



## BRIEFING PAPER

Number 03372, 13 June 2018

# "Common law marriage" and cohabitation

By Catherine Fairbairn

### Inside:

1. What is "common law marriage"?
2. Number of cohabiting couples
3. The current law relating to cohabitation
4. Cohabitation agreements
5. Law Commission report
6. Calls for reform
7. Scotland
8. Northern Ireland



# Contents

<b>Summary</b>	<b>3</b>
<b>1. What is “common law marriage”?</b>	<b>5</b>
<b>2. Number of cohabiting couples</b>	<b>6</b>
2.1 Opposite sex cohabiting couples	6
2.2 Same sex cohabiting couples	7
<b>3. The current law relating to cohabitation</b>	<b>9</b>
3.1 Property rights	9
3.2 Housing	10
3.3 Domestic violence	10
3.4 Inheritance	11
3.5 Social Security	12
3.6 Pensions	14
3.7 Taxation	16
3.8 Immigration	16
3.9 Birth registration	16
3.10 Parental responsibility	17
<b>4. Cohabitation agreements</b>	<b>18</b>
<b>5. Law Commission report</b>	<b>19</b>
5.1 New statutory scheme recommended	19
5.2 Government response	20
<b>6. Calls for reform</b>	<b>22</b>
6.1 Early Day Motion	22
6.2 Private Members’ Bills	22
6.3 Resolution campaign	23
6.4 Opposition to proposals: Baroness Deech	24
<b>7. Scotland</b>	<b>26</b>
<b>8. Northern Ireland</b>	<b>27</b>

Contributing Authors: Catherine Fairbairn, Cohabitation; property rights; inheritance; birth registration; cohabitation agreements; sections 1, 3.1, 3.4, 3.9, and 4 to 7; Oliver Hawkins, Statistics, section 2; Wendy Wilson, Housing, section 3.2; Sally Lipscombe, Domestic violence, section 3.3; Steven Kennedy, Social Security, section 3.5; Djuna Thurley, Pensions, section 3.6; Antony Seely. Taxation, section 3.7; Melanie Gower, Immigration, section 3.8; Tim Jarrett, Parental responsibility, section 3.10

Cover page image copyright: [Holding hands](#) – [no copyright required](#) / image cropped

## Summary

This briefing paper provides general information about the number of cohabiting couples; how the law applies to cohabitants; the Law Commission's proposals for reform; and about other calls for reform.

Unless specified otherwise, this paper deals generally with the law in England and Wales. There is also a short summary of the position in Scotland and Northern Ireland.

### **No legal status for common law marriage**

Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware that there is no specific legal status for what is often referred to as a "common law marriage". This is the case no matter how long the couple lived together and even if they had children together.

### **Number of cohabiting couples**

The Office for National Statistics has published annual data on the composition of families and households living in the UK since 1996. During this period, the number of opposite sex and same sex cohabiting couple families has increased, but trends differ between opposite sex and same sex couple families.

### **How does the law treat cohabiting couples?**

This paper sets out information about how the current law affects cohabiting couples in these areas: property rights; housing; domestic violence; inheritance; social security; pensions; taxation; immigration; birth registration; and parental responsibility.

### **Cohabitation agreements**

Some cohabitants enter into a cohabitation agreement which can act as encouragement to consider what they would want to happen if the relationship ends.

### **Law Commission proposals for reform**

In July 2007, following consultation, the Law Commission published a report which considered the financial consequences of ending cohabiting relationships. The Law Commission recommended the introduction of a new statutory scheme of financial relief on separation, based on the contributions made to the relationship by the parties. The scheme would be available to eligible cohabiting couples. Couples who have had a child together or who have lived together for a minimum period would be eligible. Couples would be able to opt out of the scheme by a written agreement to that effect.

In March 2008, the Labour Government announced that it would be taking no action to implement the Law Commission's recommendations until research on the cost and effectiveness of a similar scheme recently implemented in Scotland could be studied. In April 2018, the Government said that it would consider how to proceed in relation to the proposals in the context of any further reforms to the family justice system.

In a separate report, published in 2011, the Law Commission recommended that some unmarried partners should have the right to inherit on each other's death under the intestacy rules, without having to go to court. This recommendation has not been implemented.

### **Calls for reform**

Calls for reform of the law continue to be made, both within and outside of Parliament.

**Scotland**

In Scotland, cohabitants may make limited claims against each other either when their relationship breaks down or when a partner dies.

**Northern Ireland**

In Northern Ireland, cohabitants have legal protection in some areas. However, they have fewer rights and responsibilities than couples who have married or formed a civil partnership.

# 1. What is "common law marriage"?

A man and woman living together in a stable sexual relationship are often referred to as "common law spouses", but this is incorrect in law in England and Wales. Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware of this fact.<sup>1</sup>

Click, a digital relationship support service built and maintained by the charity One Plus One, states that the "myth of common-law marriage" - that couples who live together have the same legal rights as married couples - springs from a time when there was uncertainty about what constituted a marriage.<sup>2</sup>

The then Department for Constitutional Affairs<sup>3</sup> funded two voluntary sector partners, Advice Services Alliance and One Plus One, to manage the "LivingTogether" campaign.<sup>4</sup> The purpose of the campaign was to make cohabitants more aware of their legal status and provide them with practical advice on how they could protect themselves and their families, should they wish to do so. The campaign was launched on 15th July 2004.

## Box 1: Online information

A range of general information is available online including:

- Advicenow, [Living together](#);
- Citizens Advice:
  - [Living together and marriage: legal differences](#);
  - [Living together and civil partnership - legal differences](#);
- Resolution, [Living together](#).<sup>5</sup>

<sup>1</sup> See, for example, Resolution, [Millions of couples at severe financial risk due to 'common-law marriage' myth](#), 27 November 2017 [accessed 13 June 2018]

<sup>2</sup> For further information see Click, [The myth of common law marriage](#) [accessed 13 June 2018]

<sup>3</sup> Now the Ministry of Justice

<sup>4</sup> Department for Constitutional Affairs, [Living together but not married? Do you know the legal implications of cohabitation?](#), July 2004 (ARCHIVED) [accessed 13 June 2018]

