

**INTRODUCTION**

The Scottish Law Commission is currently undertaking a review of aspects of family law. The first phase of the project will focus on review and reform of the law relating to cohabitants’ rights on cessation of cohabitation otherwise than by death, including consideration of the definition of “cohabitant” and related issues, all as set out in sections 25-28 of the Family Law (Scotland) Act 2006.

I am lead Commissioner on the project. I am working with a small team, of which Lorraine Stirling is project manager. We hope that we will be able to publish a Discussion Paper early next year, and that you or your firm will respond to that Paper in due course. In the meantime, we are keen to hear from family law practitioners about their experiences, and those of their clients, of claims under the cohabitation provisions in the 2006 Act.

I would be very grateful if you would take time to complete the attached questionnaire and return your responses to Lorraine at [Lorraine.stirling@scotlawcom.gsi.gov.uk](mailto:Lorraine.stirling@scotlawcom.gsi.gov.uk), if possible by **30 September 2019**. If you prefer to submit your response in hard copy, please send it to Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR, addressed to Lorraine or myself. Please do feel free to forward a copy of the questionnaire to colleagues whom you think might be able to help.

We will treat your response in confidence, and it may be submitted anonymously if you prefer. You may respond to as many or as few of the questions as you wish. Any information that you provide will greatly assist us in the work that we are doing. You will see that in question 5 we ask whether you are able to share a copy of any unreported decisions with us. If you can, we would be most grateful if you would send us a copy of the decision with your response to the attached questionnaire.



Kate Dowdalls QC

Commissioner

**QUESTIONNAIRE**

**1. Question 1 – Section 28 claims**

1.1 During the past year how many inquiries have you had from (former) cohabitants about the consequences of separation?

A 0-5

B 5-10

C 10 +

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| **Comments on Question 1.1**  «InsertTextHere» |

1.2 How many were aware of the right to make a claim for financial provision under s.28 of the Family Law (Scotland) Act 2006?

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| **Comments on Question 1.2**  «InsertTextHere» |

1.3 How many went on to make or defend a claim for financial provision?

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| **Comments on Question 1.3**  «InsertTextHere» |

1.4 How many had legal aid?

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| **Comments on Question 1.4**  «InsertTextHere» |

1.5 How many claims were settled by agreement (before court action was raised)?

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| **Comments on Question 1.5**  «InsertTextHere» |

1.6 Of those who resorted to litigation, what proportion settled before proof?

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| **Comments on Question 1.6**  «InsertTextHere» |

**2. Question 2 – Time limit**

2.1 Do you think one year time limit for claims under section 28(8) should remain as it is?

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| **Comments on Question 2.1**  «InsertTextHere» |

2.2 If not, what change would you like to see and why?

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| **Comments on Question 2.2**  «InsertTextHere» |

**3. Question 3 – Disputed issue(s)**

3.1 What were the disputed issues in the cases that you have dealt with?

1. Whether the couple were cohabitants in terms of s.25
2. Issues arising under sections 26 or 27
3. Claim under section 28(2)(a)
4. Claim under s.28(2)(b)
5. Claim under both s.28(2)(a) and (b)
6. Something else

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| **Comments on Question 3.1**  «InsertTextHere» |

**4. Question 4 - Remedies**

4.1 Did the lack of choice of remedies help / hinder settlement? In what way?

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| **Comments on Question 4.1**  «InsertTextHere» |

**5. QUESTION 5 - Miscellaneous**

5.1 Are you able to share copies of unreported decisions in s.28 cases with us?

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| **Comments on Question 5.1**  «InsertTextHere» |

5.2 Do you have any other comments or suggestions?

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| **Comments on Question 5.2**  «InsertTextHere» |