a civil partner in respect of housing and income in the event of the death of the other partner;
- (g) to ensure that the benefit of the financial contributions made by a civil partner in respect of pensions and benefits can be made available to the surviving partner;
- (h) to provide for the right of a surviving partner to bring an action for damages in respect of any wrongful act, neglect or omission causing his partner’s death.<sup>50</sup>

---

<sup>45</sup> Press release 14<sup>th</sup> February 2002 at [www.stonewall.org.uk/home.asp](http://www.stonewall.org.uk/home.asp)

<sup>46</sup> Clause 2

<sup>47</sup> Clause 6

<sup>48</sup> Clause 3

<sup>49</sup> Clause 5

<sup>50</sup> Clause 8

Accordingly, the Bill covers a wide variety of areas including:

- (1) Arrangements regarding ownership of property (Clauses 9-11)
- (2) Taxation (Clause 12)
- (3) The legal position following incapacity of one partner (Clause 13 and 14)
- (4) Entitlement to state benefits (Clauses 15-16)
- (5) Domestic Violence Orders (Clauses 17-18)
- (6) Provision in the event of death (Clauses 19-29)

**Part 3** deals with the ending of a civil partnership. The partnership will be able to be dissolved by mutual consent or by court order.<sup>51</sup> Couples will be able to make their own arrangements for separation. Where they do not do so, a standard procedure will apply. The court will have the power to intervene to make appropriate orders in relation to the partners' property interests in the event of an application by either partner.<sup>52</sup>

The text of the Bill can be found at:

[www.publications.parliament.uk/pa/ld200102/ldbills/041/2002041.pdf](http://www.publications.parliament.uk/pa/ld200102/ldbills/041/2002041.pdf)

The content of the Bill is analysed in greater detail below in **Part VI** of this paper. In addition, a copy of explanatory notes written by Lord Lester are available from the Library upon request.

## **B. The Second Reading Debate**

The Bill had its second reading on 25<sup>th</sup> January 2002.<sup>53</sup> Lord Lester put forward his proposals as follows:<sup>54</sup>

**Lord Lester of Herne Hill** : My Lords, I beg to move that this Bill be now read a second time. The Bill enables unmarried couples living in a mutually supportive relationship to make provision for their joint protection within a coherent legal framework...

What is the pressing social need for legislation of this kind? English law gives full effect to the bond between couples if they are lawfully married, but not if they are unmarried. Whether people living together are of the same sex or of both sexes, the law treats them much less favourably than married couples, even if they have close and long-standing relationships. Cohabiting partners, unlike

---

<sup>51</sup> Clauses 31 to 34

<sup>52</sup> Clauses 35 to 39

<sup>53</sup> HL Deb 25 Jan 2002 Col 1692

[http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20125-01.htm#20125-01\\_head1](http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20125-01.htm#20125-01_head1)

<sup>54</sup> Reproduced in part.

married ones, do not enjoy a standard set of legal rights and responsibilities. In several ways their legal position is either inferior or not recognised as a family status at all.

Gay and lesbian couples suffer especially from this ancient source of injustice. As Justice Ackermann recently noted, for a unanimous Constitutional Court of South Africa in the *National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs* case, same sex partners are as capable as heterosexual spouses,

"of forming intimate, permanent, committed, monogamous, loyal and enduring relationships, of furnishing emotional and spiritual support; and of providing physical care, financial support and assistance in running the common household".

Justice Ackermann also rightly observed that the message of the denial of equal rights to same sex as to opposite sex partners,

"is that gays and lesbians lack the inherent humanity to have their families . . . respected or protected. It serves in addition to perpetuate and reinforce existing prejudices and stereotypes" ...

The problems covered by the Bill stem from the lack of a proper legal framework recognising the status of unmarried cohabiting couples. English law lags far behind many European and Commonwealth countries in this respect; countries as diverse as France, Germany and the Netherlands, as well as the Nordic countries, and Australia, Canada and New Zealand.

While the position in England and Wales is largely stagnant, in Scotland, the Scottish Executive has adopted the Scottish Law Commission's 1992 proposals on reform of cohabitation law, and they are likely to be enacted in the near future. Furthermore, in Northern Ireland the Law Reform Advisory Committee has made important recommendations, including the automatic sharing of beneficial interests of the family home purchased or transferred after a cohabitation period of two years.

But in England and Wales, when it comes to important questions of inheritance, pensions, next-of-kin entitlements and social security, cohabitants cannot obtain full recognition of their relationship. To take one recent example, Anna Homsí was the long-term partner of an SAS member killed in Sierra Leone. Because they were not married, Anna was refused a war widow's pension by the Ministry of Defence, and although eventually she received an *ex gratia* payment, the government scheme continues to discriminate against unmarried couples.

Unmarried couples who cohabit face immense and distressing difficulties in securing legal recognition of their caring and enduring family lives. They do not enjoy full rights to communal property, or the right to be treated as next of kin by state agencies such as hospitals in the event of serious illness, or to make beneficial pension and life assurance arrangements. Unlike widows and widowers, they are not relieved from inheritance tax on the death of their partner.

Gay people have notoriously experienced cruel treatment after their partners have died, especially if they died intestate, when members of the family of the deceased partner, refusing to accept the relationship, have taken over the home and the property which the partners have shared in common for many years. It is even uncertain whether cohabitation contracts are enforceable in English law.

Many pension schemes make no provision for survivor benefits for same-sex couples. The Fatal Accident Act 1976 does not allow same-sex partners to claim bereavement damages for the wrongful death of a partner. The Law Commission has recommended that this injustice should be removed. An opposite-sex partner cannot even register her partner's death or sign for his funeral.

On the other hand, there is the anomaly that, because their relationship is not recognised, same-sex couples do not have their means assessed as a couple for the purposes of income tax and social security...

[The increase in] cohabitation outside marriage has not yet been recognised through any coherent law reform ...

English marriage law consists of a centuries-old accumulation of legislation and common law precedents reflecting traditional religious and social concepts from [1753]... and well before. For those who choose to marry, whether from religious conviction or otherwise, the institution of marriage will always remain and will always be fully protected. Indeed, a civil partnership may often lead to a full religious or civil marriage. But many heterosexual couples do not wish to organise their common life in this way, and same-sex couples, of course, cannot choose to do so.

Along with the increasing number of heterosexual couples choosing not to marry, or choosing to cohabit before they eventually do marry, there has been an increase in the number of homosexual men and women who wish to secure public and legal recognition of their partnerships. Their wish should surely be respected.

The time is over-ripe for legislation to create a legally recognised civil partnership system. The law needs to do more than to equalise the position between same-sex and opposite-sex couples because of the inadequate nature of the rights conferred on unmarried couples generally. The Bill seeks to achieve a law which gives full partnership rights and responsibilities to all mature adults, whether same sex or opposite sex, who wish to enter into a binding legal compact to organise their common life together.

Members of the other place have already voted to allow pension rights for their own unmarried partners. In the words of Angela Mason,

"If it's good enough for them, it's good enough for us".

The Civil Service pension scheme, too, is relaxing its rules on dependants from October. According to a well-informed article in the Financial Times on 10th

January by Jean Eaglesham and Robert Budden, the cost implications of extending pension benefits have not deterred the private sector.

The Bill creates a code which consenting unrelated adults can agree to adopt. It is a reform that works for both same-sex and opposite-sex couples who want to support and care for each other by entering into a civil partnership ...

In the other place, it is noteworthy that Jane Griffiths, the Labour MP, was given leave on 24th October 2001 to bring in her Bill on the subject by 179 votes to 59. We hope that, despite the difference in age and generation, this Bill will have strong support in this, if I may respectfully say so, more elderly House too. The Bill reflects a core Liberal Democrat policy commitment, but we hope that it will have support from all parts of the House, as well as from the younger and democratically accountable other place.

...Detailed Explanatory Notes, ... are available in the Printed Paper Office, together with an opinion by my colleague, David Pannick QC, explaining his view that the Bill is fully compatible with the European Convention on Human Rights...