<sup>5</sup> All links accessed 13 June 2018

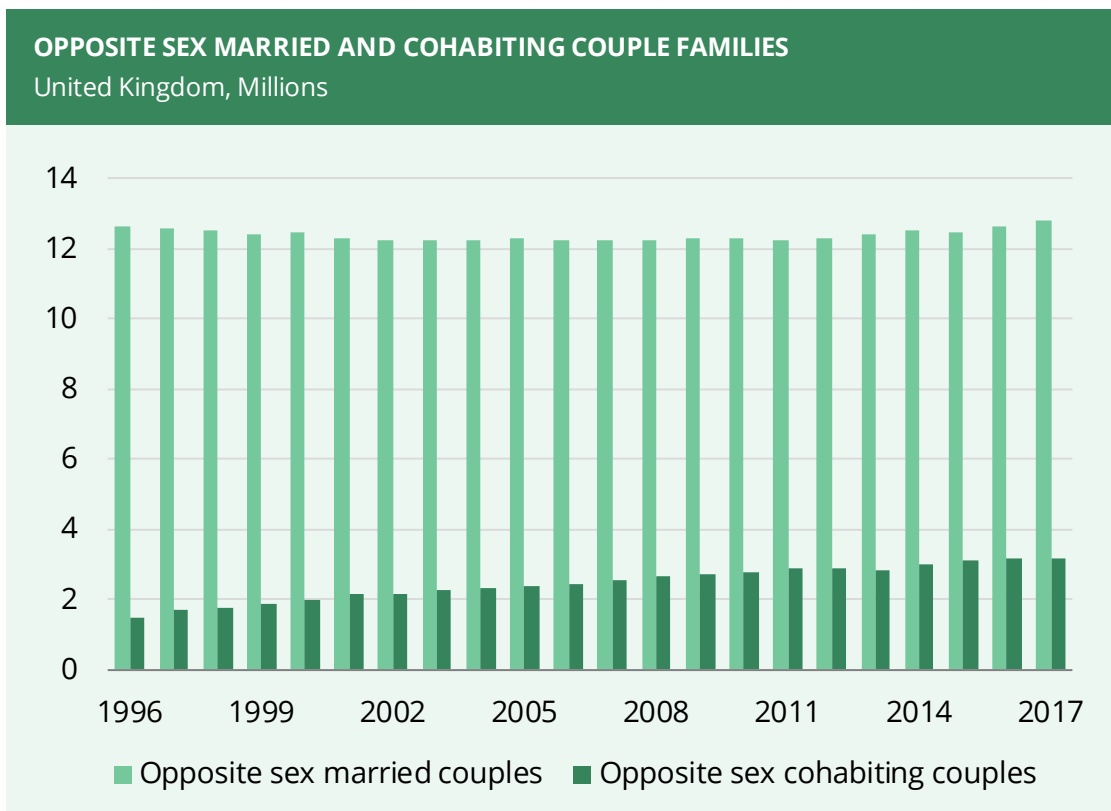
## 2. Number of cohabiting couples

The Office for National Statistics has published annual data on the composition of families and households living in the UK since 1996.<sup>6</sup> During this period, the number of opposite sex and same sex cohabiting couple families has increased, but trends differ between opposite sex and same sex couple families.

### 2.1 Opposite sex cohabiting couples

Between 1996 and 2017 the number of opposite sex cohabiting couple families more than doubled, from around 1.5 million in 1996 to around 3.2 million in 2017. In 1996, around 10% of all opposite sex couple families were cohabiting (rather than married) compared with 20% in 2017.

The chart below shows ONS estimates of the number of opposite sex cohabiting couple families and opposite sex married couple families living in the UK in each year since 1996. This chart includes all opposite sex couples living together as a family, whether or not they have children.<sup>7</sup>



Source: ONS, [Families and Households: 2017](#), Tables 1 and 9

<sup>6</sup> ONS, [Families and Households 2017](#)

<sup>7</sup> The ONS defines a family as a married, civil partnered or cohabiting couple with or without children, or a lone parent with at least one child. Children may be dependent or non-dependent.

## 7 "Common law marriage" and cohabitation

As the chart shows, while the number of opposite sex cohabiting couple families grew, the number of opposite sex married couple families remained broadly the same. Between 1996 and 2004 the number of opposite sex married couple families fell, from around 12.6 million in 1996 to around 12.2 million. The number remained at roughly this level until 2011 but has increased since then, reaching 12.8 million in 2017.

Between 1996 and 2017, the number of opposite sex cohabiting couple families with dependent children more than doubled, from around 539,000 in 1996 to around 1.2 million in 2017.<sup>8</sup> The number of married couple families with dependent children fell from around 5.2 million in 1996 to around 4.9 million in 2017.<sup>9</sup>

### 2.2 Same sex cohabiting couples

Between 1996 and 2017 the number of same sex cohabiting couple families increased from around 16,000 to 101,000, which is an increase of around 530%. However, this figure understates the true extent of growth in same sex couple families, because the introduction of civil partnerships in December 2005 and of marriage for same sex couples in March 2014 means some same sex couple families are no longer recorded as cohabiting.

The chart below shows ONS estimates of the number of same sex cohabiting couple families, civil partnership families, and same sex married couple families from 1996 to 2017. Estimates of the number of civil partnership couples are available from 2006 and of same sex married couple families from 2015. In this chart, the three different types of same sex couple family are stacked in order to illustrate the trend in the total number same sex couple families.

