

RESPONSE FORM

DISCUSSION PAPER ON COHABITATION

We hope that by using this form it will be easier for you to respond to the questions set out in the Discussion Paper. Respondents who wish to address only some of the questions may do so. The form reproduces the questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are responding to / commenting on only a few of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

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**Summary of Questions**

1. Should the regime for financial provision for cohabitants on cessation of cohabitation otherwise than by death remain separate from that for spouses and civil partners on divorce and dissolution?

(Paragraph 2.66)

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| **Comments on Question 1**  «InsertTextHere» |

2. Should the definition of cohabitant in section 25 of the 2006 Act be amended?

(Paragraph 3.101)

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| **Comments on Question 2**  «InsertTextHere» |

3. If consultees think the definition should be amended, should the comparison with spouses be removed in favour of a description of the nature of the relationship, such as “enduring family relationship”, “genuine domestic basis”, or something else?

(Paragraph 3.101)

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| **Comments on Question 3**  «InsertTextHere» |

4. If the comparison with spouses is to be removed, should the legislation expressly provide that couples within the forbidden degrees of relationship to each other will be excluded?

(Paragraph 3.101)

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| **Comments on Question 4**  «InsertTextHere» |

5. Should a qualifying period of cohabitation be introduced in order to access remedies under the 2006 Act? If so:

(a) how long should that qualifying period be?

(b) should the qualifying period be different, or removed altogether, if the parties have children?

(Paragraph 3.101)

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| **Comments on Question 5**  «InsertTextHere» |

6. Would the response to Question 5(a) or (b) change if the remedies available to former cohabitants were extended?

(Paragraph 3.101)

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| **Comments on Question 6**  «InsertTextHere» |

7. Would the definition of cohabitant be improved by the introduction of a list of features or characteristics to be taken into account in deciding whether the parties are cohabitants?

If so, what features or characteristics should be included?

(Paragraph 3.101)

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| **Comments on Question 7**  «InsertTextHere» |

8. What are consultees’ views on the introduction of a registration system for cohabitants?

(Paragraph 3.101)

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| **Comments on Question 8**  «InsertTextHere» |

9. Do sections 26 and / or 27 cause any difficulty in practice?

(Paragraph 4.34)

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| **Comments on Question 9**  «InsertTextHere» |

10. Should the language in sections 26 and / or 27 be modernised?

(Paragraph 4.34)

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| **Comments on Question 10**  «InsertTextHere» |

11. Should sections 26 and / or 27 be modified in some other way?

(Paragraph 4.34)

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| **Comments on Question 11**  «InsertTextHere» |

12. Should the policy underpinning awards for financial provision for former cohabitants, where cohabitation ends otherwise than by death, be:

(a) compensation for economic loss sustained during the relationship;

(b) relief of need:

(c) sharing of property acquired during the cohabitation;

(d) sharing the future economic burden of child care;

(e) a combination of any or all of (a) to (d) above; or

(f) something else?

(Paragraph 5.69)

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| **Comments on Question 12**  «InsertTextHere» |

13. For the purposes of financial provision for former cohabitants, should any distinction be made between a child of whom the cohabitants are parents and a child who is or was accepted by the cohabitants as a child of the family?

(Paragraph 5.69)

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| **Comments on Question 13**  «InsertTextHere» |

14. Should the test for determining what order, if any, the court may make for financial provision on cessation of cohabitation otherwise than by death be based on fairness and reasonableness, having regard to all the circumstances of the case, including a list of relevant factors such as:

(a) the financial and non-financial contributions made by each party to the relationship, including the contribution made by each party to the care of the family and the family home;

(b) the effect of the cohabitation upon the earning capacity of each of the parties;

(c) the parties’ respective needs and resources;

(d) relief of financial hardship caused by the cohabitation or the end of the cohabitation;

(e) a combination of any or all of (a) to (d) above; or

(f) something else?

(Paragraph 5.69)

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| **Comments on Question 14**  «InsertTextHere» |

15. Are the remedies available to the court on an application for financial provision by a former cohabitant adequate and sufficient?

(Paragraph 5.92)

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| **Comments on Question 15**  «InsertTextHere» |

16. If not, should the remedies be extended to include:

(a) transfer of property;

(b) pension sharing;

(c) periodic payments for a period after the end of the cohabitation, sufficient to relieve short term financial hardship; or

(d) something else?

(Paragraph 5.92)

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| **Comments on Question 16**  «InsertTextHere» |

17. Should express provision be made requiring or permitting the court to consider the resources of the former cohabitants in deciding what order, if any, to make for financial provision?

(Paragraph 5.92)

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| **Comments on Question 17**  «InsertTextHere» |

18. Should the one year time limit for making a claim under section 28(2) of the 2006 Act be extended?

(Paragraph 6.35)

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| **Comments on Question 18**  «InsertTextHere» |

19. If the time limit is extended, what should the new time limit be?

(Paragraph 6.35)

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| **Comments on Question 19**  «InsertTextHere» |

20. If the time limit is extended, should the court be afforded discretion to allow late claims?

(Paragraph 6.35)

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| **Comments on Question 20**  «InsertTextHere» |

21. If the time limit is not extended, should the court be afforded discretion to allow late claims?

(Paragraph 6.35)

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| **Comments on Question 21**  «InsertTextHere» |

22. If the court is afforded discretion to allow late claims:

(a) should the test for the exercise of discretion be “on cause shown”, “in exceptional circumstances” or something else?

(b) should there be a maximum period (backstop) beyond which no claim may competently be made?

(Paragraph 6.35)

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| **Comments on Question 22**  «InsertTextHere» |

23. Should express provision be made in the 2006 Act to allow parties to agree extension of the time limit to facilitate settlement?

(Paragraph 6.35)

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| **Comments on Question 23**  «InsertTextHere» |

24. Should express statutory provision be made permitting the court to have regard to the terms of any agreement between the parties as to financial provision on cessation of cohabitation (including opting out of the 2006 Act regime) when deciding what order, if any, to make?

(Paragraph 7.39)

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| **Comments on Question 24**  «InsertTextHere» |

25. Should express statutory provision be made allowing the court to set aside, or vary any term of, a cohabitation agreement? If so, should the test for setting aside or variation be:

(a) that the agreement was not fair or reasonable at the time it was entered into;

(b) that there has been a material change in the parties’ circumstances since the agreement was entered into, or

(c) another test (and if so what should that test be)?

(Paragraph 7.39)

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| **Comments on Question 25**  «InsertTextHere» |

26. What information or data do consultees have on:

(a) the economic impact of sections 25-28 of the Family Law (Scotland) Act 2006,

(b) the potential economic impact of any option for reform discussed in this Discussion Paper (in particular the impact in terms of tax law of the possibility of extending the remedies available to cohabitants on cessation of cohabitation otherwise than by death to include property transfers/pension sharing/maintenance)?

(c) the potential economic impact upon the SCTS and legal aid budgets of any option for reform discussed in this Discussion Paper, including extension of the time limit for claims and additional remedies?

(Paragraph 9.4)

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| **Comments on Question 26**  «InsertTextHere» |

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| **General Comments**  «InsertTextHere» |

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.