With all respect to the Christian Institute, which organises political lobbies, and to today's Daily Telegraph, the Bill is not a threat to marriage. The fact that for many people marriage is the best framework in which to raise children is no reason for the state to fail to protect those who choose to cohabit, or who have no choice. The Bill may well actually promote marriage, since many heterosexual couples who have been successful and happy in a civil partnership may decide in the light of their experience to move to a religious or civil marriage. That is a matter of personal choice. In any event, it is unjust to continue to penalise opposite sex couples for not choosing to marry - unjust to them and to their children. They need legal protection and encouragement to live together as stable and loving families.

Civil partnership provides the means of allowing couples who cannot or would not marry to base their common life on a firm legal foundation. The Bill enables men and women to come together to form a caring relationship of mutual support protected by law. It provides fair and appropriate remedies for different family situations. It may be criticised for not going further in its scope, but we have deliberately decided to introduce a measure conspicuous for its moderation....

I commend the Bill to the House.

Lord Alli, Earl Russell, Baroness Rendell of Babergh, Baroness Ludford, Baroness Taylor of Camden, Lord Dholakia, Baroness Thomas of Wallisford, Baroness Kennedy of the Shaws, Lord Rennard, Baroness Howe of Idlicote, Baroness Massey of Darwen, and Lord Goodheart spoke in support of the Bill.<sup>55</sup>

---

<sup>55</sup> HL Deb 25 Jan 2002 Col 1697 *et seq*

Baroness Wilcox gave limited support to those provisions of the Bill which would afford legal protection to same sex couples in stable long-term relationships.<sup>56</sup> However, she argued that the provisions on heterosexual couples should not be included because civil registration of marriages is already available. In addition, Baroness Wilcox stated:

Cohabiting couples can still gain the majority of benefits included in the Bill by instructing a solicitor or by going through the courts. They can, for example, set up a cohabitation arrangement; they can write a will.

The Lord Bishop of Winchester opposed the extent of the current Bill, arguing that it undermined the institution of marriage. He suggested that a case could be made for an alternative Bill. He envisaged that this would give a small number of people in long term same sex relationships a limited number of rights. He stated that a more limited approach would adequately address the injustices currently suffered by same sex cohabitants.<sup>57</sup> Lord Elton similarly said the sanctity of marriage would be undermined by the Bill attempting to give parity of status to civil partnerships.<sup>58</sup>

It seems to me that the Bill is bound to have the effect of further undermining, in the eyes of present and future generations, the "institution" of marriage. To undermine marriage is, as the Chief Rabbi has pointed out, like destroying a precious ecosystem on which the security, the maturing, the well-being and the wholesomeness, not only of countless individuals but of our society, now and in the future depends.

I believe that the Bill tends to undermine marriage because it seems to give official backing to the belief already widely held--and often, I recognise, for understandable reasons--that life-long exclusive commitment is no longer really possible. Yet most people still want to marry and 60 per cent of marriages last "till death us do part".

Still more regrettable and damaging, the Bill seems to give official backing to the belief that lifelong exclusive commitment is simply not desirable and that this is a bond that human beings are better and happier without.

Lord Ackner agreed that the Bill would jeopardise the institution of marriage.<sup>59</sup>

The Lord Bishop of Guildford spoke in praise of marriage as unique and beneficial across all faiths. He acknowledged the hardships faced by same sex couples who wanted a to register their long-term commitment. He stated that while he had no objection to civil partnership registration *per se*, the Government should undertake to review the hardships

---

<sup>56</sup> *Ibid.* Col 1699

<sup>57</sup> *Ibid.* Col 1703

<sup>58</sup> *Ibid.* Col 1713

<sup>59</sup> *Ibid.* Col 1716

faced by cohabitants. This, he suggested, would achieve the correct balance. It would address the injustices suffered by a few, while not undermining the strength provided by marriage.

The position of the Government and the Official Opposition are considered below in part VII.

### C. Progress of the Bill

On 11<sup>th</sup> February, Lord Lester stated that he would not be proceeding with the Bill this session. This was to allow the completion of a cross-departmental Government review of the impact that the proposed reforms would have. The review is being co-ordinated by the Cabinet Office.<sup>60</sup> Lord Lester stated that he would call for a Select Committee of the House of Lords to examine the question of reform once the Government has concluded its review in autumn 2002.<sup>61</sup>

## VI Comparative Analysis of the Bills

The Bills are broadly similar in that they seek to introduce a system of partnership registration for same and opposite sex partners. Legal responsibilities and benefits follow from registration.

Both Bills have the same three part structure. The first part provides that a partnership can be registered, sets out how a couple can register a partnership, and who is entitled to do so. The second part details the duties and benefits which follow from partnership registration. The third part provides for the dissolution of the partnership and the consequent allocation of property.

However there are obvious differences in both style and the content.

In terms of style, Lord Lester's *Civil Partnership Bill* prescribes the rules of how the partnership registration will operate in detail. In contrast, Jane Griffith's *Relationships (Civil Registration) Bill* makes reference to current legislation for registration and recognition of the rights of spouses. The existing legislation is extended to include registered partners. The resulting difference in detail is reflected in the difference in length of the Bills, numbering 25 and 4 pages respectively.

In terms of content, there is a large overlap between the rights and duties which follow from registration. However, there are also areas which only one Bill addresses.

---

<sup>60</sup> See below under VII(A) "The Government's Position"

<sup>61</sup> Press release 14<sup>th</sup> February 2002 at [www.stonewall.org.uk/home.asp](http://www.stonewall.org.uk/home.asp)

The differences are apparent upon an examination of each of the three parts of the Bills.

## **A. Registration**

Lord Lester's Bill provides that a civil partnership may be registered with the Registrar General.<sup>62</sup> Certain conditions must be fulfilled.<sup>63</sup> Both parties must be over 18, not already married or a registered partner, and not a close relative. One notable condition is that the parties must have lived together in the same household for six months.<sup>64</sup> There is no equivalent condition in Jane Griffith's Bill.

Lord Lester's Bill then provides the exact procedure for how a relationship must be registered. The application must be in the specified form and contain specified information.<sup>65</sup> The parties must make a declaration of partnership in writing, signed and witnessed by two independent witnesses.<sup>66</sup> The declaration of partnership must contain certain prescribed information including a statement that the applicant is fully aware of the gravity of the financial and emotional responsibilities of supporting and caring for the other partner that he is undertaking.<sup>67</sup>

The Registrar General may refuse to register the partnership if the conditions are not fulfilled. Otherwise he must register the partnership within one month.<sup>68</sup> It becomes a criminal offence to register a partnership knowing one of the preconditions had not been fulfilled, or being reckless as to whether it had been.<sup>69</sup> In addition, either party may apply to the Court to have the partnership annulled if it transpires that one of the preconditions was not satisfied.<sup>70</sup>

The Registrar General is obliged to keep a record of the civil partnership.<sup>71</sup> This is available to the public on request.<sup>72</sup> The record must include various relevant events. For example, any property agreement or power of attorney made under the terms of the Bill must be recorded, as must any cessation order following the breakdown of the partnership.<sup>73</sup>

In contrast, Jane Griffith's Bill does not prescribe for the procedure to be followed in such detail. Clause 1(1) simply provides:

---

<sup>62</sup> Clause 1

<sup>63</sup> Clause 1(2) and Clause 2

<sup>64</sup> Clause 2(1)(c)

<sup>65</sup> Clause 3(2)

<sup>66</sup> Clause 3(3)

<sup>67</sup> Clause 3(4)

<sup>68</sup> Clause 4

<sup>69</sup> Clause 3(7)

<sup>70</sup> Clause 6

<sup>71</sup> Clause 5

<sup>72</sup> Clause 5(3)

<sup>73</sup> Clause 5(5)

Two persons, at least one of whom is resident in the United Kingdom, may register a relationship upon the issuing of a licence by a registrar following the making before that registrar of a declaration of partnership.

