



BRIEFING PAPER

Number 03372, 4 May 2021

"Common law marriage" and cohabitation

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Summary

The number of couples choosing to live together (cohabit) without getting married or entering a civil partnership, in what is often called “a common law marriage”, increased by 137% between 1996 and 2020.

Although cohabitating couples do have legal protection in several areas, such as under the law relating to domestic abuse, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware this is the case.

This briefing provides information about the number of cohabiting couples, how the law applies to them, the Law Commission’s proposals for reform, and other calls for reform.

Unless specified otherwise, this paper deals with the law in England and Wales.

Number of cohabiting couples

The total number of cohabiting couples has increased from around 1.5 million in 1996 to around 3.5 million in 2020, an increase of 137%. In 2020, 18% of couples that lived together were cohabiting rather than married or in a civil partnership. Trends differ between opposite-sex and same-sex cohabiting couples.

Cohabitation agreements

Some couples have a ‘cohabitation agreement’ which sets out what they want to happen if the relationship ends. Parties are encouraged to take legal advice on the terms and intended effect of any proposed agreement.

Law Commission proposals for reform

In July 2007, the Law Commission published a report which considered the financial consequences of ending cohabiting relationships. The Commission recommended that a new statutory scheme of ‘financial relief on separation’ should be introduced. This would be based on the ‘qualifying contributions’ each partner made to the relationship, giving rise to certain enduring consequences at the point of separation. ‘Qualifying contributions’ might be financial or otherwise, such as care for the children of both parties.

To be eligible, cohabitating couples would need to have had a child together or to have lived together for a minimum period. Couples would be able to opt out of the scheme through a written agreement.

In March 2008, the Labour Government announced it would be taking no action to implement the Law Commission’s recommendations until research on the cost and effectiveness of a similar scheme in Scotland could be studied. In April 2018, the May Government said it would be considering how to proceed in relation to the proposals “in the context of any further reforms to the family justice system”. To date, the current Government has not given any further indication of what might happen next.

In a separate report published in 2011, the Law Commission recommended that some unmarried partners should have the right to inherit after each other’s death under the intestacy rules, without having to go to court. This has not been implemented.

Scotland

In Scotland, cohabitants may make limited claims against each other either when their relationship breaks down or when a partner dies.

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Northern Ireland

In Northern Ireland, cohabitants have legal protection in some areas, but they have fewer rights and responsibilities than couples who have married or formed a civil partnership.

1. What is “common law marriage”?

A couple living together in a stable sexual relationship are often referred to as “common law spouses”, but this is incorrect in law in England and Wales. Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware of this fact, as shown by research carried out by The National Centre for Social Research, which was published in January 2019:

The first findings from this year’s British Social Attitudes Survey – carried out by The National Centre for Social Research – reveal that 46% of us are under the wrong impression that cohabiting couples form a common law marriage – a figure that remains largely unchanged over the last fourteen years (47% in 2005) despite a significant increase in the number of cohabiting couples. In contrast, only 41% of respondents rightly say cohabiting couples are not in a common law marriage.¹

Box 1: Online information

A range of general information for couples, who are not married or civil partners, is available online including:

- Advicenow, [Living together](#);
- Citizens Advice:
 - [Living together and marriage: legal differences](#);
 - [Living together and civil partnership - legal differences](#);
- Resolution, [Your rights when living together](#);
- Law Society, [Cohabitation – your rights](#).²

¹ NatCen, [Almost half of us mistakenly believe that common law marriage exists](#), 22 January 2019 [accessed 27 April 2021]. See also, Resolution, [Millions of couples at severe financial risk due to ‘common-law marriage’ myth](#), 27 November 2017 [accessed 27 April 2021]

² All links accessed 27 April 2021

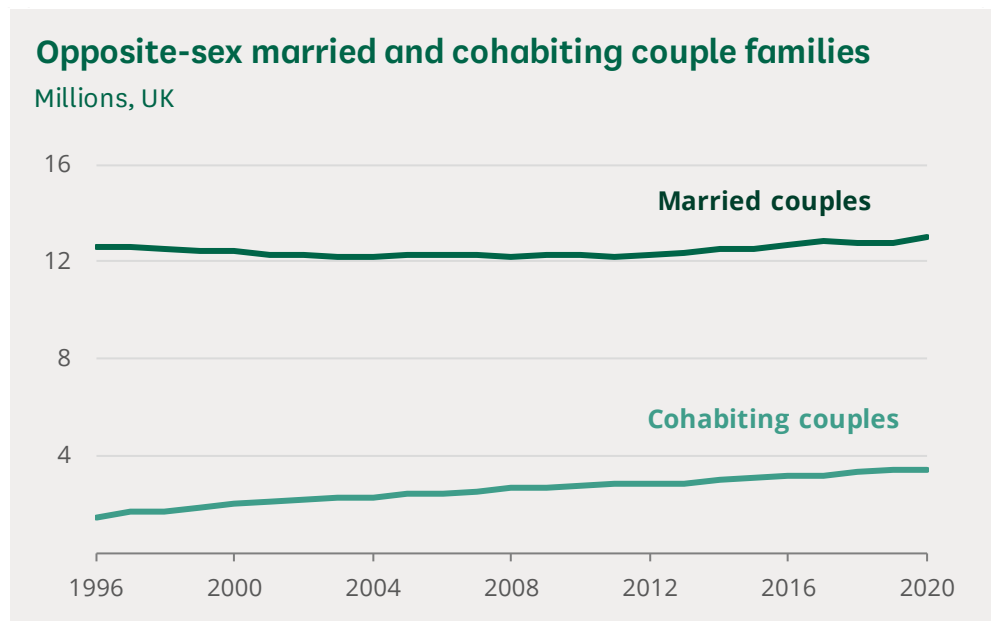
2. Number of cohabiting couples

The Office for National Statistics has published annual data on the composition of families and households living in the UK since 1996. The total number of cohabiting couples has increased from around 1.5 million in 1996 to around 3.5 million in 2020, an increase of 137%.³ In 2020, 18% of couples that lived together were cohabiting rather than married or in a civil partnership. Trends differ between opposite-sex and same-sex cohabiting couples and are described in more detail below.