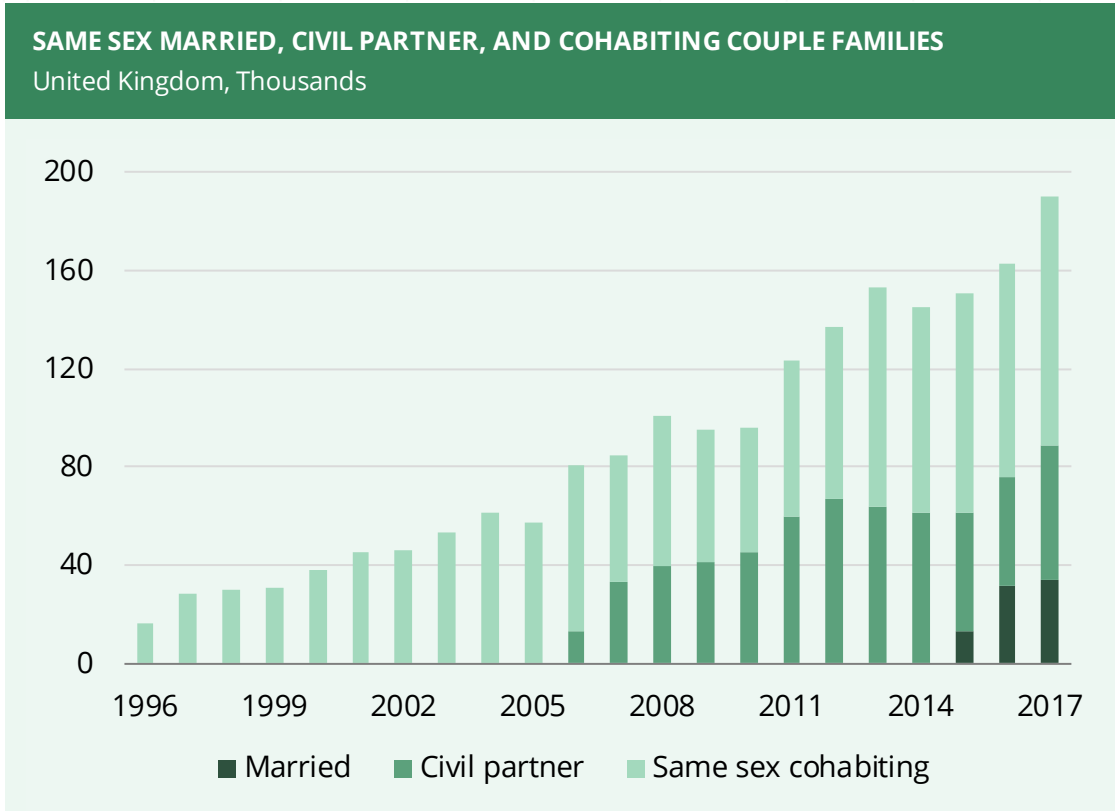
Because ONS estimates of the number of families are based on survey data, estimates of these smaller populations are more uncertain and may vary from one year to the next due only to sampling error. Nevertheless, despite this uncertainty, there is a clear trend in the total number of same sex couple families, whether in a marriage, civil partnership, or cohabiting relationship.

The number of same sex couple families with dependent children is difficult to measure because the number is too small to estimate accurately from the available survey data. However, the best available estimates suggest that in the most recent years there were somewhere around 20,000 same sex couple families (of all types) with dependent children.

---

<sup>8</sup> Dependent children are those living with their parent(s) and either aged under 16, or aged 16 to 18 in full-time education (excluding those aged 16 to 18 who have a spouse, partner or child living in the household).

<sup>9</sup> This figure includes a small number of children living in same sex married couple families in 2016.



Source: ONS, [Families and Households: 2017](#), Tables 1 and 9



## 3. The current law relating to cohabitation

### 3.1 Property rights

Unmarried couples have no guaranteed rights to 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 property and divide it as they may do on divorce or dissolution of a civil partnership.

If a couple cannot agree on their respective shares, it is possible to ask the court to determine an interest in property.<sup>10</sup> The court may only make orders based on a determination of shares which have been acquired in the property in circumstances where the legal rules of trusts or proprietary estoppel apply. These rules are technical but, essentially, one party may be found to have a beneficial (or equitable) interest in the property even where the property is in the sole name of the other party; or to have a greater share than the other party where the property is held in joint names. The apparent intentions of the parties may be relevant in deciding the proportion of the property owned by each party. The length of time the partners have cohabited is not necessarily relevant. Each case is decided on its own facts.

#### Court cases

A number of court cases have considered the property rights of cohabitants.<sup>11</sup> In a 2007 case, Lord Walker of Gestingthorpe said that there was "a good deal of uncertainty and the possibility of high litigation costs". In the same case, Baroness Hale of Richmond also cautioned about the costs of pursuing legal action:

In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual.<sup>12</sup>

In 2011, in another case, Lord Walker and Baroness Hale summarised the principles which apply where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests. They confirmed that each case would turn on its own facts: "financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended... or fair...".<sup>13</sup> They also said that there was a different

---

<sup>10</sup> Under section 14 of the Trusts of Land and Trustees Act 1996

<sup>11</sup> For example, [Oxley v Hiscock](#) [2004] EWCA Civ 546, [Stack v Dowden](#) [2007] UKHL 17, [Jones v Kernott](#) [2011] UKSC 53

<sup>12</sup> [Stack v Dowden](#) [2007] UKHL 17, paragraph 68

<sup>13</sup> [Jones v Kernott](#) [2011] UKSC 53, paragraph 51

starting point where the family home is put into the name of one party only:

52. This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as ...above.<sup>14</sup>

## Specifying shares

It is open to cohabiting couples to enter into a contract regulating their relationship and in particular their property rights. In addition, if a house or other property is bought jointly, it is possible to make clear the basis of the joint ownership, and whether the property is owned equally or in unequal shares.

A lawyer would be able to advise on how to proceed in the circumstances of any particular case.

## 3.2 Housing

The succession rights of cohabitants in relation to privately rented and social housing are explained in two Library briefing papers entitled [Succession rights and privately rented housing](#)<sup>15</sup> and [Succession rights and social housing \(England\)](#).<sup>16</sup>

## 3.3 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 same sex partners) to apply for non-molestation orders and/or court orders regulating the occupation of the family home. The Domestic Violence Crime and Victims Act 2004 extended these provisions to allow couples who have never cohabited to apply for non-molestation orders, and to strengthen the position of same sex partners, particularly with regard to occupation orders.

A new offence of “coercive control” was introduced in December 2015 through [section 76](#) of the Serious Crime Act 2015. This applies to people who are in “intimate personal relationships”, or where the couple live together, and have either been in an intimate personal relationship or are in “the same family”. Family is broadly defined and includes (amongst others) spouses, ex-spouses, civil partners, ex-civil

---

<sup>14</sup> Ibid paragraph 52

<sup>15</sup> SN/SP/2004, 6 March 2009

<sup>16</sup> SN/SP/1998, 17 March 2016

partners and people who have a child together. Further details are in a Library briefing paper, [Domestic Violence in England and Wales](#).<sup>17</sup>

The [Secure Tenancies \(Victims of Domestic Abuse\) Act 2018](#), which received Royal Assent on 10 May 2018, will ensure that certain victims of domestic violence retain a right to a 'lifetime' secure tenancy when fixed-term tenancies become mandatory for English housing authorities under the Housing and Planning Act 2016. Again, this applies to victims who are or have been in the same family or household as the abuser, or in an intimate personal relationship with the abuser. Further details are in a Library briefing paper, [Secure Tenancies \(Victims of Domestic Abuse\) Bill \[HL\] 2017-19: analysis of progress](#).<sup>18</sup>

### 3.4 Inheritance

#### Surviving cohabitant has no automatic right to inherit partner's estate

When a couple live together, without getting married or forming a civil partnership, and one of them dies without leaving a will, the survivor has no automatic right under the intestacy rules to inherit any part of his or her partner's estate.<sup>19</sup> This is the case no matter how long they lived together and even if they had children together.<sup>20</sup>