The procedural formalities are contained in Clause 1(5). Clause 1(5) states that parties must give notice of the partnership in accordance with the formalities for giving notice of marriage contained in section 27 of the *Marriage Act 1949*. Section 27 also obliges a registrar to maintain a record of marriages. It may be intended that this obligation is extended to registered partnerships by the Bill, although it does not necessarily follow from the wording of the Bill.

Jane Griffith's Bill also provides conditions for eligibility. This is achieved by incorporating the existing statutory restrictions which apply to marriage.<sup>74</sup> The parties must be over 16, not close relatives and such like.<sup>75</sup> Thus the age of eligibility is slightly younger under the *Relationships (Civil Registration) Bill*, than under the *Civil Partnerships Bill*, where the minimum age is 18.

## **B. Rights and Duties**

The style of each Bill in specifying the rights and duties of partners can also be contrasted. Again Jane Griffith's Bill extends current statute law, which confer rights on spouses, to include registered partners. Thus, the Bill incorporates partner rights by reference to existing legislation.<sup>76</sup> Although Lord Lester's Bill also makes some reference to existing statute law, it contains far more detail on the precise operation of the partners' entitlements in different situations.

In addition to the difference in style, different rights and duties are specified in each Bill. However, there is considerable overlap as a comparison of the respective provisions demonstrates.

### **1. Rights and Duties Common to Both Bills**

#### **Inheritance**

Both Bills stipulate that the registered partner may have the right to inherit some or all of his partner's estate, if the partner dies without making a will. The registered partner is also entitled to apply to the court under the *Inheritance (Provision for Family and Dependents) 1975* if no provision (or inadequate provision) has been made for him either by will or by operation of the rules of intestate succession.

---

<sup>74</sup> Clause 1(2) to (4)

<sup>75</sup> Section 1 to 3 *Marriage Act 1949*

<sup>76</sup> With the exception of Para 4 of the Schedule (additional provisions in relation to occupational pensions)

A comparison of the respective clauses in each Bill that deal with inheritance illustrates the difference in the style of each.

Jane Griffith's *Relationships (Civil Registration) Bill* provides:

### **Inheritance**

1. For the purposes of claims made against the estate of a deceased registered partner, section 46 of the Administration of Estates Act 1925 (c.23) (succession to real and personal estate on intestacy), the Non-Contentious Probate Rules 1954 and s1(1)(a) of the Inheritance (Provision for Family and Dependents) Act 1975 (c. 63) (application for financial provision from a deceased's estate), a party to a registered relationship shall be treated in the same manner as a spouse.

Lord Lester's Bill makes similar provision in the following way.

### **22. Intestacy**

(1) This section applies where—

(a) a partner ("B") in a civil partnership dies domiciled in England and Wales;

(b) B does not leave a will which effectively disposes of the whole of his property; and

(c) the other partner ("A") survives B by a period of 28 days beginning with the day on which B died.

(2) Where B dies leaving a will which effectively disposes of part of his property, the following provisions of this section have effect only as respects the part of B's property that is not effectively disposed of (and subject to the provisions contained in the will).

(3) The residuary estate of B is to be distributed in accordance with subsections (4) and (5).

(4) If B leaves no issue, the residuary estate is to be held on trust for A absolutely.

(5) If B leaves issue —

(a) A takes the personal chattels absolutely;

(b) the residuary estate stands charged with the payment to A of a net sum of £125,000; and

(c) subject to providing for that sum, the residuary estate is to be held —

(i) as to one half, upon trust for A during his life and, subject to that life interest, on the statutory trusts for the issue of B;

(ii) as to the other half, on the statutory trusts for the issue of B.

(6) The reference to statutory trusts is to be construed in accordance with subsection (1)(i) of section 47 of the Administration of Estates Act 1925 (c. 23);

and the remaining provisions of subsections (1) and (2) of that section apply to the statutory trusts under this section as they apply to the statutory trusts under Part 4 of that Act.

(7) The Lord Chancellor may by order under section 30 —

- (a) amend subsection (5)(b) by varying the amount of the net sum; and
- (b) specify the rate of interest to be included in the net sum by virtue of subsection (8).

(8) “Net sum” means a sum free of death duties and costs and includes interest on the sum (payable primarily out of income) which is to be calculated from the date of B’s death until the date of payment.

(9) “Personal chattels” has the same meaning as in the Administration of Estates Act 1925 (c. 23).

### **23. Right of action under Inheritance (Provision for Family and Dependants) Act 1975**

(1) “Relevant order” means an order under section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 (c. 63) (“the 1975 Act”) or an interim order under section 5 of the Act.

(2) The court may make a relevant order if—

- (a) one partner (“B”) in a civil partnership dies domiciled in England and Wales;
- (b) an application is made to the court by the surviving partner (“A”); and
- (c) the court considers that the disposition of B’s estate effected by B’s will, the law relating to intestacy or both does not make such provision as it would be reasonable in all the circumstances for A to receive for his maintenance.

(3) Where an application is made by A for an order under section 2 of the 1975 Act, **the court is to have regard to the age of A, the duration of the civil partnership** and the contribution by A to the welfare of B’s family, including any contribution made by looking after the home or caring for the family.

Apart from the stylistic differences, the content of the two Bills in relation to inheritance differs slightly. The circumstances in which the intestacy rules operate are different in each Bill. For example under Lord Lester’s Bill, provision for the surviving partner will depend on whether there are children of the deceased to be taken into account. In contrast, by incorporating s46 of the *Administration of Estates Act 1925* Jane Griffith’s Bill provides that parents and siblings must also be taken into account.

The Bills make different provision for what an applicant under the *Inheritance (Provision for Family and Dependents) Act 1975* is entitled to. Under the *Relationship (Civil*

*Registration) Bill* a partner is to be treated as a spouse. Therefore, the partner is entitled to financial provision as would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that financial provision is required for maintenance. In contrast, under the *Civil Partnership Bill* a partner is only entitled to such provision as would be reasonable in all the circumstances for **maintenance**.

Finally, under Jane Griffith's Bill a partner is primarily entitled to a grant of administration of the deceased partner's estate (as a spouse is currently entitled to) under the *Non-Contentious Probate Rules 1954*.<sup>77</sup>

### **Housing Succession**

Both Bills state that a registered partner may be a successor to a tenancy under the Rent and Housing Acts.<sup>78</sup> The only apparent difference is that Lord Lester's Bill includes succession to a statutory tenancy within the meaning of the *Rent (Agriculture) Act 1976*.

### **Incapacity**

The Bills differ in their approaches to incapacity. Both provide that the registered partner becomes the "nearest relative" for the purposes of the *Mental Health Act 1983*.<sup>79</sup> Both enable the partner to register the death of the other partner.<sup>80</sup>

Additionally, Jane Griffith's Bill provides that a party to registered partnership shall be treated as next of kin.<sup>81</sup> Lord Lester's Bill provides the mechanism for each partner to create a continuing power of attorney under the Bill.<sup>82</sup> The power of attorney would enable a doctor or other person, who has make decisions affecting the incapacitated partner's welfare, to take account of the directions of the other partner.

### **Pensions and Social Security**

The Bills both bestow rights and duties under pension schemes and in accordance with social security law. However, Lord Lester's Bill is more extensive.

While both enable partners to benefit from occupational pension schemes,<sup>83</sup> Lord Lester's Bill also enables a partner to benefit under personal pension schemes, and public sector pensions.<sup>84</sup>

---

<sup>77</sup> SI 1954/796

<sup>78</sup> Namely the *Rent Act 1977*, *Housing Act 1985*, *Housing Act 1988*. *Civil Partnerships Bill* Clause 21; *Relationships (Civil Registration Bill)* Para 2 Schedule.

<sup>79</sup> *Civil Partnerships Bill* Clause 14; *Relationships (Civil Registration) Bill* Para 3 Schedule

<sup>80</sup> *Civil Partnerships Bill* Clause 20; *Relationships (Civil Registration) Bill* Para 3 Schedule

<sup>81</sup> Para 3 Schedule.

<sup>82</sup> Clause 13

<sup>83</sup> *Civil Partnerships Bill* Clause 26; *Relationships (Civil Registration) Bill* Para 4 Schedule

<sup>84</sup> Clause 27 and 28.