2.1 Opposite-sex cohabiting couples

Between 1996 and 2020 the number of opposite-sex cohabiting couple families more than doubled, from around 1.5 million in 1996 to around 3.4 million in 2020. In 1996, around 10% of all opposite-sex couple families were cohabiting (rather than married) compared with 21% in 2020.

The chart below shows ONS estimates of the number of opposite-sex cohabiting couple families and opposite-sex married couple families living in the UK in each year since 1996. This chart includes all opposite-sex couples living together as a family, whether or not they have children.⁴



Source: ONS, [Families and Households: 2020](#), Table 1

As the chart shows, while the number of opposite-sex cohabiting couple families has grown in this period, the number of opposite-sex married couple families has remained broadly the same. The number of opposite-sex married couples fell from around 12.6 million in 1996 to

³ ONS, [Families and Households 2020](#), Table 1

⁴ The ONS defines a family as a married, civil partnered or cohabiting couple with or without children, or a lone parent with at least one child. Children may be dependent or non-dependent

around 12.2 million in 2004. The number remained at roughly this level until 2011 but has increased since then, reaching around 13 million in 2020.

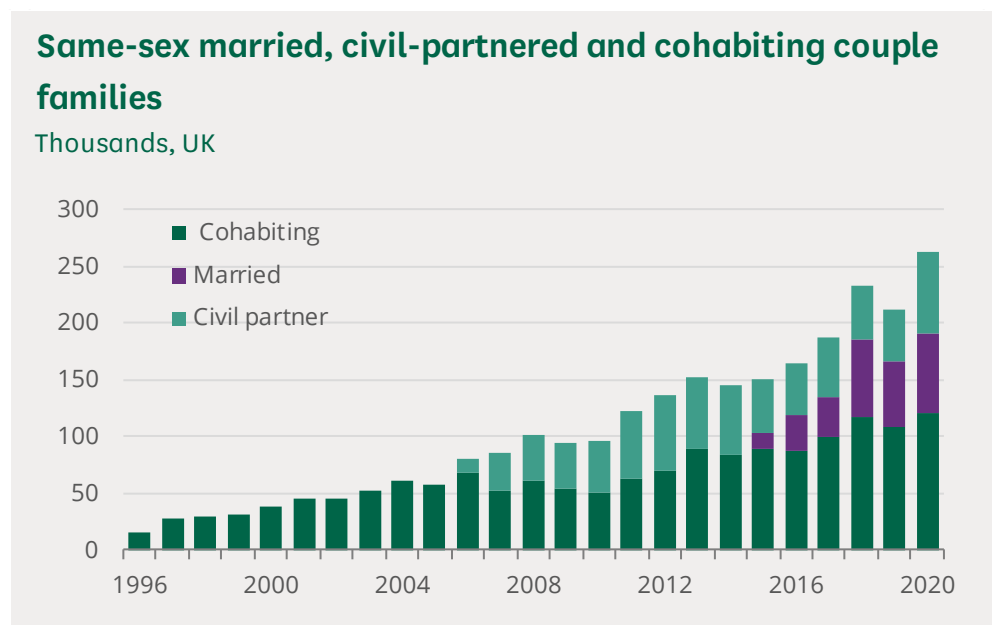
These estimates are based on a survey sample, which means that they come with some statistical uncertainty. While the estimate for the number of married couples shows a slight dip between 2018 and 2019, the statistical uncertainty means we cannot say with confidence that this reflects a real change. The difference between the 2018 and 2019 figures is not statistically significant.⁵

Between 1996 and 2020, the number of opposite-sex cohabiting couple families with dependent children more than doubled, from around 539,000 in 1996 to around 1.3 million in 2020.⁶ The number of married couple families with dependent children fell from around 5.2 million in 1996 to around 5 million in 2020.⁷

2.2 Same-sex cohabiting couples

Between 1996 and 2020 the number of same-sex cohabiting couple families increased from around 16,000 to 120,000, which is an increase of around 650%.

The chart below shows trends in the number of same-sex couples who were cohabiting, married or in a civil partnership between 1996 and 2020. Estimates of the number of couples in civil partnerships are available from 2006 and estimates of same-sex married couples are available from 2015.



Source: ONS, [Families and Households: 2020](#), Tables 1 and 9

⁵ There is currently no indication of the statistical robustness of the 2020 estimates as confidence intervals for 2020 are not yet available

⁶ Dependent children are those living with their parent(s) and either aged under 16, or aged 16 to 18 in full-time education (excluding those aged 16 to 18 who have a spouse, partner or child living in the household)

⁷ This figure includes a small number same-sex married couples with children in 2018

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Because ONS estimates of the number of families are based on survey data, estimates of these smaller populations are more uncertain and may vary from one year to the next due only to sampling error. However, there is a clear increase in the number of cohabiting and married same-sex couples, as well as an increase in the total number of same-sex couples living in a family together.

