

Family Law Reform in 2026

What is the future for Cohabitation and Financial Remedies law after 'A Fairer End to Relationships'?

By Jo Edwards and Graeme Fraser

Topics we will be covering today

Government's proposals & Resolution's response to the MOJ Consultation

1

- Financial remedies
 - Cohabitation
-

2

Policy themes underpinning the campaign for law reform



Response over the
line!

14 August 2026

 **Forsters**

WILLIAM STURGES
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Resolution's Vision for Family Justice, November 2023

1. Main policy focus - cohabitants meeting eligibility criteria should be able to apply for certain financial remedies.

2. Financial Remedies reform not a priority and any reform should be undertaken using an evidence-based approach as a basis for a move towards principled discretion to make outcomes easier to predict.

Pre-nuptial agreements should be binding (with suitable safeguards), and non-matrimonial property unavailable for sharing.

In addition, the law should provide that any spousal maintenance will be a term order and, lastly, the current costs regime should be used and applied far more rigorously.



Why is the govt looking at FR reform now?

- The current law lacks certainty and consistency - an individual going through divorce cannot understand, by reading the statute, how their case will be decided
- Fair Shares; Resolution DA in FR proceedings report; Law Commission
- Four models of reform - codification, codification plus, guided discretion, and default regime.
- The government has chosen codification plus, where the current law would be codified, with some additional reform to deal with certain areas where the law remains unsettled, and some limitations on discretion may be introduced.



A. What is the future of FR law after *A Fairer End to Relationships*?

- Standish principles - greater recognition of the distinction between matrimonial and non-matrimonial property (including post-separation accrual) and seamless pre-marital cohabitation.
- Needs - a proposed move towards a more structured, hierarchical approach to meeting needs.
- Domestic abuse – greater consideration given to the impact of domestic abuse in financial remedies cases, to guide judges on how to apply their discretion.
- Pensions - increased emphasis on considering pensions as part of the overall financial settlement, rather than treating them as a secondary issue.
- Qualifying Nuptial Agreements (QNAs) - proposals for a statutory framework raise wider questions about the treatment of agreements that fall outside the regime, including foreign agreements and domestic agreements that do not satisfy the qualifying requirements.

Seamless Cohabitation Prior To Marriage

Seamless pre-marital cohabitation may be recognised when determining the length of the relationship, with the court considering the overall nature of the parties' relationship rather than applying a rigid test.

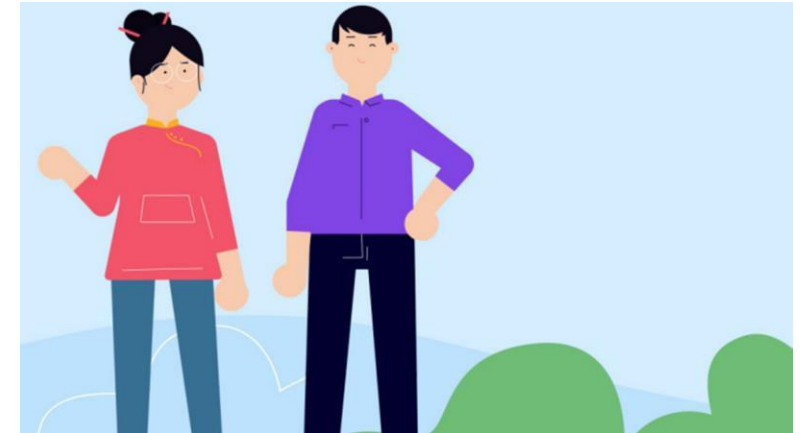
For discussion how this intersects with sub-3 years' cohabitation/no children couples – will count if they marry but potentially not if they don't. And what if they have opted out?

Move on to cohabitation reform proposals...