Both Bills entitle a party to receive bereavement payments following the death of their partner.<sup>85</sup> Lord Lester's Bill makes additional provision for a partner to claim bereavement allowance akin to that available to spouses under the *Social Security Contributions and Benefits Act 1992*.<sup>86</sup>

Both Bills provide that civil partners are to be assessed as a single unit in determining whether or not they are entitled to various income-based benefits (such as Jobseeker's Allowance), and if so, how much is to be paid. This means that in making any assessment relating to any one partner, whether the other partner is working or is in receipt of benefits is taken into account. In addition, the capital and income of both partners is taken into account in making an assessment relating to one of them. Both partners cannot claim the same benefit.<sup>87</sup>

## Tax

Both Bills exempt transfers of property between spouses from inheritance tax.<sup>88</sup>

## Compensation under the Fatal Accidents Act 1976

Both Bills enable a registered partner to have a right of action under the *Fatal Accidents Act 1976* if their partner is wrongfully killed.<sup>89</sup>

## Domestic Violence

Both Bills extend protection from domestic violence to registered partners. Jane Griffiths achieves this by reference to some sections of the *Family Law Act 1996*. Lord Lester sets out explicitly the powers of the Court to make Occupation Orders and Non-Molestation Orders in certain circumstances.<sup>90</sup>

The different approaches would seem to have different practical effects. By incorporating the existing legislation, Jane Griffiths's Bill apparently extends ancillary powers to protect cohabitants. These include a power of arrest if a non-molestation order is breached,<sup>91</sup> the power of the Court to accept undertakings from the parties,<sup>92</sup> and the power of the court to make an *ex parte* order in extreme circumstances.<sup>93</sup> Lord Lester's Bill does not contain or incorporate such ancillary powers explicitly.

---

<sup>85</sup> *Civil Partnerships Bill* Clause 25; *Relationships (Civil Registration) Bill* Para 4 Schedule

<sup>86</sup> s39B

<sup>87</sup> *Civil Partnerships Bill* Clause 15 and 16; *Relationships (Civil Registration) Bill* Para 4 Schedule

<sup>88</sup> *Civil Partnerships Bill* Clause 24; *Relationships (Civil Registration) Bill* Para 5 Schedule

<sup>89</sup> *Civil Partnerships Bill* Clause 29; *Relationships (Civil Registration) Bill* Para 6 Schedule

<sup>90</sup> Clauses 17 and 18

<sup>91</sup> section 47

<sup>92</sup> section 46

<sup>93</sup> section 45

Interestingly, Jane Griffith's does not incorporate section 42 of the Family Law Act 1996 into her Bill. This is perhaps surprising as section 42 is the section that empowers the court to make a non-molestation order; although as discussed above, the ancillary powers to Non-Molestation Orders have been incorporated.

## **2. Rights and Duties Provided by Jane Griffith's *Relationships (Civil Registration) Bill* only.**

### **Immigration**

Jane Griffith's Bill provides that partners shall be treated as spouses for the purposes of immigration law.<sup>94</sup>

## **3. Rights and Duties provided by Lord Lester's *Civil Partnerships Bill* only**

### **Sharing communal property**

Communal property is to be held jointly for both partners in equal shares unless otherwise agreed, or someone other than the parties is entitled to an interest in the property.<sup>95</sup> This includes the dwelling house and other functional domestic items. The presumption of equal shares may also be overridden by the Court or both parties once the partnership has dissolved.

### **Property agreements**

The *Civil Partnerships Bill* permits partners to make a property agreement which sets out their respective entitlements to property. This will generally be conclusive of all the matters contained within it.<sup>96</sup>

### **Life Assurance**

Lord Lester's Bill enables a partner to take out a policy of life assurance on the life of the other partner.<sup>97</sup>

### **Capital Gains Tax**

No capital gains tax is payable on a transfer of assets between partners.<sup>98</sup>

---

<sup>94</sup> Para 8 Schedule

<sup>95</sup> Clause 9

<sup>96</sup> Clause 10. NB Jane Griffith's Bill acknowledges such agreements will be given effect by the Court upon dissolution subject to the interests of children of the partners, or to prevent grave financial hardship, although the *Relationships (Civil Registration) Bill* does not specify any particular procedure which *must* be followed for their valid creation under the Bill.

<sup>97</sup> Clause 19

### C. Dissolution of the Partnership

Under Jane Griffith's Bill a partnership may be dissolved by court order upon the application of one or both of the parties. The order will only be made twelve months after the date of application for dissolution. The court will decide any application for financial relief as it would an application by a spouse in divorce proceedings. Prior agreements on the ownership and distribution of property shall be given effect by the Court except where it would not be in the best interests of the child of any party, or if one partner would suffer grave financial hardship.<sup>99</sup>

Lord Lester's Bill provides that a court may order dissolution by a "cessation order."<sup>100</sup> However, there is some difference in the time-frame. No order may be considered until twelve months after the partnership was registered. The court shall order dissolution one month after the application if the application is made by both parties, and accompanied by a "final settlement arrangement" (discussed below). In all other cases, the court may make a cessation order nine months after the application for the order is received. This time frame does not apply if a partner applies for an "intervention order" (discussed below).<sup>101</sup>

The parties can agree on their respective entitlements to communal property and submit it to the court in the form of a "final settlement agreement."<sup>102</sup> In all other cases the following rules apply. Firstly, the property will be distributed according to any registered prior property agreement. If no such agreement has been made, it will be distributed according to the principles of sharing communal property set out in the Bill.<sup>103</sup> All other property is to remain in the ownership of the former partner to whom it belongs.<sup>104</sup>

Under the *Civil Partnerships Bill*, a partner may apply for financial provision (maintenance) under an "intervention order" made by the court. The court may make a number of orders in respect of entitlement to property, financial provision (by periodical payments or lump sum) and pension sharing.<sup>105</sup> In making an intervention order, the Court must have regard to similar factors to those used to determine financial provision upon divorce.<sup>106</sup>

---

<sup>98</sup> Clause 12

<sup>99</sup> Clause 3

<sup>100</sup> Clauses 31 and 32

<sup>101</sup> Clause 32

<sup>102</sup> Clause 34

<sup>103</sup> See Clause 9 discussed above.

<sup>104</sup> Clause 34

<sup>105</sup> Clause 35

<sup>106</sup> Clause 36(4) – compare Section 25 of the *Matrimonial Causes Act 1973*.

## D. Other Differences in the Content of the Bills

Lord Lester's Bill makes provision for additional regulations to be made under the proposed Act.<sup>107</sup> These empower the Lord Chancellor to make detailed provision relating to applications for registration and the keeping of the public record, for example. There is a supplementary part of the Bill which deals with questions of interpretation, jurisdiction and rules of the courts.<sup>108</sup>

## VII Responses to the Bills

### A. The Government's Position

In response to a written parliamentary question, the Government set out its position regarding Jane Griffith's Bill as follows:

**Glenda Jackson:** To ask the deputy Prime Minister what assessment he has made of the impact enactment of the Relationships (Civil Registration) Bill would have on his department; and if he will make a statement.

**Mrs. Roche:** Civil partnership registration and associated rights and responsibilities raise a number of complex issues, which have prompted a growing debate within society and the Government is watching this debate with interest.

These issues have potentially significant financial and administrative implications and the Government cannot commit themselves to making any changes in these areas before undertaking a comprehensive analysis of all the implications. The Government are examining the issues in detail. The Home Office will contribute to the work which the Cabinet Office is co-ordinating.<sup>109</sup>

The Government's view of Lord Lester's Bill is similar, as was shown in a speech delivered by the Leader of the House of Lords, Lord Williams of Mostyn during the second reading debate:<sup>110</sup>

Your Lordships are entitled to know the Government's position and I state it plainly. I can confirm that the Government will look very carefully at the implications of setting up such a scheme of civil partnership registration, rights and responsibilities. The noble Baroness, Lady Buscombe, is right. Questions need to be answered. She is right in saying that we ought to see and benefit from the experience of our European partners... Of course, the French being much

---

<sup>107</sup> Clauses 7, 30 and 43

<sup>108</sup> Part 4

<sup>109</sup> HC Deb 4<sup>th</sup> February 2002 Col 708W

<sup>110</sup> HL Deb 25 Jan 2002 Col 1740

more intellectual than we, call them "civil solidarity pacts", which is marvellously Gaelic ...

