



Scottish Law Commission

promoting law reform

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A review of cohabitation law in Scotland

Many thousands of couples in Scotland live together in committed and enduring family relationships, without being married or having a civil partnership.

Recent statistics for the UK show that the number of cohabiting couple families continues to grow, with cohabitants making up an estimated 20% of families.

It is therefore essential that the law affecting cohabitants is kept up to date.

While the Family Law (Scotland) Act 2006 gave cohabitants statutory rights where none previously existed, there have been changes in society and in attitudes to relationships and families in Scotland since this legislation was introduced.

The law in this area has been criticised as being out of date, unclear and overly complicated. In particular, criticism has focused on the definition of a “cohabitant”; the purpose of awards for financial provision on breakdown of a relationship; the test for awards; the time limit for applications, and the limited remedies available to cohabitants who claim financial provision when their relationships end.

Following a detailed review and extensive consultation, today the Scottish Law Commission has published a Report in which it recommends changes to cohabitation law in Scotland.

The Report makes the following key recommendations for improvement of the law in this area:

- A more modern and inclusive definition of “cohabitant” that does not rely on comparison with married couples or civil partners;
- A clearer test for the court to apply when separated cohabitants claim financial provision, including guiding principles aimed at achieving fair outcomes for both parties, underpinned by factors relevant to their application, and consideration of resources;

- A broader range of remedies for cohabitants, including orders for transfer of property and for short term payments for relief of serious financial hardship;
- Provision requiring the court to take account of agreements between cohabitants when deciding an application for financial provision;
- Retaining the one year time limit for claims, and introducing flexibility so that late claims may go ahead on special cause shown;
- Introducing an absolute time limit of two years from the date the cohabitation ends, after which no late claim will be possible;
- Provision enabling the couple to agree extension of the time limit so that they can negotiate settlement.

Kate Dowdalls KC, lead Commissioner on this project, said:

“Problems in this area of law were identified shortly after the 2006 Act came into force. Reform is long overdue. Our recommended reforms are aimed at achieving fairer outcomes for cohabitants when their relationships break down, by clarifying and simplifying the law as well as providing a broader range of remedies. We are pleased to publish our Report on Cohabitation today. Our thanks go to everyone who has taken an interest in this project, especially our Advisory Group and those who responded to the Discussion Paper on Cohabitation and online public attitudes survey, both published in 2020. These contributions, and others, have helped shape policy and enabled us to make recommendations for change in this important aspect of family law.”

FURTHER INFORMATION SECTION

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chair is the Rt Hon Lady Paton, a Court of Session judge. The other Commissioners are Kate Dowdalls KC, Professor Frankie McCarthy, Professor Gillian Black and David Bartos. The Interim Chief Executive is Charles Garland.
2. Further information can be obtained by contacting Lorraine Stirling, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gov.uk).
3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 2 November 2022.