



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 mutually dependent / supportive 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 faster than the number of married couple and lone parent families.

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

While the Family Law (Scotland) Act 2006 gives 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.

Today the Scottish Law Commission has published a Discussion Paper reviewing cohabitation law in Scotland.

The law in this area has been criticised as being out of date, unclear and overly complicated.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 policy reasons for making awards for financial provision on breakdown of a relationship; the test for awards; the time limit for applications, and the limited remedies available.

The Discussion Paper considers how the law could be improved.

We ask for views on issues, including:

- Should the regime for cohabitants on breakdown of a relationship be the same as that for spouses and civil partners?
- How should “cohabitant” be defined?
- Should cohabitants have lived together for a minimum length of time before they can access financial remedies if the relationship breaks down?

- What is the purpose of financial remedies on breakdown of cohabitation? Is financial provision required for relief of need, to compensate for economic loss, or something else?
- Is the current test for making an order for financial provision on cessation of cohabitation too complicated? If so, how could it be improved?
- Should wider remedies, such as property transfer, pension sharing and maintenance be available to former cohabitants?
- Should the court be able to take account of, vary or set aside contractual agreements between cohabitants when deciding an application for financial provision?

The Scottish Law Commission invites comments from everyone with an interest. Responses to the Discussion Paper can be made until 31 May 2020.

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

“Problems in this area of law were identified shortly after the 2006 Act came into force. Criticism continues and reform is long overdue. We are keen to hear from anyone interested in the law relating to cohabitation, particularly cohabitants and their advisors. The responses we receive now will help us to shape policy and make proposals for future reform of the 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 QC and Professor Frankie McCarthy. The Chief Executive is Malcolm McMillan.
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 26 February 2020.