It is sometimes possible for a surviving cohabitant to make a claim at court, under family provision legislation, against the estate of their partner,<sup>21</sup> if no provision (or inadequate provision) has been made for them either by will or by operation of the intestacy rules. However, a cohabitant is not treated in exactly the same way as a spouse. A surviving spouse or civil partner is entitled to seek such financial provision as it would be reasonable in all the circumstances of the case for a spouse/civil partner to receive, whether or not that provision is required for maintenance. A cohabitant may only seek reasonable provision for their own maintenance.<sup>22</sup>

#### Law Commission proposal to extend inheritance rights for some cohabitants

On 29 October 2009, the Law Commission published a consultation paper, [Intestacy and Family Provision Claims on Death](#).<sup>23</sup> This covered a range of issues. One of the areas highlighted for potential reform was whether certain cohabitants should have a place in the intestacy rules,

---

<sup>17</sup> Number 6337, 21 June 2017

<sup>18</sup> Number 8253, 1 May 2018

<sup>19</sup> The intestacy rules specify who should inherit the property of a deceased person who did not leave a valid will

<sup>20</sup> Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Consultation Paper No 191 (Summary), 29 October 2009, paragraph 15

<sup>21</sup> In this context, a cohabitant means a person who lived in the same household as the deceased, as if he or she were the spouse or civil partner of the deceased, for a period of two years ending immediately before the date when the deceased died

<sup>22</sup> [Inheritance \(Provision for Family and Dependants\) Act 1975](#)

<sup>23</sup> Law Commission Consultation Paper No 191, [Intestacy and Family Provision Claims on Death](#), October 2009

the conditions which would have to be met, and how much of the estate they should receive.

The consultation period ended on 28 February 2010 and the Law Commission published its final report, [Intestacy and Family Provision Claims on Death](#) on 14 December 2011.<sup>24</sup> This included two draft bills, one of which was the draft Inheritance (Cohabitants) Bill. This contained provisions intended to give some unmarried partners, who had lived together for five years, the right to inherit on each other's death under the intestacy rules, without having to go to court. Where the couple had a child together, this entitlement would accrue after two years' cohabitation, provided the child was living with the couple when the deceased died.

The Law Commission acknowledged that views differed on how far the law should provide for cohabitants. However, it considered that the question of whether a cohabitant should inherit on his or her partner's death was very different from the treatment of cohabitants on separation. It proposed reform only where the deceased was not married or in a civil partnership.<sup>25</sup>

The Law Commission also recommended that a surviving cohabitant who had a child with the deceased should be able to make a family provision claim even if the relationship had lasted for a shorter period than two years.

The Law Commission said that its recommendations "reflect the growing prevalence and public acceptance of cohabitation" and that they would also bring English law into line with the law in other Commonwealth jurisdictions. Cohabitants would still be able to make a will naming other beneficiaries (subject to making reasonable provision for those family members and dependants protected by existing family provision legislation).<sup>26</sup>

In March 2013, the Coalition Government announced that it had decided that the Law Commission's recommendations regarding rights for cohabitants upon intestacy would not be implemented during that Parliament.<sup>27</sup>

### 3.5 Social Security

For means-tested benefits and tax credits – and for Universal Credit which is to replace them – the unit of claim is the "family". In general this includes the claimant and their husband, wife or civil partner, or someone they live with **as if they were** husband, wife or civil partner.<sup>28</sup> If two people who are not married or in a civil partnership are treated as

<sup>24</sup> Law Commission Report No 331, [Intestacy and Family Provision Claims on Death](#), December 2011

<sup>25</sup> Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Law Com Report 331 (Summary), 14 December 2011, p5

<sup>26</sup> Ibid paragraph 33

<sup>27</sup> [HC Deb 21 March 2013 cc59-60WS](#)

<sup>28</sup> For further details of the "Living Together as a Married Couple" test, see [Chapter 11 of the DWP Decision Maker's Guide](#)

## 13 "Common law marriage" and cohabitation

a couple, the resources of both partners are added together and taken into account when a claim is made.

The rules governing Income Support and income-based Jobseeker's Allowance also recognise that married couples, and civil partners, have a duty to maintain each other. The Department for Work and Pensions may, for example, seek to recover money from a separated spouse or civil partner if their partner claims benefit. These powers are rarely exercised, however. There are no corresponding provisions for couples who are not married or in a civil partnership.

Contributory benefits – ie those which are dependent on a sufficient National Insurance contribution record – do not recognise couples who are not married or in a civil partnership. So, for example, partners who are not married or in a civil partnership would not be entitled to bereavement benefits.<sup>29</sup> Someone in receipt of certain bereavement benefits (Widowed Parent's Allowance or Bereavement Allowance) can however lose their entitlement if they start living together as if they were husband and wife, even if they do not remarry; or start living together with someone as though civil partners, even if they do not register their partnership.

Successive governments have resisted calls to extend bereavement benefits to unmarried partners on the grounds that a founding principle of the social insurance system is that all rights to benefit derived from another person's contributions are based on the concept of legal marriage (extended to include civil partnerships). However, practical considerations have also been cited, such as the difficulty of ascertaining the nature and depth of the relationship, and the possibility of conflicting claims (eg where the spouse was separated when they died, leaving both a surviving unmarried partner and a legal spouse).<sup>30</sup>

In a February 2016 ruling, the High Court of Justice in Northern Ireland held that refusal of Widowed Parent's Allowance to a woman who was not married to her deceased partner amounted to unjustifiable discrimination.<sup>31</sup> That decision was however subsequently overturned by the Court of Appeal in Northern Ireland, which found that the relationship of an unmarried cohabitee was not analogous with that of a spouse or civil partner in the context of a WPA and therefore different

---

<sup>29</sup> There is however an exception in Scotland. In Scotland a person may be able to claim bereavement benefits if they were married 'by cohabitation with habit and repute' even if they did not go through a formal wedding ceremony [R(G) 1/71]. This is more than simply living together, as there must have been something about the relationship which meant that it could be inferred that the person and their partner consented to marriage and nothing existed which would have prevented a valid marriage taking place (e.g. either party already being married to someone else) [R(G) 5/83]. In addition, their relationship must have been such that other people generally believed that they married [CSG/7/1995]. However, the rule by which marriage could be constituted by cohabitation with habit and repute ceased to have effect from 4 May 2006 (as a result section 3 of The Family Law (Scotland) Act 2006). For people to continue to benefit from the rule, their marriage by cohabitation with habit and repute must have started before this date.