The introduction of civil partnerships and marriage for same-sex couples means that the proportion of same-sex couples who cohabit has declined, even though the total number has increased. Around 84% of same-sex couples who were living together in a family were cohabiting in 2006, the first year for which data on civil partnerships is available. By 2015, the first year for which marriage data is available, the proportion had fallen to around 60%. By 2020 around 46% of same-sex couples in families were cohabiting, while the rest were either in marriages or civil partnerships.

3. The current law relating to cohabitation

3.1 Property rights

Unmarried couples have no automatic guaranteed rights to ownership of each other's property on relationship breakdown. If a cohabiting couple separate, the courts have no power to override the strict legal ownership of property and to divide it as they may do on divorce or dissolution of a civil partnership.

If a couple cannot agree on their respective shares, it is possible to ask the court to determine an interest in property.⁸ The court may only make orders based on a determination of shares which have been acquired in the property in circumstances where the legal rules of trusts or proprietary estoppel apply. These rules are technical but, essentially, one party may be found to have a beneficial (or equitable) interest in the property even where the property is in the sole name of the other party; or to have a greater share than the other party where the property is held in joint names. The apparent intentions of the parties may be relevant in deciding the proportion of the property owned by each party. The length of time the partners have cohabited is not necessarily relevant. Each case is decided on its own facts.

Court cases

A number of court cases have considered the property rights of cohabitants.⁹ For example:

- In a 2007 case, the Appellate (Judicial) Committee of the House of Lords¹⁰ considered the respective interests of an unmarried couple in a property which had been their family home and was registered in their joint names.¹¹ The Court ruled that, where a property is registered in joint names in the domestic context, and there is no express declaration setting out the respective beneficial shares of the registered owners, there is a presumption that the benefit of the property is held in equal shares, unless and until the contrary is proved. If either party claims a different share of the value, they have to prove their entitlement. It would be necessary to look at all the relevant circumstances to ascertain the parties' shared intentions "actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it".¹² Baroness Hale of Richmond said that "each case will turn on its own facts" and that "many more factors than financial

⁸ Under the Trusts of Land and Trustees Act 1996

⁹ For example, [Oxley v Hiscock](#) [2004] EWCA Civ 546, [Stack v Dowden](#) [2007] UKHL 17, [Jones v Kernott](#) [2011] UKSC 53

¹⁰ The final appeal court at that time, now the Supreme Court

¹¹ [Stack v Dowden](#) [2007] UKHL 17. Baroness Hale gave the leading judgment for the majority, with which Lord Hoffmann agreed; Lords Walker and Hope delivered concurring judgments. Lord Neuberger agreed with the result, but provided different reasons for his decision (Law Commission, [Cohabitation: the financial consequences of relationship breakdown](#) (LAW COM No 307, Cm 7182, 31 July 2007) p18, footnote 9)

¹² *Ibid*, paragraph 60 (Baroness Hale of Richmond)

contributions may be relevant to divining the parties' true intentions", giving examples of what might be taken into account. She added:

In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection.¹³

Baroness Hale also said that parties' intentions might change over time.¹⁴

The House of Lords held, on the facts, that the case in question was one of those very unusual cases in which the presumption of beneficial equal shares could be rebutted and the common intention of the parties was not to share equally. The couple had kept their financial affairs largely separate. The Court determined that the sale proceeds should be divided 35/65 between the parties.¹⁵

- In the same case Lord Walker of Gestingthorpe said that there was "a good deal of uncertainty and the possibility of high litigation costs". Baroness Hale of Richmond also cautioned about the costs of pursuing legal action:

In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual.¹⁶

- In 2011, in another case, Lord Walker and Baroness Hale summarised the principles which apply where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests. They confirmed that each case would turn on its own facts: "financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended... or fair...".¹⁷ They also said that there is a different starting point where the family home is put into the name of one party only:

This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But

¹³ Ibid, paragraph 69 (Baroness Hale)

¹⁴ Ibid, paragraph 70 (Baroness Hale)

¹⁵ The Law Commission provides further information about this case and other case law in its report, [Cohabitation: the financial consequences of relationship breakdown](#) (LAW COM No 307, Cm 7182, 31 July 2007) – see particularly Part 2 and Appendix A

¹⁶ [Stack v Dowden](#) [2007] UKHL 17, paragraph 68

¹⁷ [Jones v Kernott](#) [2011] UKSC 53, paragraph 51

their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as ...above.¹⁸

Specifying shares

If a house or other property is bought jointly, it is possible for a cohabiting couple to set out the basis of the joint ownership, and whether the property is owned equally or in unequal shares.

3.2 Housing

The succession rights of cohabitants in relation to privately rented and social housing are explained in two Commons Library briefing papers entitled [Succession rights and privately rented housing](#)¹⁹ and [Succession rights and social housing \(England\)](#).²⁰

3.3 Domestic abuse

Cohabitants do benefit, in a broadly similar way to married couples, from the protection available under Part IV of the Family Law Act 1996, which is designed to deal with domestic abuse. The Act allows home-sharers and former home-sharers (including same sex-partners) to apply for non-molestation orders and/or court orders regulating the occupation of the family home. The Domestic Violence Crime and Victims Act 2004 extended these provisions to allow couples who have never cohabited to apply for non-molestation orders, and to strengthen the position of same-sex partners, particularly with regard to occupation orders.

The offence of “controlling or coercive behaviour” was introduced in December 2015 by [section 76](#) of the Serious Crime Act 2015. This currently applies to people who are in “intimate personal relationships”, or people who live together and have either been in an intimate personal relationship or are in “the same family”. Family is broadly defined and includes (amongst others) spouses, ex-spouses, civil partners, ex-civil partners and people who have a child together.