B. Reforming the law for cohabitants on separation – eligibility (proposed)

1. Two people living together as a couple in an enduring family relationship
2. There should be the same non-prohibitive and non-exhaustive list of factors for determining whether individuals are cohabitants that applies to determining seamless cohabitation prior to marriage
3. Those who are already married or in a civil partnership with each other or too closely related to each other to be married should be ineligible
4. Anyone under 18 would not be eligible unless the circumstances of the case are exceptional



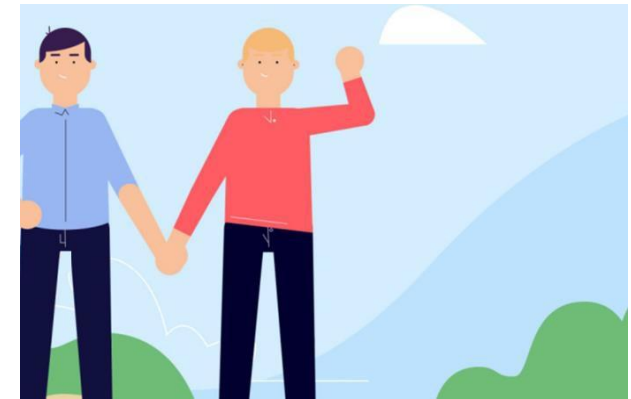
Reforming the law for cohabitants on separation – eligibility (comment)

1. Three years feels like the right balance for couples without children to have lived together as a minimum before they can access the cohabitation framework
2. Where cohabitants are living together and there is a child of the family, the minimum duration requirement should be disapplied
3. Resolution proposes a three-year time limit to prevent claims being made longer than three years after the relationship ended, while the government proposes a shorter, two-year time limit.
4. There should be a discretion to disapply the time limit to prevent injustices, or subject to domestic abuse/ misconduct, or if the couple agree to do so, if they are choosing to use an out of court dispute resolution process



Reforming the law for cohabitants on separation – needs principle

- The Government proposes that ‘needs’ should be the guiding principle for determining outcomes upon separation (not relationship-generated disadvantage).
- This would prioritise fair outcomes for children, which may often mean mitigating financial vulnerability of the primary carer.
- It would also account for the economic disadvantage women are more likely to experience upon separation.
- However, the needs-based approach would also support the distinct status of marriage, by excluding discretionary needs from the courts’ consideration and the sharing principle.



Reforming the law for cohabitants on separation - needs principle (comment)

- Resolution proposes introducing a presumption that each party should be self-supporting to mark the difference between marriage and cohabitation and allow finality.
- Needs of all cohabitants should be considered by reference to their standard of living during the relationship, and future needs.
- Also, needs arising from wider circumstances such as disabilities should be considered to protect vulnerable
- Resolution proposes a checklist of matters to consider including standard of living; the existence of an agreement; and domestic abuse which may have impacted on earning capacity, income, accrual of savings and pensions

Cohabitation Remedies - Government Proposals

1. A full range of orders to meet needs including pension sharing is welcomed
2. Maintenance should only be awarded in cases in exceptional circumstances, such as serious health issues or disability
3. The distinct status of marriage should be set out by way of an objective and guidance which explains the difference between financial remedies on divorce and cohabitation

Cohabitation Remedies - Resolution's Position

- Resolution broadly agrees with the proposed approach in relation to remedies – the Scottish experience of reform shows that a wider range of orders available is beneficial.
- However, Resolution doesn't agree that maintenance should be awarded only in exceptional circumstances – this is too restrictive and exceptionality is too high a bar.
- Regarding maintenance, qualifying cohabitants should be able to apply for a limited period to reflect the economic advantages and disadvantages generated by the relationship.

Opt-Out Agreements

- The Government propose an opt-out model, meaning qualifying cohabitants are covered by the statutory framework by default. [This is the 'big win' but opposed by many, who favour an opt in regime]
- This would be subject to certain safeguards, such as contract validity, execution as a deed, material financial disclosure, independent legal advice.
- Resolution also advocate an opt-out model, subject to a safeguard against manifest or serious injustice, and that the balance between party autonomy and automatic protections should be maintained.
- However, they suggest a standard agreement to be registered via a government gateway, with clear encouragement for the parties to obtain legal advice (rather than a requirement, which is unpracticable).