<sup>30</sup> See section 3.7 of Library briefing SN00431, [Bereavement benefits](#), 30 August 2013

<sup>31</sup> [McLaughlin's \(Siobhan\) Application \[2016\] NIQB 11 \(9 February 2016\)](#)

treatment was justified.<sup>32</sup> A further appeal to the Supreme Court has been made, and the case was heard by the Court at its first ever sitting in Belfast on 30 April 2018.<sup>33</sup>

A new benefit – Bereavement Support Payment – replaced the previous system of bereavement benefits for people bereaved from April 2017. It followed a public consultation on proposals to reform bereavement benefits launched in December 2011. The Social Security Advisory Committee, the House of Commons Work and Pensions Committee and bereavement charities have criticised the continuing exclusion of unmarried couples (particularly those with children) from bereavement support, but from the outset the Coalition Government made it clear that it had no plans to extend the new benefit to unmarried partners. The current Government has reaffirmed this position. Remarriage or repartnering does not however disqualify the bereaved individual from receiving Bereavement Support Payment, as it is intended as help with the additional costs of bereavement, rather than serving as replacement for the deceased spouse or civil partner’s earnings. For practical purposes though, this change may have limited impact since Bereavement Support Payment is only payable for a maximum period of 18 months.

Further information can be found in Commons Library briefing CBP-7887, [Bereavement Support Payment](#).

## 3.6 Pensions

### State pensions

A cohabitant cannot rely upon their former partner's contributions for the purposes of State Pensions. Under State Pension rules for people who reached State Pension age before 6 April 2016, a person who was or had been married, or in a civil partnership, could claim a basic State Pension (BSP) on the basis of their (former) spouse or civil partner’s contributions.<sup>34</sup> These rules were removed (with some transitional protection) for people reaching State Pension age from 6 April 2016, when the new State Pension was introduced.<sup>35</sup> The rationale was that the new State Pension has been designed for people to qualify on the basis of their own NI record.<sup>36</sup> For more detail, see Library briefing paper, SN 6525 [The new State Pension - background](#) (August 2016) (section 5.2).

For means-tested benefits, such as Pension Credit, if two people are treated as a couple, the resources of both are added together and may be taken into account in assessing entitlement. Two cohabitants are

<sup>32</sup> [McLaughlin, Re Judicial Review \[2016\] NICA 53 \(13 December 2016\)](#)

<sup>33</sup> [UK Supreme Court bound for Northern Ireland](#), Supreme Court press release, 27 November 2017

<sup>34</sup> DWP, [State Pension entitlements derived from a current or former spouse’s or civil partner’s national insurance contributions](#) (March 2013) - [Annex A](#); Pension Service, [a detailed guide to State Pensions for advisers and others](#), NP46, August 2009, p44-54

<sup>35</sup> [Pensions Act 2014](#), s1(2), 11 and 12

<sup>36</sup> [Pensions Act 2014](#), s1(2), 11 and 12

treated as a couple if they are considered to live together and share their lives in the same way as if they were married or civil partners.<sup>37</sup> They are still treated as a couple during periods temporarily living apart. If a temporary separation becomes permanent, they can apply for Pension Credit separately.<sup>38</sup>

## Occupational pensions

The pension tax legislation allows pension schemes to provide a survivor pension to a person who was not married or a civil partner of the scheme member but was financially dependent on them.<sup>39</sup>

Until reforms introduced in the mid-2000s, public service schemes did not provide survivor pensions for unmarried partners. This was in contrast to private sector schemes, where the trustees often had discretion to do so. Changes in lifestyles led to pressure for schemes to be modernised and in 1998, the Labour Government said it would extend eligibility to survivors' pensions to unmarried partners if members were prepared to meet the additional costs.<sup>40</sup>

Subsequent reforms to all the main public service pension schemes included improvements to survivors' benefits, such as the introduction of pension for unmarried partners and allowing pensions to be paid for life rather than removed on remarriage or cohabitation. These improvements were generally not made retrospective – scheme members either had to have service after the date of the reform or opt to be a member of the post-reform scheme. When pensions for unmarried partners were introduced, most schemes required a nomination to have been made and this remains a feature of some.<sup>41</sup>

In February 2017, on an application by Denise Brewster for [judicial review relating to the local government scheme in Northern Ireland](#), the Supreme Court allowed Ms Brewster's appeal and declared that:

the requirement in the 2009 Regulations that the appellant and Mr McMullan should have made a nomination be disapplied and that the appellant is entitled to receive a survivor's pension under the scheme.

After the judgment, HM Treasury wrote to public pension schemes saying that cases previously refused solely because of lack of a nomination form should be reconsidered:

**Chris Evans:** To ask Mr Chancellor of the Exchequer, pursuant to the Answer of 3 March 2017 to Question 652450, what assessment he has made of the implications for his policies of the judgment of the Supreme Court of 8 February 2017 in the matter of an application by Denise Brewster for Judicial Review (Northern Ireland) [2017] UKSC8; and whether schemes will be required to

---

<sup>37</sup> Pension Service, [A detailed guide to Pension Credit for advisers and others](#), PC10S, April 2018, [People living together as if they were married](#)

<sup>38</sup> *Ibid*, [People living apart from their partner](#)

<sup>39</sup> *Finance Act 2004*, part 4

<sup>40</sup> DSS, [A new contract for welfare: partnership in pensions](#), December 1998, Cm 4179, chapter 8

<sup>41</sup> CBP-06348 [Occupational pensions: survivors' benefits for cohabitants](#) (February 2017)

revisit past cases where a survivor's pension was refused because no nomination had been made.

**Elizabeth Truss:** HM Treasury officials wrote out to public sector pension schemes in England, Wales, Scotland and Northern Ireland on 6 April 2017. The letter made clear that cases like that of Ms Brewster should be dealt with in line with the UK Supreme Court's decision. Cases previously refused solely because of a lack of nomination form should be reconsidered and schemes should pay survivor benefits from the date of the member's death in eligible cases, regardless of when a claim is made.<sup>42</sup>

For more detail, see Library Briefing Paper – CBP-06348 [Occupational pensions: survivors' benefits for cohabitants](#) (June 2018).

The Coalition Government conducted a [review of survivor benefits generally in occupational pension schemes](#) in 2014. The current Government has said it will respond in due course.<sup>43</sup> For more detail, see section 4 of Library Briefing paper CBP-3035 [Pensions: civil partnerships and same-sex marriages](#) (April 2018).