The [Domestic Abuse Act 2021](#) sets out a new statutory definition of “domestic abuse”, which applies to people who are “personally connected to each other”. The definition of personally connected includes people who are – or have previously been – in an “intimate personal relationship”. The Act also covers a wide range of other domestic abuse issues, including extending the controlling or coercive behaviour offence to cover post-separation abuse involving former couples who no longer live together. Further details are in the following Library briefing papers:

- [Domestic Abuse Bill 2019-21](#)

¹⁸ Ibid, paragraph 52

¹⁹ SN/SP/2004, 6 March 2009

²⁰ SN/SP/1998, 2 September 2018

- [Domestic Abuse Bill 2019-21: Progress of the Bill](#)

The Act received Royal Assent on 29 April 2021 although at the time of writing the large majority of its provisions are not yet in force.

Fixed-term tenancies

The Secure Tenancies (Victims of Domestic Abuse) Act 2018 was introduced to ensure that certain victims of domestic violence would retain a right to a 'lifetime' secure tenancy when fixed-term tenancies became mandatory for English housing authorities under the Housing and Planning Act 2016. Subsequently, the Government announced that it would not introduce mandatory fixed-term local authority tenancies "at this time."²¹

The Government's Social Housing Green Paper, [A new deal for social housing](#) (Cm 9671), published on 14 August 2018, included a commitment (at paragraph 188) to legislate to put in place similar protections for victims of domestic abuse where local authorities offer **fixed-term tenancies at their discretion**. The [Domestic Abuse Act 2021](#) gives effect to that commitment.

3.4 Inheritance

No automatic right to inherit partner's estate

When a couple live together, without getting married or forming a civil partnership, and one of them dies without leaving a will, the survivor has no automatic right under the intestacy rules to inherit any part of his or her partner's estate.²² This is the case no matter how long they lived together and even if they had children together.²³

It is sometimes possible, under family provision legislation, for a surviving cohabitant to make a claim at court against the estate of their partner,²⁴ if no provision (or inadequate provision) has been made for them either by will or by operation of the intestacy rules. However, a cohabitant is not treated in exactly the same way as a spouse. A surviving spouse or civil partner is entitled to seek such financial provision as it would be reasonable in all the circumstances of the case for a spouse/civil partner to receive, whether or not that provision is required for maintenance. A cohabitant may only seek reasonable provision for their own maintenance.²⁵

²¹ Ministry of Housing, Communities and Local Government, [A new deal for social housing](#), Cm 9671, 14 August 2018, paras 183-186

²² The intestacy rules specify who should inherit the property of a deceased person who did not leave a valid will

²³ Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Consultation Paper No 191 (Summary), 29 October 2009, paragraph 15

²⁴ In this context, a cohabitant means a person who lived in the same household as the deceased, as if he or she were the spouse or civil partner of the deceased, for a period of two years ending immediately before the date when the deceased died

²⁵ [Inheritance \(Provision for Family and Dependents\) Act 1975](#)

Law Commission proposal to extend inheritance rights for some cohabitants

On 29 October 2009, the Law Commission published a consultation paper, [Intestacy and Family Provision Claims on Death](#).²⁶ This covered a range of issues. One of the areas highlighted for potential reform was whether some cohabitants should have a place in the intestacy rules, the conditions which would have to be met, and how much of the estate they should receive.

The consultation period ended on 28 February 2010. In December 2011, the Law Commission published its final report, [Intestacy and Family Provision Claims on Death](#),²⁷ which included two draft bills, one of which was the draft Inheritance (Cohabitants) Bill. This contained provisions intended to give “qualifying cohabitants”, who had lived together for five years, the right to inherit on each other’s death under the intestacy rules, without having to go to court. Where the couple had a child together, this entitlement would accrue after two years’ cohabitation, provided the child was living with the couple when the deceased died.

The Law Commission acknowledged that views differed on how far the law should provide for cohabitants. However, it considered that the question of whether a cohabitant should inherit on his or her partner’s death was very different from the treatment of cohabitants on separation. It proposed reform only where the deceased was not married or in a civil partnership.²⁸

The Law Commission also recommended that a surviving cohabitant who had a child with the deceased should be able to make a family provision claim even if the relationship had lasted for a shorter period than two years.

The Law Commission said that its recommendations “reflect the growing prevalence and public acceptance of cohabitation” and that they would also bring English law into line with the law in other Commonwealth jurisdictions. Cohabitants would still be able to make a will naming other beneficiaries (subject to making reasonable provision for those family members and dependants protected by existing family provision legislation).²⁹

In March 2013, the Coalition Government announced that it had decided that the Law Commission’s recommendations regarding rights for cohabitants upon intestacy would not be implemented during that Parliament.³⁰

²⁶ Law Commission Consultation Paper No 191, [Intestacy and Family Provision Claims on Death](#), October 2009

²⁷ Law Commission Report No 331, [Intestacy and Family Provision Claims on Death](#), December 2011

²⁸ Law Commission, [Intestacy and Family Provision Claims on Death Executive Summary](#), Law Com Report 331 (Summary), 14 December 2011, p5

²⁹ Ibid paragraph 33

³⁰ [HC Deb 21 March 2013 cc59-60WS](#)

3.5 Social Security

For means-tested benefits and tax credits – and for Universal Credit which is replacing them – the unit of claim is the “family”. In general this includes the claimant and their husband, wife or civil partner, or someone they live with **as if they were** husband, wife or civil partner.³¹ If two people who are not married or in a civil partnership are treated as a couple, the resources of both partners are added together and taken into account when a claim is made.