Cohabitation reform – drivers for change



Media

‘MARRIAGE-LITE PLANS THREATEN TO CUT BIRTHS BY OVER 75,000 A YEAR – NEW STUDY FINDS’

‘Shake-up of unmarried couples’ rights branded ‘state-forced marriage’

‘Lammy wants new rights for unmarried couples. There’s a ruinously expensive catch’ -

The big winners: lawyers and loneliness. Fewer couples will move in together if they think they will be financially liable for their partner



‘Cohabiting couples could enter marriage-style arrangements ‘without knowing’ amid new proposals’

‘David Lammy’s proposed cohabitation law would be bad for couples – and worse for some women’

‘If you want marriage rights, get married’

‘We chose not to marry. New laws for couples threaten my financial freedom’

‘Labour seems to think marriage doesn’t matter. Children would disagree’

The Government’s plan to reform cohabitation rights would introduce ambiguity into family law



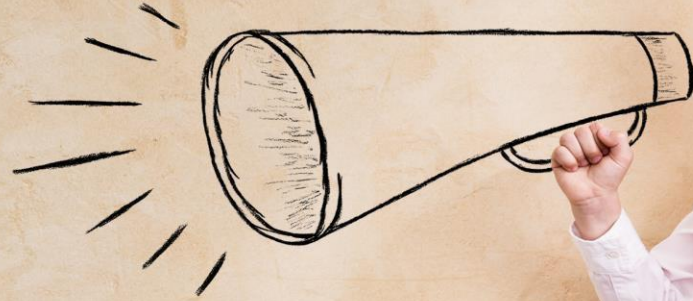
What is the case for cohabitation law reform?

1. We know and respect that government wants to preserve the distinct status of marriage; cohabitation reform doesn't undermine that. But we all know the stats and the law must reflect how people are living their lives/provide protection
2. Reform is important for victims of domestic abuse
3. Also important for children, as around half of children are now born to unmarried mothers
4. International experience shows that marriage rates don't nosedive when cohabitation reform comes in
5. People will be able to opt out, balancing respecting people's autonomy with protecting the most vulnerable

What do opponents of cohabitation reform say (and how to respond)

1. State imposing rights people consciously didn't sign up to
2. It devalues marriage and will lead to a plummet in marriage rates
3. If people want to, they should just get married!
4. The courts will be overwhelmed
5. This is about greedy lawyers trying to line their coffers...

Family Law Reform – A Call for Action



What can you do?

1. Bang the drum for change in local media – grass roots campaigning helpful
2. Gather case studies
3. Be ready to engage with Resolution in the run-up to awareness week in the autumn, including MP engagement
4. Make sure your clients are advised about possible change down the tracks:
 - Ensure they know about the need to talk about how they own property with their partner, have a cohabitation agreement, declaration of trust and/or a Will.
 - If they both agree and want marriage rights – get married/have a civil partnership.
 - Talk to them about possible transitional arrangements





Policy considerations

Looking ahead

- Will the consultation generate broad success across the political parties?
- How effectively will the interconnected issues be addressed in draft legislation?
- Can implementation be achieved within the current Parliament?
- How well will the final framework balance fairness, certainty and child protection?



An Enduring Legacy

Better outcomes for millions of families

The reform moment is also a chance to leave a durable, practical legacy.

Observations

- The Government's plans are bold and ambitious, aiming to modernise family law across the board by creating a coherent framework that serves all families
- Placing children at the centre of reform provides an excellent foundation for building cross-party consensus
- If successful, these reforms could fundamentally improve how families navigate relationship breakdown, whether they are married, in civil partnerships, or cohabiting

*A coherent framework
that serves all families.*

Thank you



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