### 3.7 Taxation

Cohabiting couples are treated as unconnected individuals for taxation purposes and as such cannot, for example, benefit from various reliefs and exemptions in the taxation system available for spouses and civil partners.

### 3.8 Immigration

The legal position of non-EEA national unmarried cohabitants seeking to enter or remain in the UK with their British/settled partner largely mirrors that for married couples, as set out on the ['Family visas'](#) section of the GOV.UK website. In order to be eligible for permission to remain in the UK as an unmarried partner of a British/settled person, the couple must have been "living together...in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application".<sup>44</sup>

### 3.9 Birth registration

If the parents were married to each other at the time of the birth or conception, either the mother or father can register the birth on their own and details of both parents will be recorded. The law assumes that the mother's husband is her child's father.

If the parents are not married to one another, generally the father's details may be recorded only if both parents (or the court) acknowledge the father's paternity. The father's particulars may be entered in the register in the following circumstances:

- the mother and father sign the birth register together, or

---

<sup>42</sup> [PO 105675, 16 October 2017](#)

<sup>43</sup> Teachers' Pensions, [Survivors' benefits in the Teachers' Pension Scheme](#) – Q and A, 10 June 2018

<sup>44</sup> [Immigration Rules \(HC 395 of 1993-4 as amended\)](#), Appendix FM para GEN.1.2



## 17 "Common law marriage" and cohabitation

- one parent completes a statutory declaration of parentage form and the other takes the signed form to register the birth,
- one parent goes to register the birth with a document from the court (for example, a court order) giving the father parental responsibility.<sup>45</sup>

If the father's details are not included in the birth register, it may be possible to re-register at a later date.

Information about registering a birth is provided on the [Gov.UK](#) website. This includes information about how same sex couples may register a birth and about who else may be able to register a birth.

Section 56 and Schedule 6 of the [Welfare Reform Act 2009](#) were intended to make provision for the joint registration of births, wherever possible, where the parents of a child are not married to each other nor are civil partners of each other. However, these provisions have not been brought into force.

### 3.10 Parental responsibility

The legal position relating to parental responsibility for unmarried fathers is set out in a Library briefing paper, [Children: parental responsibility - what is it and how is it gained and lost \(England and Wales\)](#).<sup>46</sup>

---

<sup>45</sup> Gov.UK, [Register a birth](#), [accessed 13 June 2018]

<sup>46</sup> Number 2827, 9 August 2017

## 4. Cohabitation agreements

Cohabitants may enter into a cohabitation agreement and this can act as encouragement for them to consider what they would want to happen if the relationship ends. Both parties should consider taking legal advice on the effect of any proposed agreement.

Advicenow has published, [How to make a living together agreement](#), which includes a template of an agreement.<sup>47</sup> This comments on whether a living together agreement would be legally binding:

Living Together Agreements have a slightly odd status in law. They aren't binding unless you write them as a formal legal deed, but the court will usually follow them as long as what you agreed is fair, and you were both honest about your finances when you made the agreement. A court is even more likely to uphold the agreement if you both had some legal advice, separately, about what you were doing before signing the agreement.

If you want to ensure it is binding, you can make it in the form of a deed. It is advisable to do this if you want to make sure that the agreement about the ownership of the home is binding, for instance, or if one of you is promising to pay something to the other. We advise you to each take legal advice if you are going to make the agreement in deed form...<sup>48</sup>

The Law Society considers that cohabitation contracts can help to limit disagreements:

These are slowly gaining recognition as a way of securing a couple's financial and other arrangements. They set out, in advance, what each member of the relationship expects of the other, both during the relationship and if they separate or one of them dies. They are 'honourable agreements', which means that not all clauses may be enforced by the courts. But they do limit disagreements and certainly provide some peace of mind.

You and your partner should both take separate legal advice before signing such an agreement.<sup>49</sup>

---

<sup>47</sup> Accessed 13 June 2018

<sup>48</sup> Section 4

<sup>49</sup> Law Society, [Moving in together](#) [accessed 13 June 2018]

## 5. Law Commission report

### 5.1 New statutory scheme recommended

On 31 July 2007, following consultation, the Law Commission published a report, [Cohabitation: the financial consequences of relationship breakdown](#).<sup>50</sup> The Law Commission did not consider that cohabitants should be given the same rights as married couples and civil partners in the event of their separation. Instead, the Report recommended the introduction of a new scheme of financial relief on separation based on the contributions made to the relationship by the parties (rather than on the respective financial needs of the parties as in divorce). First consideration would be given to any dependent children of the couple. Unlike in cases of divorce, cohabitants would not be expected to meet each other's future needs by means of maintenance payments, and there would be no principle that the parties should share their assets equally.<sup>51</sup>

Moving in with someone, by itself, would not automatically give rise to any entitlement to a remedy. The scheme would be available to eligible cohabiting couples. Couples who have had a child together or who have lived together for a minimum period would be eligible. The Law Commission recommended that the minimum period for couples without children should be set within a range of two to five years.<sup>52</sup>

Couples would be able to opt out of the scheme by a written agreement to that effect.

The key features of the scheme were summarised in the [Executive Summary](#). This sets out how financial relief for cohabitants on separation would differ from the provision available on divorce:

1.17 It would not be sufficient for applicants simply to demonstrate that they were eligible for financial relief and that the couple had not made a valid opt-out agreement disapplying the scheme. In order to obtain a remedy, applicants would have to prove that they had made qualifying contributions to the parties' relationship which had given rise to certain enduring consequences at the point of separation.

1.18 The scheme would therefore be very different from that which applies between spouses on divorce. Simply cohabiting, for however long, would not give rise to any presumed entitlement to share in any pool of property. Nor would the scheme grant remedies simply on the basis of a party's needs following separation, whether by making orders for maintenance or otherwise.

The Law Commission said that the proposed scheme aimed to be fair to both parties:

1.19 In broad terms, the scheme would seek to ensure that the pluses and minuses of the relationship were fairly shared between

---

<sup>50</sup> [Cm 7182, LAW COM No 307](#)

<sup>51</sup> Law Commission press release, New remedies for cohabitants – different from divorce, 31 July 2007

<sup>52</sup> Ibid

the couple. The applicant would have to show that the respondent retained a benefit, or that the applicant had a continuing economic disadvantage, as a result of contributions made to the relationship. The value of any award would depend on the extent of the retained benefit or continuing economic disadvantage. The court would have discretion to grant such financial relief as might be appropriate to deal with these matters, and in doing so would be required to give first consideration to the welfare of any dependent children.