The rules governing Income Support and income-based Jobseeker’s Allowance also recognise that married couples, and civil partners, have a duty to maintain each other. The Department for Work and Pensions (DWP) may, for example, seek to recover money from a separated spouse or civil partner if their partner claims benefit. These powers are rarely exercised, however. There are no corresponding provisions for couples who are not married or in a civil partnership.

Contributory benefits – i.e. those which are dependent on a sufficient National Insurance contribution record – have never recognised couples who are not married or in a civil partnership. In response to recent successful legal challenges, the Government has however said that it will amend legislation to extend bereavement benefits to cohabitants with dependent children.

Bereavement benefits and unmarried partners

Bereavement benefits provide additional support to people of working age on the death of their husband, wife or civil partner. Bereavement benefits have been reformed twice in the past 20 years. A new system – comprising the Bereavement Payment, the Bereavement Allowance, and Widowed Parent’s Allowance – replaced the former system of widows’ benefits for new claims from April 2001. The three bereavement benefits were in turn replaced by a new benefit – [Bereavement Support Payment](#) (BSP) – for people bereaved from April 2017. BSP comprises a lump-sum plus monthly payments for up to 18 months, the rates for both being higher for claimants with dependent children.

Partners who are not married or in a civil partnership have never been entitled to bereavement benefits.³² Someone in receipt of certain

³¹ For further details of the “Living Together as a Married Couple” test, see [Chapter 11 of the DWP Decision Maker’s Guide](#)

³² There is, however, an exception in Scotland. In Scotland a person may be able to claim bereavement benefits if they were married “by cohabitation with habit and repute” even if they did not go through a formal wedding ceremony [Social Security Commissioner’s decision R(G) 1/71]. This is more than simply living together, as there must have been something about the relationship which meant that it could be inferred that the person and their partner consented to marriage and nothing existed which would have prevented a valid marriage taking place (e.g. either party already being married to someone else) [R(G) 5/83]. In addition, their relationship must have been such that other people generally believed that they married [CSG/7/1995]. However, the rule by which marriage could be constituted by cohabitation with habit and repute ceased to have effect from 4 May 2006 (as a result section 3 of The Family Law (Scotland) Act 2006). For people to continue to benefit from the rule, their marriage by cohabitation with habit and repute must have started before this date. For further details see [DWP Decision Maker’s Guide Volume 3, Chapter 10: Evidence of age, marriage and death](#), paras 10209-10229.

bereavement benefits (Widowed Parent's Allowance or Bereavement Allowance) could however lose their entitlement if they started living together with another person as if they were husband and wife, even if they did not remarry; or started living together with someone as though civil partners, even if they did not register their partnership.³³

Successive governments have resisted calls to extend bereavement benefits to unmarried partners on the grounds that a founding principle of the National Insurance system is that all rights to benefit derived from another person's contributions are based on the concept of legal marriage (subsequently extended to include civil partnerships). Practical considerations have also been cited, such as the difficulty of ascertaining the nature and depth of the relationship, and the possibility of conflicting claims (e.g. where the spouse was separated when they died, leaving both a surviving unmarried partner and a legal spouse).³⁴

Despite representations from the Social Security Advisory Committee, the House of Commons Work and Pensions Committee and bereavement charities, the Coalition Government made it clear from the outset that it had no plans to extend the new Bereavement Support Payment (BSP) to unmarried partners.³⁵ Subsequent governments reaffirmed this position. Remarriage or repartnering does not however disqualify a bereaved individual from receiving BSP, as it is intended as help with the additional costs of bereavement, rather than serving as replacement for the deceased spouse or civil partner's earnings. For practical purposes though, this change may have limited impact since BSP is only payable for a maximum period of 18 months.

Legal challenges

In a judgment of 30 August 2018³⁶, by a majority of four to one, the Supreme Court ruled that a refusal to pay Widowed Parent's Allowance to a woman – Siobhan McLaughlin – who was not married to her deceased partner was incompatible with Article 14 of the European Convention on Human Rights (ECHR), together with the right to respect for family life under Article 8. The Court held that Widowed Parent's Allowance was targeted at the needs and well-being of children, and that the differential treatment of children according to their parents' marital status could not be justified.³⁷

The judgment only concerned Widowed Parent's Allowance and the Supreme Court did not consider the Bereavement Support Payment rules. Organisations representing bereaved families argued that BSP should be available to people who were unmarried, describing the situation as "blatant discrimination."³⁸ The previous Work and Pensions

³³ These rules continue to apply to people bereaved before April 2017 still receiving Widowed Parent's Allowance

³⁴ See section 7.3 of Commons Library briefing CBP-7887, [Bereavement Support Payment](#), 19 June 2017

³⁵ Ibid.

³⁶ [McLaughlin, Re Judicial Review \(Northern Ireland\) \[2018\] UKSC 48](#)

³⁷ See also Carla Clarke, 'Bereavement and children: unequal no more?', Welfare Rights Bulletin 266, October 2018

³⁸ ['Bereaved families denied benefit despite supreme court ruling'](#), Guardian, 15 June 2019

Committee also recommended that BSP be extended to bereaved parents who were not married, arguing that the policy unjustly penalised innocent children.³⁹

Following the Supreme Court case, the Child Poverty Action Group (CPAG) launched a judicial review of the BSP rules as they applied to unmarried parents, on behalf of two bereaved families (the [Jackson & Others](#) case). CPAG argued that the Supreme Court's decision in *McLaughlin* should apply to BSP as well as to Widowed Parent's Allowance. The DWP, however, argued that BSP was a different type of benefit to WPA – to help with the costs of bereavement incurred by the surviving parent, rather than a benefit 'for' children – and as such the Supreme Court's reasoning in *McLaughlin* should not apply.

