



## Intestacy & Cohabitation

The Government has shelved proposals by the Law Commission that would have provided greater financial certainty to cohabiting unmarried couples. The proposals were formulated in July 2007 after a two-year consultation and they also covered the treatment of property upon the separation of unmarried couples but those proposals will also not be taken forward at this stage.

In a written ministerial statement in September, Jonathan Djanogly indicated the government would not proceed with the proposals during this parliament due to lack of evidence.

This means that unmarried partners are still left at risk if they do not make adequate provision to make sure all of their property and affairs are in good order when it comes to estate planning.

The proposals would have given more rights to cohabitants who fell into certain categories. The Law Commission suggested that although cohabitants should not be given the same rights as married couples and civil partners in the event of their separation, they should instead have a new scheme of financial remedies. Only those couples who had a child together or who lived together for a minimum period (to be set by Parliament within a suggested range of two to five years) would be eligible to apply. Awards would be based solely on contributions made to the relationship and couples who wished to do so could opt out of the scheme. Government commended the thoroughness and quality of the report but still rejected it.

The Law Commission believes the current situation leads to unjust results for those couples who have lived together for many years but have chosen not to get married or enter into a civil partnership.

A Justice Ministry spokesman noted that it was already possible for cohabiting couples to draft Wills and enter into cohabitation agreements to cover their property rights if they chose to do so and the courts in England & Wales recognised such agreements as legally binding. He said: "It is hoped that the proposals will not be delayed beyond the next Parliament. However, I would advise cohabitants to make sure that they have Wills in place to ensure that their loved ones are provided for in the event of their death."

In the meantime the redress for a cohabiting partner still needs to be accessed via the Inheritance (Provision for Family and Dependants) Act 1975 and they would need to bring a claim against the estate, proving their entitlement under the terms of the Act.

The Law Commission released a statement following the rejection which concluded: "We note the Government's cautious response to our recommendations and that reform will not be implemented during the current Parliament. We hope that implementation will not be delayed beyond the early days of the next Parliament, in view of the hardship and injustice caused by the current law. The prevalence of cohabitation and of the birth of children to couples who live together, means that the need for reform of the law can only become more pressing over time."

**The best advice will always be that clients should make Wills to ensure their assets pass to those people they want to receive them and this announcement means it is absolutely vital for cohabitants.**

We hope you find this useful, but please do not hesitate to contact us for further information.

*Best wishes for a healthy and successful 2012.*

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