The work here is at a very early stage. It was rightly pointed out that my colleague in the Commons, Jane Griffiths, introduced her Bill in October last year. Of course, work is at an early stage, but we are getting on. The first meeting was held on 9th January this year, so there has not been real delay. Sixty officials attended from across the different Whitehall departments. That will be essential. All noble Lords who have dealt with these intricacies know that, whatever the principled approach may be, the working out in practice of a large number of questions, many of which have not been exhaustively explored, will take a lot of working through...

I stress that the Government have a genuinely open mind. I cannot give any commitments at this stage, nor would your Lordships sensibly expect them, except that we shall approach this matter properly, seriously and thoroughly. The Bill has potential cost implications... There are complex inter-relating issues, not simply with regard to property, but also children and general social consequences. So we need to know in considerable detail what we are engaged on.

It may be that the noble Lord, Lord Lester, with his usual generosity, seized the appropriate moment to bring this debate to public attention, as he has undoubtedly succeeded in doing, but recognises that there are important consequential implications which we shall need to address...

A good deal has been done but before I detail it, I must stress that I agree with the noble Lord, Lord Lester. This Bill is not about marriage. It is about a different relationship, not unknown in the rest of Europe, which by and large seems to have worked satisfactorily. We are talking about civil partnership registration. That is a contractual obligation which encapsulates rights and responsibilities and which, for many of our fellow citizens, is desired as a public recognition of what is essentially a personal and private commitment. That is what we are talking about. This has nothing to do with an attack on the institution of marriage.

...The Government recognise that marital partnerships remain the choice of many people who want to build stable relationships because they want to raise children and that that stability and that type of commitment are of critical importance to children, to families and to wider society. However, the two are not exclusive and in a diverse society, there is no reason why we should be stereotypical on every occasion.

We have made significant advances in dealing with same-sex and heterosexual partnerships... Since... April 2001, the criminal injuries compensation scheme was extended to cover both same-sex and heterosexual partners.

On immigration, unmarried heterosexual and same-sex couples may be eligible for leave to remain in the United Kingdom, if they have lived together for two years or more.

The point was raised that private business does better than public service. That is incorrect. These things are changing very quickly. The new Civil Service pensions scheme will offer survivor benefits to unmarried partners, whether same-sex or heterosexual. That is a very important step forward...

The question of succession arises. The Law Reform (Succession) Act 1995 states that a heterosexual unmarried partner can apply for succession rights; a same-sex partner cannot. Significant questions are raised about whether or not we deal with our fellow citizens fairly and justly. If there is significant injustice, it does not just tell itself on those who are the objects of injustice, but is an attack on the quality of our society and its stability and continuance.

The Law Commission is working on tenancy succession for same-sex partners. We expect the consultation document to be published early this year and it is hoped by the commission that there will be a final report and draft Bill by 2003. The Law Commission is also working on the property rights of home-sharers. Again, that work is continuing.

There is work being done. There is a degree of recognition. I take the theme and purpose of the noble Lord's Bill to be that these are piecemeal changes, not necessarily coherent, though just and necessary for the moment.

What the noble Lord wishes, I believe, is to remodel the availability of a wider spectrum of recognised relationships which may be available to those of our fellow citizens who feel disadvantaged, excluded and unjustly treated.

I hope that I have given as full a response as the House feels is reasonable and that I have given as positive a response as I am able to do at this time.

Following the Government's indication that it was conducting a cross-departmental review of the matter, Lord Lester stated that he would not be proceeding with his Bill in this session. He said that the best way to proceed would be for a House of Lords Select Committee to examine the findings of the review in autumn 2002.<sup>111</sup>

## **B. The Opposition's Position**

Baroness Buscombe spoke for the Official Opposition in the second reading debate:<sup>112</sup>

We cannot support the Bill. It provides rights, such as the right to inheritance and to share life assurance and occupational pensions, that are already available to couples through marriage. There is no need to create a separate category of registered civil partnerships for mixed-sex couples because anyone seeking those rights can attain them by marrying. Providing a watered-down variant of marriage

---

<sup>111</sup> See Press release 14<sup>th</sup> February at <http://www.stonewall.org.uk/home.asp>

<sup>112</sup> *Ibid.* Col 1737

would serve only to undermine the institution and increase the risk of the state intruding into people's lives in order to discover whether the extent of their cohabitation justifies the rights that they would claim.

The Bill does, however, provide us with the opportunity to consider seriously the rights of those who are not able to marry--the couples who do not have that choice, particularly same-sex couples who have a long-term stable relationship. There is no doubt that those couples face a number of real problems in their daily lives, problems that need to be addressed in a sensitive, respectful and practical way. The Bill clearly seeks to overcome statutory discrimination against those who want to make the commitment to share within a coherent framework rights and responsibilities.

In addition to those economic rights and responsibilities within a union, the Bill specifically addresses issues that test the emotional strength and heart of a relationship, such as the right of action in respect of a fatal accident, the right to register the death of a partner and the provision for the health and welfare of a partner without capacity to act--issues whereby, if a couple are in a stable relationship and unable to marry, it must be right to allow them the dignity of acting on each other's behalf in the same way as a married couple. It must be right to confront any form of discrimination that compromises mutual respect and commitment within a stable and loving relationship for no good reason...

Moving on from the principal themes, we have various concerns which I shall touch on briefly. The Bill wishes, in the words of the noble Lord, Lord Lester, in the Explanatory Notes,

"to enable cohabiting couples to live together within a stable and coherent framework of rights and responsibilities".

As I said, the Bill addresses some real practical problems requiring particular practical solutions--some of which may be legislative, others administrative, but all need to be sensitively and precisely targeted. In that context we should bear in mind that such problems are not confined to gay couples. Just as the benefits to society of marriage are clear, particularly when there are children, so is the virtue in other forms of relationship expressly excluded from the Bill.

In particular, why does the noble Lord, Lord Lester, exclude from eligible persons... "close relatives"? Why should close relatives--for example, two cohabiting sisters who may have pledged to care for each other--not register and thereby enjoy the same rights and responsibilities as others? Surely that exclusion is discriminatory in principle, particularly against the elderly. Is the noble Lord interested only in protecting the rights of couples in a sexual relationship? He may respond by saying that as two sisters they are perfectly capable of contracting to afford each other of certain rights and responsibilities. However, the same can be said of those couples who are eligible under the Bill.

There are also questions of family law. In particular, what happens to the children of a couple who have registered their partnership when that partnership breaks

down? Is the Bill specifically intended to exclude the interests of children other than in the context of the working families tax credit, property and non-molestation orders? Indeed, I feel some personal discomfort with a Bill that demands such a watershed in our thinking and our social attitudes but that does not pay more attention to children. Perhaps that is intentional, and perhaps it is right. However, it is hard to consider all the issues in a clear-cut manner since our lives and different lifestyles are so varied and often complex.

We are also concerned with regard to the cost implications of the Bill. That is an area that we would certainly want to explore further as the Bill addresses, quite rightly, a broad range of issues which carry financial consequences...

We are also interested in those conditions that must be satisfied prior to the formation of a civil partnership. In particular, the noble Lord, Lord Lester of Herne Hill, has specified that the prospective partners must have lived together for a minimum period of six months before the relationship can be registered. Is it possible to demonstrate a stable relationship in that period of time?

Could the civil registration partnership be viewed as a neat way of avoiding tax and enjoying benefits without sincere commitment?

In contrast, it is very rare to find a couple, where either party is prepared to enter a marriage, without a genuine hope that the marriage will last until they are parted by death. Would it not be sensible to respond to that arguably cynical view of civil partnerships by proposing a timeframe that would, in a practical sense, police the sincerity of the commitment to the partnership?...