On 7 February 2020, the High Court held that the rules denying payment of the higher rate of BSP to unmarried, cohabiting partners with children were incompatible with the ECHR.⁴⁰ Rejecting the DWP's argument that the higher rate BSP was not 'for' children, Mr Justice Holman said that there was "manifestly no reasonable justification whatsoever" for giving the higher rate BSP to families based on marriage or civil partnership, while denying it to those based on cohabitation.

The Government is not contesting either of these judgments. In neither case did the court say what should be done, but instead they both issued a 'declaration of incompatibility', leaving it to the Government and Parliament to decide whether and how legislation should be changed. The DWP has said that it will lay before Parliament a [Remedial Order](#) to remove the incompatibilities from the legislation governing WPA and BSP by extending these benefits to cohabitants with children. It is not known when the Remedial Order will be laid. Asked what progress had been made, the Pensions Minister Guy Opperman said in a parliamentary written answer on 10 March 2021 that the DWP was "currently considering the detail and implementation of the draft remedial order" and would update the House "in due course."⁴¹

Further information on the judgments and their implications can be found at the Child Poverty Action Group's website.⁴² The Childhood Bereavement Network – which has been campaigning on the issue of [unmarried cohabiting partners and bereavement benefits](#) – has also produced a factsheet, [How do the recent court cases about widowed parents and bereavement benefits affect me?](#)⁴³

³⁹ Work and Pensions Committee, [Bereavement Support Payment](#), HC 85 2019-20

⁴⁰ [Jackson & Ors v The Secretary of State for Work And Pensions \[2020\] EWHC 183 \(Admin\)](#); see also [Bereavement Support Payment: High Court rules in favour of bereaved parents who were cohabiting and their children](#), CPAG press release, 7 February 2020; and [Bereavement benefit rules discriminatory and incompatible with ECHR rights, rules High Court](#), Garden Court Chambers press release, 7 February 2020

⁴¹ [PO 162555](#)

⁴² See [Bereavement Support Payments for unmarried parents](#), and [Widowed Parent's Allowance and non-married couples](#)

⁴³ Last updated February 2021

In January 2020, the DWP published an analysis of the estimated cost of extending BSP to cohabiting survivors, and of the numbers who might be affected.⁴⁴ It estimated that an additional 15,000 claimants per year would be entitled to BSP, at an annual additional cost of £50 million, if BSP was extended to cohabiting survivors **with or without children**. This compared to the DWP's estimate of entitlement rates under the existing rules of 55,000 claimants per year at an annual cost of around £180 million. The estimated annual cost of extending BSP **only to cohabiting partners with dependent children** was £15 million a year.

3.6 Pensions

State pensions

A cohabitant cannot rely upon their former partner's contributions for the purposes of State Pensions. Under State Pension rules for people who reached State Pension age before 6 April 2016, a person who was or had been married, or in a civil partnership, could claim a basic State Pension (BSP) on the basis of their (former) spouse or civil partner's contributions.⁴⁵ These rules were removed (with some transitional protection) for people reaching State Pension age from 6 April 2016, when the new State Pension was introduced.⁴⁶ The rationale was that the new State Pension has been designed for people to qualify on the basis of their own NI record.⁴⁷ For more detail, see Commons Library briefing paper, CBP 7414 [The new State Pension – transitional issues](#) (Feb 2019), section 3.2.

For means-tested benefits, such as Pension Credit, if two people are treated as a couple, the resources of both are added together and may be taken into account in assessing entitlement. Two cohabitants are treated as a couple if they are considered to live together and share their lives in the same way as if they were married or civil partners.⁴⁸ They are still treated as a couple during periods temporarily living apart. If a temporary separation becomes permanent, they can apply for Pension Credit separately.⁴⁹

Occupational pensions

The pension tax legislation allows pension schemes to provide a survivor pension to a person who was not married or a civil partner of the scheme member but was financially dependent on them.⁵⁰

⁴⁴ DWP, [Bereavement Support Payment, forecasts for April 2020 to March 2025: Ad hoc release of Bereavement Support Payment statistics on the effect of extending eligibility to cohabitants](#)

⁴⁵ DWP, [State Pension entitlements derived from a current or former spouse's or civil partner's national insurance contributions](#) (March 2013) - [Annex A](#); Pension Service, [a detailed guide to State Pensions for advisers and others](#), NP46, August 2009, p44-54

⁴⁶ [Pensions Act 2014](#), s1(2), 11 and 12

⁴⁷ [Pensions Act 2014](#), s1(2), 11 and 12

⁴⁸ Pension Service, [A detailed guide to Pension Credit for advisers and others](#), PC10S, April 2018, [People living together as if they were married](#)

⁴⁹ *Ibid*, [People living apart from their partner](#)

⁵⁰ [Finance Act 2004](#), part 4

Until reforms introduced in the mid-2000s, public service schemes did not provide survivor pensions for unmarried partners. This was in contrast to private sector schemes, where the trustees often had discretion to do so. Changes in lifestyles led to pressure for schemes to be modernised and in 1998, the Labour Government said it would extend eligibility to survivors' pensions to unmarried partners if members were prepared to meet the additional costs.⁵¹

Subsequent reforms to all the main public service pension schemes included improvements to survivors' benefits, such as the introduction of pension for unmarried partners and allowing pensions to be paid for life rather than removed on remarriage or cohabitation. These improvements were generally not made retrospective – scheme members either had to have service after the date of the reform or opt to be a member of the post-reform scheme. When pensions for unmarried partners were introduced, most schemes required a nomination to have been made. Such restrictions have been subject to a succession of legal challenges.