1.20 We consider that a scheme based on these principles would provide a sound basis on which to address the hardship and other economic unfairness that can arise when a cohabiting relationship ends. It would respond, more comprehensively than the current law can, to the economic impact of the contributions made by parties to their relationship, and so to needs which arise in consequence. Where there are dependent children, the scheme would enable a remedy to be provided for the benefit of the primary carer, and so better protect those children who share their primary carer's standard of living. By making adequate provision for the adult parties, the scheme would give more leeway to the court than it currently has to apply Schedule 1 to the Children Act 1989 for the benefit of the parties' children.<sup>53</sup>

Stuart Bridge, the then Commissioner leading the project, said that the scheme would not undermine marriage, adding:

We consider that our scheme strikes the right balance between the need to alleviate hardship and the need to protect couples' freedom of choice.<sup>54</sup>

## 5.2 Government response

### Labour Government: decision deferred

On 6 March 2008, Bridget Prentice, who was then a junior Justice Minister, announced that no action would be taken to implement the Law Commission's recommendations until research on the cost and effectiveness of the scheme recently implemented in Scotland could be studied.<sup>55</sup>

### Coalition Government: no implementation at that time

On 6 September 2011, Jonathan Djanogly, then a junior Justice Minister, announced that, having carefully considered the Law Commission's recommendations, together with the outcomes of research on the Family Law (Scotland) Act 2006, the then Government did not intend to reform the law relating to cohabitation in that Parliamentary term:

The findings of the research into the Scottish legislation do not provide us with a sufficient basis for a change in the law. Furthermore, the family justice system is in a transitional period,

<sup>53</sup> Law Commission, [Cohabitation: The Financial Consequences of Relationship Breakdown Executive Summary](#), Law Com No 307 (Summary), 31 July 2007

<sup>54</sup> Law Commission press release, New remedies for cohabitants – different from divorce, 31 July 2007

<sup>55</sup> [HC Deb 6 March 2008 c122WS](#)

with major reforms already on the horizon. We do not therefore intend to take forward the Law Commission's recommendations for reform of cohabitation law in this parliamentary term.<sup>56</sup>

### **Conservative Government: matter to be considered in context of any family justice reforms**

In April 2018, junior Justice Minister, Lucy Frazer, said that the Government would consider how to proceed in relation to proposals made by the Law Commission in the context of any further reforms to the family justice system.<sup>57</sup>

---

<sup>56</sup> [HC Deb 6 September 2011 cc15-16WS](#)

<sup>57</sup> [PQ 138023 \[on Cohabitation\], 30 April 2018](#)

## 6. Calls for reform

For a number of years, calls have been made from both within and outside of Parliament for reform of the law relating to cohabitation.

### 6.1 Early Day Motion

On 22 November 2017, Caroline Lucas (Green Party) tabled an EDM, [Legal rights for cohabittees who separate](#):

That this House notes that there are currently more than six million people in the UK who live together without being married or in a civil partnership, and that such cohabittees are the fastest growing family type; is concerned that, in England and Wales, such cohabittees have little or no legal protection or ability to access support if their relationship breaks down and they separate; further notes that countries such as Australia, Canada and Scotland legally recognise cohabitation relationships and provide legal protection; notes that Resolution's Cohabitation Awareness Week takes place from 27 November to 1 December 2017 to help counter the widely held belief that cohabittees are protected under so-called common law marriage, and highlight the benefits of cohabitation, separation and living together agreements; and calls on the Government to act upon Resolution's proposal that cohabittees meeting eligibility criteria indicating a committed relationship have a legal right to apply to the courts for certain financial orders if they separate.<sup>58</sup>

The EDM has 23 signatures (as at 13 June 2018).

### 6.2 Private Members' Bills

Private Members' Bills intended to establish a framework of rights for cohabitants on separation and/or death have been introduced on several occasions and in both Houses. For example, in the 2008-09 Parliamentary session, Lord Lester of Herne Hill (Liberal Democrat), introduced the [Cohabitation Bill \[HL\] 2008-09](#),<sup>59</sup> and Mary Creagh (Labour) sought leave, under the Ten Minute Rule motion, to introduce the [Cohabitation \(No 2\) Bill](#).<sup>60</sup>

Lord Marks of Henley-on-Thames (Liberal Democrat) has introduced a Cohabitation Rights Bill [HL] in a number of Parliamentary sessions, most recently the [Cohabitation Rights Bill \[HL\] 2017-19](#), which was introduced on 5 July 2017.<sup>61</sup> The long title of this Bill is "to provide certain protections for persons who live together as a couple or have lived together as a couple as cohabitants; to make provision about the property of deceased persons who are survived by a cohabitant; and for connected purposes".

The [Cohabitation Rights Bill \[HL\] 2017-19](#) has not yet made any further progress. However, there was a Second Reading debate on the

---

<sup>58</sup> EDM 582 of 2017-19

<sup>59</sup> HL Bill 8 of 2008-09

<sup>60</sup> [HC Deb 25 March 2009 cc309-11](#)

<sup>61</sup> HL Bill 34 of 2017-19

[Cohabitation Rights Bill \[HL\] 2014-15](#), which was in similar (but not identical) terms.<sup>62</sup>

Lord Marks said that the Bill was intended to implement the Law Commission's 2007 proposals on separation, and 2011 proposals on intestacy. He reiterated that the Bill's proposals would not equate cohabitation with marriage. Lord Marks said that there was a "powerful body of both professional and lay opinion in favour of these reforms: most of the family judiciary; Resolution; the Family Law Bar; and many others, including many in the church". He also acknowledged the opposition to the proposals from Baroness Deech, who spoke against the Bill in the Second Reading debate. Lord Marks suggested that legislation was overdue.

Replying for the Government, Lord Ashton of Hyde spoke of a "patchwork of legal rules" which might apply to individual cohabitants. He said that the Government had reservations about the Bill, although it would not oppose the Motion to give the Bill a Second Reading.

Lord Ashton said that the Government's priority in family law matters had been to improve the family justice system and that this work was continuing. He added, "Faced with this programme of work, we knew that we could not do justice with the resource available to the complex and far-reaching recommendations made for the reform of the law relating to cohabitants".

Lord Ashton indicated that it would be for the next Government to decide how to proceed:

We do not consider that the matters raised by my noble friend's Bill and by the Law Commission have yet been properly and fully considered to the extent that they ought to be. We therefore take the view that consideration of the question of rights for cohabitants is properly for the new Parliament. We do not think that taking forward this Bill now, in the limited time that we have in this Parliament, would be the correct approach.