In that paper I used the example of the then new French institution known as "Pacs", which stands for Pacte Civil de Solidarite. Pacs allows two people to register their union and then, three years later, to enjoy the statutory rights afforded by that registration.

Did the noble Lord, Lord Lester of Herne Hill, consider [the French registration legislation] (and perhaps he did) as well as other examples where a form of civil partnership has already been introduced? For example, those registers introduced in Spain, Norway, the Netherlands, Denmark, Sweden, Iceland and/or Germany, will have been, to some extent, tried and tested.

Given that it is such a sensitive area that touches on a very broad range of issues, it must surely make sense to review, in some detail, the workings of civil partnerships by our European partners before we legislate here; after all, it does, albeit occasionally, pay to learn from experience.

In conclusion, our policies and our laws should reflect the world as it is and the questions raised by the noble Lord, Lord Lester of Herne Hill, in this Bill are timely and deserve a serious and considered response. However, we believe that there is more work to be done and we would very much welcome further in-depth discussion of all the issues.

## C. Media and Other Responses

During his speech in the second reading debate, Lord Alli quoted from an article published in *The Sun* dated 7<sup>th</sup> September 2001 by Richard Littlejohn as evidence of public opinion:

"You don't have to be Peter Tatchell to be in favour of ending discrimination against unmarried couples in certain areas. Nor do you have to support the full gay 'rights agenda' or believe that homosexual partnerships should be put on an equivalent footing to conventional marriage.

I remain implacably opposed to adoption by gay couples, artificial insemination on the NHS for lesbians, the repeal of Clause 28 and the legalisation of open-air gay sex. But the law as it stands at the moment is blatantly unfair to homosexual couples in stable, long-term relationships in the areas of health, pensions and employment benefits.

"For instance, why should a homosexual be denied visiting rights when his partner is seriously ill in hospital? Why should a man who has lived in a council flat for donkey's years be evicted when his partner dies, simply because his name is not on the rent book? Why should a lesbian have to go to an industrial tribunal to get the same employment benefits as a married colleague?"<sup>113</sup>

A selection of other press responses and articles follows:

### 1. The Daily Telegraph

All articles are available from [www.telegraph.co.uk](http://www.telegraph.co.uk)

- "Labour may give legal status to gay relationships," S Womack, 2<sup>nd</sup> November 2002.
- "Letwin backs gay rights," A McSmith, 25<sup>th</sup> January 2002.
- "Marriage works so what's the point of imitation," O Letwin, 25<sup>th</sup> January 2002.
- Opinion: "Not wedded to dogma," 25<sup>th</sup> January 2002.

### 2. The Guardian

All articles are available from the web-site [www.guardian.co.uk/](http://www.guardian.co.uk/)

- "Bill seeks rights for cohabitants," C Dyer, 11<sup>th</sup> January 2002.
- "Lords to debate civil partnerships," J Glover, 24<sup>th</sup> January 2002.
- "Tories soften line on gay partnerships," A Perkins 25<sup>th</sup> January 2002.
- "Tories oppose cohabitation bill," Staff, 25<sup>th</sup> January 2002.

### 3. The Independent

All articles are available from [www.independent.co.uk](http://www.independent.co.uk)

---

<sup>113</sup> HL Deb 25 Jan 2002 Col 1697

- “Ministers say private Bill on equality for unmarried couples is 'too early,’” M Woolfe, 11<sup>th</sup> January 2002.
- Comment: “Our Politicians Should Make a Small leap of Courage,” 11<sup>th</sup> January 2002.
- “A modest reform that Labour must dare to enact,” D McIntyre, 11<sup>th</sup> January 2002.
- “Peers and bishops attack plans for 'civil partnerships,’” M Woolfe, 26<sup>th</sup> January 2002.

#### 4. The Times

- “It’s time that unmarried couples were united in the eyes of the law,” Lord Lester, 10<sup>th</sup> January 2002, page 16.
- “The legal status of cohabitation,” Letters, 16<sup>th</sup> January 2002, page 17.
- “Is it time to bring non-married couples in from the cold?” J Copson, 11<sup>th</sup> September 2002, page 3.
- “Living together legally,” M Harper, 24<sup>th</sup> October 2002, page 13.

A BBC News Online report notes the response of Mark Harper, of the Law Society's Family Law Committee:

"Someone who has lived with their partner for 10 or 20 years, why shouldn't they be able to claim for maintenance or a share of property? And also why can't they claim on the death of their partner as that is when more rights are needed," he said.

He said the Law Society wanted the law to go further by recognising the rights of unmarried couples from the moment they moved in together.<sup>114</sup>

Additional perspectives can be found on the following web-sites:

- The Christian Institute: [www.christian.org.uk](http://www.christian.org.uk) for the publication “Counterfeit Marriage: How Civil Partnerships Devalue Marriage.”<sup>115</sup>
- Stonewall, an organisation that campaigns for the civil rights of gays and lesbians, which collaborated with Lord Lester’s Bill: [www.stonewall.org.uk/home.asp](http://www.stonewall.org.uk/home.asp)

---

<sup>114</sup> BBC News Online, “*MPs support right for unwed couples*,” 24 October 2001

<sup>115</sup> [www.christian.org.uk/html-publications/counterfeitmarriage.htm](http://www.christian.org.uk/html-publications/counterfeitmarriage.htm)

## VIII Cohabitants' Rights in Scotland

The position in Scotland is broadly similar to that of England and Wales as cohabitants are recognised in certain legal circumstances. However, the Scottish Courts have a limited power to recognise an informal Common Law marriage that arises from "habit and repute." Those married at Common Law have the same rights as regularly married couples. However, Common Law marriage is extremely rare. It is not enough for the couple to believe they are married at Common Law. To be married by habit and repute, the couple must establish two things. Firstly, that they behaved in a way which was compatible with marriage. Secondly, they must prove that their nearest friends and relatives believed they were married. The second part of the test is extremely difficult to establish. There are only about five applications to the Court of Session per year to have the marriage recognised as a Common Law marriage. The following extract from the Scottish Legal Web-site "Oracle" provides an example of a successful application:

Recently, the Court of Session was persuaded that two Catholic divorcees who had swapped rings but never formally married were married at common law. Upon swapping the rings the male romantically exclaimed, 'that's it hen', this helped to satisfy the judge of his intentions. As the couple were prevented from marrying in their church and did not wish a civil ceremony because of their faith they had set up home and acted as husband and wife. He called her 'the missus' or 'the wife' and in all the circumstances of the case the judge was persuaded that the couple had indeed been married at common law."<sup>116</sup>

In the 1992 Report on Family Law by the Scottish Law Commission (No 135) the limitations of marriage by habit and repute were documented.<sup>117</sup> Recommendations for reforming the law were made. The report advocated some limited reform of Scottish private law to enable certain legal difficulties faced by cohabiting couples to be overcome and certain anomalies to be remedied. Such reform, it said, should not undermine marriage. Nor should it undermine the freedom of those who have deliberately opted out of marriage. It should be confined to the easing of certain legal difficulties and the remedying of certain situations which are widely perceived as being harsh and unfair. The Commission conducted further consultation in 1999.<sup>118</sup>

In the same year, responsibility for family law devolved to the Scottish Parliament. The Scottish Executive published, in September 2000, a white paper proposing legislative reform. The proposals advocate a more limited reform of the law relating to cohabitants than that envisaged by the original 1992 Commission report.