The fact that the scheme member needs service after a particular date, was subject to an unsuccessful legal challenge in relation to the Local Government Pension Scheme (LGPS). The claimant, [Catherine Harvey](#), was the unmarried partner of a deceased member of the LGPS who had left service before 1 April 2008, the date from which he needed to have been in employment for her to be eligible. Ms Harvey contended that the refusal to pay her a pension amounted to unlawful discrimination and a breach of her human rights. However, the High Court found in favour of the Government. It considered that the central and core justification was that spouses in the 1997 Scheme and cohabitants of 2008 Scheme members are entitled to a pension because it was costed into the relevant Schemes and paid for.⁵² Where a member left before April 2008 the member did not pay for a cohabitee to receive a benefit, nor was it otherwise costed into the 1997 Scheme."⁵³

When pensions for unmarried partners were introduced, most public service schemes required a nomination to have been made. In February 2017, on an application by Denise Brewster for judicial review relating to the local government scheme in Northern Ireland, the Supreme Court held that the nomination requirement should be disapplied and that she should be entitled to a survivor's pension under the scheme.⁵⁴ HM Treasury subsequently wrote to public pension schemes saying that "cases previously refused solely because of a lack of nomination form should be reconsidered and schemes should pay survivor benefits from the date of the member's death in eligible cases, regardless of when a claim is made."⁵⁵ Where schemes required a

For more detail see [Occupational pensions: survivors' benefits for cohabitants](#), Commons Library Briefing Paper, CBP 6348, March 2020

⁵¹ DSS, [A new contract for welfare: partnership in pensions](#), December 1998, Cm 4179, chapter 8

⁵² [R v Catherine Harvey and London Borough of Haringey and Secretary of State for Housing, Communities and Local Government](#), [2018] EWHC 2871

⁵³ [LGPS Update, December 2018](#)

⁵⁴ [Brewster, Re Application for Judicial Review \(Northern Ireland\)](#) [2017] UKSC 8

⁵⁵ [PO 105675, 16 October 2017](#)

nomination, that has now been removed by statutory instrument.⁵⁶ In January 2020, the Government said it did not think the Brewster judgment had any bearing on “cases where pension schemes do not provide pensions to unmarried partners.”⁵⁷

In July 2019, in the case of *Langford v Secretary of State for Defence*, the Court of Appeal held that a rule in the [Armed Forces Compensation Scheme Order \(SI 2011/517\)](#) that for a cohabiting partner to be eligible for survivors’ benefits, there must have been nothing to prevent them marrying, amounted to unlawful discrimination which was not justified or proportionate in that case.⁵⁸ The Department was “considering the merits of an appeal to the Supreme Court, and the read over of the judgment.”⁵⁹ However, in 2020 it said that the Court of Appeal judgement stated that the judgement only applied to the *Langford* case. The Government said that following legal advice, it had no plans to amend the AFPS or AFCS rules.⁶⁰

3.7 Taxation

Cohabiting couples are treated as unconnected individuals for taxation purposes and as such cannot, for example, benefit from various reliefs and exemptions in the taxation system available for spouses and civil partners.

3.8 Immigration

The legal position of non-British/Irish unmarried cohabitants seeking to enter or remain in the UK with their British/settled partner largely mirrors that for married couples, as set out on the [‘Family visas’](#) section of the GOV.UK website. In order to be eligible for permission to remain in the UK as an unmarried partner of a British/settled person, the couple must have been “living together...in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application”.⁶¹

3.9 Birth registration

Gov.UK, [Register a birth](#), provides an overview of who can register a birth, and includes information about whose details can be included on the birth certificate.

Section 56 and Schedule 6 of the [Welfare Reform Act 2009](#) were intended to make provision for the joint registration of births, wherever possible, where the parents of a child are not married to each other nor are civil partners of each other. However, these provisions have not been brought into force.

⁵⁶ For example, [The Teachers’ Pensions etc. \(Amendment\) Regulations 2019 \(Statutory Instrument 2019/1134\)](#)

⁵⁷ [HC Deb 28 January 2020 c239WH](#)

⁵⁸ [Langford v Secretary of State for Defence, \[2019\] ECWA Civ 1271](#)

⁵⁹ [AFPS Annual Report 2018-19](#), HC 2403, July 2019, para 4.10

⁶⁰ [AFPS Annual Report 2019-20](#), HC 952, November 2020, p16

⁶¹ [Immigration Rules \(HC 395 of 1993-4 as amended\)](#), Appendix FM para GEN.1.2

3.10 Parental responsibility

The legal position relating to parental responsibility when couples are not married nor in a civil partnership is set out in a Commons Library briefing paper, [Children: parental responsibility – how it's gained and lost, and restrictions \(England and Wales\)](#).⁶²

⁶² Number 8760, 10 February 2020

4. Cohabitation agreements

Cohabitants may enter into a cohabitation agreement and this can act as encouragement for them to consider what they want to happen if the relationship ends.

Advicenow has published, [How to make a living together agreement](#).⁶³ This comments on whether a living together agreement would be legally binding:

Living Together Agreements have a slightly odd status in law. They aren't binding unless you write them as a formal legal deed, but the court will usually follow them as long as what you agreed is fair, and you were both honest about your finances when you made the agreement. A court is even more likely to uphold the agreement if you both had some legal advice, separately, about what you were doing before signing the agreement.