This Bill did not make any further progress in the 2014-15 session of Parliament.

### 6.3 Resolution campaign

Resolution, which was formerly known as the Solicitors Family Law Association, describes itself as "an organisation of 6,500 family lawyers and other professionals in England and Wales, who believe in a constructive, non-confrontational approach to family law matters". Resolution also states that it campaigns for improvements to the family justice system.<sup>63</sup>

Resolution's [Manifesto for Family Law](#) was launched in February 2015. Among other things, it calls for "at least basic legal rights for couples who live together if they separate":

Resolution calls for a legal framework of rights and responsibilities when unmarried couples who live together split up, to provide

---

<sup>62</sup> [HL Deb 12 December 2014 cc2068-2092](#)

<sup>63</sup> [Resolution, About us](#) [accessed 13 June 2018]

some legal protection and secure fair outcomes at the time of a couple's separation or on the death of one partner. Other countries, such as Australia and Canada, and closer to home Scotland, recognise these relationships and provide legal protection. The Law Commission has recommended changes in this area.

Resolution proposes that cohabitants meeting eligibility criteria indicating a committed relationship would have a right to apply for certain financial orders if they separate. This right would be automatic unless the couple chooses to 'opt out'.

The court would be able to make the same types of orders as they do currently on divorce, but on a very different and more limited basis.

Awards might include payments for child care costs to enable a primary carer parent to work.<sup>64</sup>

Resolution also spoke of support from Members of Parliament:

A survey of MPs has revealed that 69% of Parliamentarians agree there is a mistaken belief in the existence of "common law marriage" among their constituents, and that 57% believe the law needs to be changed to provide greater protection for unmarried couples upon separation.<sup>65</sup>

## 6.4 Opposition to proposals: Baroness Deech

The crossbench peer, Baroness Deech, has expressed opposition to proposals to reform the law relating to cohabitation. For example, on 17 November 2009, Baroness Deech delivered a Gresham College lecture, *Cohabitation and the law*, in which she argued against giving new rights to cohabitants:

The message is one of freedom of choice and respect for rights. Why should we make them pay when young educated people live together, or when a young woman with a good career is deserted by the young man whom she had hoped would marry her but instead demands money from her? What are the expectations of cohabitants? Whatever they are, they know that they are not married, and they have chosen to avoid the married state. There is nothing to stop them marrying, for divorce is easily enough obtained if one is already married. If they are dissatisfied with their legal lot, why not marry in order to obtain marital rights? And if they are dismissive of marriage as a mere piece of paper, or an unnecessary legal bond, then why so keen to turn to the court for compensation in reliance on the law when the free union ends? Couples may be trying out their relationship before taking the step of marriage, and we should not impose the penalties of a failed marriage on those who were experimenting in order to avoid this outcome. There should be a corner of freedom where

<sup>64</sup> Resolution, [Provide at least basic legal rights for couples who live together if they separate](#) [13 June 2018]

<sup>65</sup> Resolution news release, ["Common Law Marriage" myth needs addressing, say MPs](#), 16 September 2013 [accessed 13 June 2018]. A note to editors states: "The survey of MPs was carried out by ComRes, who interviewed 157 MPs between the 26th June and 24th July 2013. Data were weighted by political party and region to reflect the exact composition of the House of Commons. ComRes is a member of the British Polling Council and abides by its rules. Full data tables are available at [www.comres.co.uk](http://www.comres.co.uk)."



## 25 "Common law marriage" and cohabitation

couples may escape family law with all its difficulties. Cohabitation is not marriage, now or historically, and people ought to have the freedom to try alternative forms of relationship, not to have one form imposed on them, especially one that treats women as perpetual dependants.<sup>66</sup>

---

<sup>66</sup> Baroness Deech of Cumnor, [Cohabitation and the Law](#), Gresham College [accessed 13 June 2018]

## 7. Scotland

Under the Family Law (Scotland) Act 2006, which came into force in May 2006, cohabitants (opposite sex and same sex couples) may make limited claims against each other in the event of their relationship terminating or on the death of one cohabitant. However, couples living together do not have the same rights as married couples and civil partners.

In May 2006, the Scottish Executive produced a leaflet entitled [Family Matters: Living Together in Scotland](#) which provides information about the law on cohabitation and the rights introduced by the 2006 Act.<sup>67</sup> This states that “common law marriage” does not exist in Scotland and that cohabiting couples do not have the same rights as married couples and civil partners:

### Common law marriage

It is a common misunderstanding that a couple will have established a “common law marriage” after living together for a period of time. This is not the case. Common law marriage does not exist in Scotland. Even if you have lived with your partner for many years, you do not have the same rights in law as a married person does. There was a type of irregular marriage called “marriage by cohabitation with habit and repute” which could apply to couples who had lived together and were thought to be married. This was rarely used in practice and, except for very particular circumstances, was abolished by the 2006 Act.

### Cohabitants’ rights

The 2006 Act has introduced a set of basic rights to protect cohabitants, either when their relationship breaks down, or when a partner dies. But the law is very clear: couples living together do not have the same rights as married couples and civil partners. It is very important that you understand this when deciding whether to move in with your partner or to make a formal commitment.<sup>68</sup>

Citizens Advice Scotland provides further information:

- [Living together and opposite sex marriage: legal differences;](#)
- [Living together and same-sex marriage: legal differences.](#)<sup>69</sup>

---

<sup>67</sup> [Family Matters Living Together in Scotland](#), May 2006

<sup>68</sup> Ibid p2

<sup>69</sup> Accessed 13 June 2018

## 8. Northern Ireland

In Northern Ireland, cohabitants have legal protection in some areas. However, they and their families have significantly fewer rights and responsibilities than those who are married or who have formed a civil partnership. The NI Direct website provides further information:

Most people think that after they've been living with their partner for a couple of years, they become 'common law husband and wife' with the same rights as married couples. This is not the case. There is no such thing as 'common law marriage'.

In fact, couples who live together, also called co-habitants, have hardly any of the same rights as married couples or civil partners.

Legal and financial problems can arise if you decide to separate, or if one of you dies. And while you do have legal protection in some areas, you should take steps to protect yourself and your partner.<sup>70</sup>

Citizens Advice provides further information, [Living together and marriage: legal differences \(Northern Ireland\)](#).<sup>71</sup>

---

<sup>70</sup> NI Direct, [Find out your rights](#) [accessed 13 June 2018]

<sup>71</sup> Accessed 13 June 2018

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcinfo@parliament.uk](mailto:hcinfo@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).