---

<sup>116</sup> Citing *The Glasgow Herald*, 8<sup>th</sup> April 2000 p4

[www.oraclelaw.co.uk/Scotland/family/marriage.htm#1](http://www.oraclelaw.co.uk/Scotland/family/marriage.htm#1)

<sup>117</sup> [www.scotland.gov.uk/justice/familylaw/slc.asp](http://www.scotland.gov.uk/justice/familylaw/slc.asp)

<sup>118</sup> [www.scotland.gov.uk/library/documents-w8/isfl-00.htm](http://www.scotland.gov.uk/library/documents-w8/isfl-00.htm)

The Executive adopted a specific policy approach to marriage and cohabitation:

Marriage provides the most recognisable way for a couple to signal their commitment to build a life together as partners and, where children are brought into the family, as parents. Men and women have a right to choose not to marry and to found stable and loving families on cohabitation. But we do not think it right to remove the legal distinctions between marriage and cohabitation. People should make the choice to marry or not in the knowledge that the legal consequences will be different. This is necessary to ensure that marriage has real meaning and is not just a ceremonial addition to a couple's status.<sup>119</sup>

The white paper proposes the extension of protection from domestic violence to cohabitants.<sup>120</sup> Proposals for financial provision for cohabitants were also made:

- The presumption of equal shares in household goods in section 25 of the Family Law (Scotland) Act 1985 will be applied, with modifications, to cohabitants.
- The presumption of equal shares in money and property derived from a housekeeping or similar allowance in section 26 of the Family Law (Scotland) Act 1985 will be applied, with the necessary modifications, to cohabitants.
- A cohabitant whose relationship has terminated will be able to apply to a court for financial provision from the ex-partner where there has been economic disadvantage
- Provision will be made for cohabitants whose partners have died to claim a share out of their partner's estate.<sup>121</sup>

The paper specifically rules out the abolition of marriage by habit and repute.<sup>122</sup>

Consideration of reforming the law relating to same sex cohabitants was not in the remit of the 1992 Report of the Scottish Law Commission and is similarly not addressed in the Scottish Executive's white paper.<sup>123</sup>

This white paper and the responses to it can be found on the web-site of the Scottish Executive:

[www.scotland.gov.uk/justice/familylaw/default.asp](http://www.scotland.gov.uk/justice/familylaw/default.asp)

---

<sup>119</sup> Part 6 at [www.scotland.gov.uk/justice/familylaw/pac-03.asp#b6](http://www.scotland.gov.uk/justice/familylaw/pac-03.asp#b6)

<sup>120</sup> Part 3 at [www.scotland.gov.uk/justice/familylaw/pac-02.asp](http://www.scotland.gov.uk/justice/familylaw/pac-02.asp)

<sup>121</sup> Part 7 at [www.scotland.gov.uk/justice/familylaw/pac-04.asp](http://www.scotland.gov.uk/justice/familylaw/pac-04.asp)

<sup>122</sup> Part 10 at [www.scotland.gov.uk/justice/familylaw/pac-04.asp#b8](http://www.scotland.gov.uk/justice/familylaw/pac-04.asp#b8)

<sup>123</sup> [www.scotland.gov.uk/library2/doc11/rfl-04.asp#8.5](http://www.scotland.gov.uk/library2/doc11/rfl-04.asp#8.5)

The Programme for Government for the Scottish Executive states that it will bring forward a draft bill to reform family law during this session of the Scottish Parliament. This will include provisions to implement the white papers proposals in relation to cohabitants. The Bill is currently being drafted, and it is expected to be published in draft in November 2002.<sup>124</sup>

## IX Cohabitants' rights in Northern Ireland

In its 1999 report entitled "Matrimonial Property" the Law Reform Advisory Committee reviewed the law relating to heterosexual cohabitants and recommended various reforms. It found that fewer couples live in a cohabiting relationship in Northern Ireland compared to the rest of the UK. The vast majority of couples live together in a spousal relationship.<sup>125</sup> However, the report expected the number of cohabitants to increase due to the factors outlined in the **Introduction** to this paper.<sup>126</sup>

The legal position in Northern Ireland is broadly similar to that in England and Wales. Cohabitants have fewer rights than are accorded to spouses. Particularly, after the breakdown of a partnership, the courts have no power to redistribute property, except according to ordinary property principles that apply between unconnected individuals. Common law marriage has not been recognised in Northern Ireland since 1853.

Some statutory reforms have increased the legal status of opposite sex cohabitants. Similar provisions exist as those in England and Wales regarding inheritance. These enable a cohabitant who was maintained or supported by her partner to apply to the Court for reasonable provision if the partner dies intestate.<sup>127</sup> Cohabitants also have a right to protection from domestic violence, including the right to occupy the family home if the court orders it.<sup>128</sup> Finally, under the *Children (Northern Ireland) Order 1995* cohabitants who do not own the family home may be able to stay in the property after the breakdown of the relationship for the purpose of securing housing for a child of the couple.<sup>129</sup>

In the 1999 report the Law Reform Advisory Committee recommended changes to the law.<sup>130</sup> Importantly, they recommended that cohabitants should automatically share communal property in equal shares, unless they agreed otherwise.<sup>131</sup> To qualify as a cohabitant, a couple would have to establish a degree of permanence to their relationship

---

<sup>124</sup> S1W-19540 14th November 2001

<sup>125</sup> Discussion Paper Number 5 available from the Belfast Stationary Office or [www.olrni.gov.uk/advisory-site/home.htm](http://www.olrni.gov.uk/advisory-site/home.htm)

<sup>126</sup> *Ibid* Para 4.5

<sup>127</sup> Inheritance (Provisions for Family and Dependents) (Northern Ireland) Order 1996

<sup>128</sup> Family Homes and Domestic Violence (Northern Ireland) Order 1998 1998/1071 (N.I.6)

<sup>129</sup> 1995/755 (N.I.2)

<sup>130</sup> *Op. Cit.* See summary at pages 2 to 5

<sup>131</sup> Recommendation 4 at 1.5.4

in one of two ways. They would have to establish that they had been living in the same household for two years as husband and wife.<sup>132</sup> Alternatively, they would have to be living together as husband and wife and have had a child together.

In the case of any other cohabitants the court should determine what it considers to be a just division taking account of various factors. The factors would include, for example, the reasonable expectation of the parties, and the degree of permanence of the relationship.<sup>133</sup>

## **X Cohabitation legislation in other countries**

Many countries give unmarried couples certain rights in particular circumstances, as in England and Wales. However, some countries have gone further than this ad hoc provision, and have introduced a general legal status for unmarried couples through partnership registration. Often, this was in response to difficulties faced by same sex partners under the existing regimes. The following information on the rights of same sex partners across the world can be found at the International Lesbian and Gay Association web-site.<sup>134</sup>

### **A. France**

France introduced the *Pacte Civil de Solidarité* (PACS) in 1999.<sup>135</sup> This provides a legal status for cohabitants, whether heterosexual or homosexual. A cohabitant may apply to his local municipal magistrate for a contract of civil union to be registered in the Register of Civil Unions. Once registered, the partners enjoy virtually the same tax, social security, property and inheritance rights and obligations as married couples. However, homosexual partners are not allowed to adopt children.

To dissolve the PACS, the both partners notify the authorities and the union is dissolved immediately. If the split is not mutual, the departing cohabitant simply has to have the bailiff serve the appropriate letter on his ex-partner and on the authorities. The union is dissolved in three months.

---

<sup>132</sup> Discussion Paper Number 5 available from the Belfast Stationary Office at:  
[www.olrni.gov.uk/advisory-site/home.htm](http://www.olrni.gov.uk/advisory-site/home.htm)

<sup>133</sup> Recommendation 8 at 1.5.8

<sup>134</sup> [www.ilga.org/Information/legal\\_survey/summary\\_information\\_by\\_subject.htm](http://www.ilga.org/Information/legal_survey/summary_information_by_subject.htm)

<sup>135</sup> [translate.google.com/translate?hl=en&sl=fr&u=http://vosdroits.service-public.fr/ARBO/1007-NXFAM260.html&prev=/search%3Fq%3DPacte%2BCivil%2Bde%2BSolidarit%25E9%2B%26sa%3DG](http://translate.google.com/translate?hl=en&sl=fr&u=http://vosdroits.service-public.fr/ARBO/1007-NXFAM260.html&prev=/search%3Fq%3DPacte%2BCivil%2Bde%2BSolidarit%25E9%2B%26sa%3DG)

(This is a translation of the original which can be found at:  
[vosdroits.service-public.fr/ARBO/1007-NXFAM260.html](http://vosdroits.service-public.fr/ARBO/1007-NXFAM260.html)

## B. Denmark

Denmark was the first country in the world to introduce partnership registration for two persons of the same sex (in 1989).<sup>136</sup> This legislation allows lesbian and gay citizens to register their partnerships in a civil ceremony. In order to register, the parties need not intend to live together or have sexual relations. Originally, one of the parties had to be a Danish citizen. This was subsequently extended so that a citizen of a country with a similar regime may now be eligible to register. Two non-Danish citizens may also enter into a registered partnership if both have lived in Denmark for at least two years.

Registration has almost identical legal consequences to those derived from legal marriage except where otherwise provided by legislation.<sup>137</sup> References to ‘marriage’ or ‘spouse’ in Danish law automatically include registered partnerships and registered partners (unless the rules define the spouse by sex). Thus legislation relating to maintenance, community property, tax and social security benefits, separation and divorce, and inheritance etc applies. A partner can adopt the children of his/her partner unless the child was adopted from a foreign country. A ceremony in a church is not permitted, although blessings are available.

A registered partnership can be dissolved according to the same rules and procedures as those used for dissolution of marriage.

Although Greenland is an independent state, it passed the Danish partnership registration legislation in 1996.<sup>138</sup>

## C. Norway

The *Act of Registered Partnership of April 30 1993 no 40* gives homosexual couples the right to register their partnerships. One partner must be domiciled in Norway, and have Norwegian nationality. Registration has the same legal effect as marriage. However, a church ceremony is not possible. Adoption and artificial insemination for lesbians is prohibited.<sup>139</sup>

## D. Sweden

A common law relationship is recognised when a couple (heterosexual or homosexual) have cohabited for a sufficiently long period and regard themselves as a couple.<sup>140</sup> No

<sup>136</sup> The Danish Registered Partnership Act 1989 (Act number 372); see [www.ilga.org/Information/legal\\_survey/europe/denmark.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/denmark.htm#*Partnership)

<sup>137</sup> *Ibid.* section 3

<sup>138</sup> *Same Sex Relationships and the Law*, Equal Opportunities Commission, Victoria, Australia, March 1998.

<sup>139</sup> [www.ilga.org/Information/legal\\_survey/europe/norway.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/norway.htm#*Partnership)

<sup>140</sup> Lagen om Gemen Samma

special registration or ceremony is required. The law also imposes some other conditions. An emotional relationship must have been sustained over a sufficiently long period. The relationship is expected to be of a sexual nature. The couple must have a joint home with some kind of financial and practical co-operation in the household.<sup>141</sup>

Same-sex domestic partners were brought within the scope of the existing domestic partnership law for heterosexuals in 1988. Domestic partners who **do not** want the law of cohabitation to apply to their relationship can opt out by an agreement signed by both partners.<sup>142</sup>

Common law cohabitants become subject to certain rights and duties. The law provides for certain restrictions on the free use of joint resources during the period of cohabitation. Cohabitants have the right to ask for partition of joint property when the period of cohabitation ends. They have the right to half of the residence and household goods acquired for shared use, when the period of cohabitation ends. In certain cases they have the right to take over the shared residence. Common law cohabitation does not include the right to take each other's name, automatic inheritance, joint taxation or maintenance obligations.

On 1 June 1994 the Swedish Parliament passed the Registered Partnership Act. This allows homosexual couples only to enter into a partnership by a registration procedure which corresponds to a civil marriage ceremony.<sup>143</sup>

To be eligible to register, the law does not explicitly require that the partners cohabit (i.e., that they are registered at the same address). Nor do they have to have a sexual relationship, or have a certain sexual orientation. The impediments to registering a partnership are the same as the impediments to marrying. Both partners must be over 18, they must not be close relatives, they must not be already married or a registered partner, and they must have some connection to Sweden.

Registration entitles the couple to most of the rights enjoyed by married couples. Registered partners are required to care for each other. They are entitled to half the property held by the other partner. They also enjoy inheritance rights. Partners are treated as a couple for tax, national insurance and legal purposes. However, partners are not permitted to a wedding ceremony. Artificial insemination and adoption is prohibited.<sup>144</sup>

---

<sup>141</sup> [www.ilga.org/Information/legal\\_survey/europe/sweden.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/sweden.htm#*Partnership)

<sup>142</sup> [www.ilga.org/Information/legal\\_survey/europe/sweden.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/sweden.htm#*Partnership)

<sup>143</sup> Swedish Registered Partnership Act 1994 (Act Number 1994: 1117)

<sup>144</sup> [www.ilga.org/Information/legal\\_survey/europe/sweden.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/sweden.htm#*Partnership)

## E. Hungary

Common law marriages are recognised when a couple live together permanently and are involved in a sexual relationship.<sup>145</sup> In May 1996, homosexual relationships were recognised by the Hungarian Parliament.<sup>146</sup> People in these relationships are now entitled to almost the same rights as common law heterosexual relationships, except adoption.

## F. Belgium

The city of Antwerp began a register of heterosexual and homosexual couples living together in January 1996. Other Belgian cities have followed. This register entitles registered couples to certain housing, health insurance and tax benefits. Since January 2000, homosexual or heterosexual cohabitants can form and register a Statutory Cohabitation Contract. However, this has been criticised as having very little impact on the existing law.<sup>147</sup>

## G. The Netherlands

Since the 1980s, a number of Dutch cities have allowed lesbian and gay residents to register their domestic partnerships. Once registered, couples attract the same municipal privileges that are offered to heterosexual couples. Legislation allowing same and opposite sex relationships to be registered was introduced in 1997.<sup>148</sup> The legal consequences are similar to marriage. From April 2001, same sex couples in the Netherlands became the first in the world to be able to legally marry.<sup>149</sup> Legislation has also been introduced which enables same sex couples to adopt children.<sup>150</sup>

## H. Spain

Despite much discussion on the introduction of a partnership registration scheme for homosexual and heterosexual couples, there is not yet legislation at a federal level. However between 1993-95, several local and regional governments instituted their own partnership registration procedures. Virtually all major Spanish cities and regions have their own partnership registration offices.<sup>151</sup> Registration regulates affairs between partners, but excludes adoption, pensions, tax and social security.

---

<sup>145</sup> L. Powers, M Remakers *ILGA Annual Report 1996*, Belgium cited in *Same Sex Relationships* at note 134.

<sup>146</sup> [www.ilga.org/Information/legal\\_survey/europe/hungary.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/hungary.htm#*Partnership)

<sup>147</sup> [www.ilga.org/Information/legal\\_survey/europe/belgium.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/belgium.htm#*Partnership)

<sup>148</sup> Registered Partnership Act 1997 (Aanpassingswet Gerregistreerd Partnerschap)

<sup>149</sup> [www.egale.ca/pressrel/010331.htm](http://www.egale.ca/pressrel/010331.htm)

<sup>150</sup> [www.ilga.org/Information/legal\\_survey/europe/netherlands.htm](http://www.ilga.org/Information/legal_survey/europe/netherlands.htm)

<sup>151</sup> [www.ilga.org/Information/legal\\_survey/Europe/spain.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/Europe/spain.htm#*Partnership)

## **I. Iceland**

In Iceland, a same sex Registered Partnership Law came into effect on 27<sup>th</sup> June 1996.<sup>152</sup> The Icelandic law is similar to the Norwegian law except that it allows a recognised couple to have joint custody if one of the partners already has a child. Both partners then become the children's guardians and should the natural parent die, the other partner - the children's step parent - automatically becomes their sole guardian. The law excludes entitlement to church ceremonies, adoption and a right to artificial insemination for lesbians.<sup>153</sup>

---

---

<sup>152</sup> The Icelandic Confirmed Partnership Act (Number 97/1997)

<sup>153</sup> [www.ilga.org/Information/legal\\_survey/europe/iceland.htm#\\*Partnership](http://www.ilga.org/Information/legal_survey/europe/iceland.htm#*Partnership)