If you want to ensure it is binding, you can make it in the form of a deed. It is advisable to do this if you want to make sure that the agreement about the ownership of the home is binding, for instance, or if one of you is promising to pay something to the other. We advise you to each **take legal advice** if you are going to make the agreement in deed form...⁶⁴

Further information is available from the Law Society, [Moving in together: getting a cohabitation agreement](#).⁶⁵

⁶³ May 2017

⁶⁴ Section 4

⁶⁵ Accessed 27 April 2021

5. Law Commission report

5.1 New statutory scheme recommended

On 31 July 2007, following consultation, the Law Commission published a report, [Cohabitation: the financial consequences of relationship breakdown](#).⁶⁶ The Law Commission did not consider that cohabitants should be given the same rights as married couples and civil partners in the event of their separation. Instead, the Report recommended the introduction of a new scheme of financial relief on separation based on the contributions made to the relationship by the parties. First consideration would be given to any dependent children of the couple. Unlike in cases of divorce, cohabitants would not be expected to meet each other's future needs by means of maintenance payments, and there would be no principle that the parties should share their assets equally.⁶⁷

Moving in with someone, by itself, would not automatically give rise to any entitlement to a remedy. The scheme would be available only to eligible cohabiting couples. Couples who have had a child together or who have lived together for a minimum period would be eligible. The Law Commission recommended that the minimum period for couples without children should be set within a range of two to five years.⁶⁸

Couples would be able to opt out of the scheme through a written agreement.

The key features of the scheme were summarised in the [Executive Summary](#).⁶⁹ This sets out how financial relief for cohabitants on separation would differ from the provision available on divorce:

It would not be sufficient for applicants simply to demonstrate that they were eligible for financial relief and that the couple had not made a valid opt-out agreement disapplying the scheme. In order to obtain a remedy, applicants would have to prove that they had made qualifying contributions to the parties' relationship which had given rise to certain enduring consequences at the point of separation.

The scheme would therefore be very different from that which applies between spouses on divorce. Simply cohabiting, for however long, would not give rise to any presumed entitlement to share in any pool of property. Nor would the scheme grant remedies simply on the basis of a party's needs following separation, whether by making orders for maintenance or otherwise.⁷⁰

The Law Commission said that the proposed scheme aimed to be fair to both parties:

⁶⁶ [Cm 7182, LAW COM No 307](#)

⁶⁷ Law Commission press release, New remedies for cohabitants – different from divorce, 31 July 2007

⁶⁸ Ibid

⁶⁹ Law Commission, [Cohabitation: The Financial Consequences of Relationship Breakdown Executive Summary](#), Law Com No 307 (Summary), 31 July 2007

⁷⁰ Ibid, paragraphs 1.17-18

In broad terms, the scheme would seek to ensure that the pluses and minuses of the relationship were fairly shared between the couple. The applicant would have to show that the respondent retained a benefit, or that the applicant had a continuing economic disadvantage, as a result of contributions made to the relationship. The value of any award would depend on the extent of the retained benefit or continuing economic disadvantage. The court would have discretion to grant such financial relief as might be appropriate to deal with these matters, and in doing so would be required to give first consideration to the welfare of any dependent children.

We consider that a scheme based on these principles would provide a sound basis on which to address the hardship and other economic unfairness that can arise when a cohabiting relationship ends. It would respond, more comprehensively than the current law can, to the economic impact of the contributions made by parties to their relationship, and so to needs which arise in consequence. Where there are dependent children, the scheme would enable a remedy to be provided for the benefit of the primary carer, and so better protect those children who share their primary carer's standard of living. By making adequate provision for the adult parties, the scheme would give more leeway to the court than it currently has to apply Schedule 1 to the Children Act 1989 for the benefit of the parties' children.⁷¹

The late Stuart Bridge, the then Commissioner leading the project, said that the scheme would not undermine marriage, adding:

We consider that our scheme strikes the right balance between the need to alleviate hardship and the need to protect couples' freedom of choice.⁷²

Further information, with links to associated documents, is available on the Law Commission webpage, [Cohabitation](#).⁷³

5.2 Government response

Labour Government

On 6 March 2008, Bridget Prentice, who was then a junior Justice Minister, announced that no action would be taken to implement the Law Commission's recommendations until research on the cost and effectiveness of the scheme recently implemented in Scotland could be considered.⁷⁴

Coalition Government

On 6 September 2011, Jonathan Djanogly, then a junior Justice Minister, announced that, having carefully considered the Law Commission's recommendations, together with the outcomes of research on the Family Law (Scotland) Act 2006, the then Government did not intend to reform the law relating to cohabitation in that Parliamentary term:

⁷¹ Ibid, paragraphs 1.19-20

⁷² Law Commission press release, New remedies for cohabitants – different from divorce, 31 July 2007

⁷³ Accessed 27 April 2021

⁷⁴ [HC Deb 6 March 2008 c122WS](#)

The findings of the research into the Scottish legislation do not provide us with a sufficient basis for a change in the law. Furthermore, the family justice system is in a transitional period, with major reforms already on the horizon. We do not therefore intend to take forward the Law Commission's recommendations for reform of cohabitation law in this parliamentary term.⁷⁵

Conservative Government

In April 2018,⁷⁶ and again in November 2018,⁷⁷ Lucy Frazer, who was then junior Justice Minister, said that the Government would consider how to proceed in relation to proposals made by the Law Commission in the context of any further reforms to the family justice system.

To date, the Government has not given any further indication of what might happen next.

⁷⁵ [HC Deb 6 September 2011 cc15-16WS](#)

⁷⁶ [PO 138023 \[on Cohabitation\], 30 April 2018](#)

⁷⁷ [PO 195548 \[on Cohabitation\], 29 November 2018](#)

6. Calls for reform

For a number of years, calls have been made from both within and outside of Parliament for reform of the law relating to cohabitation. Some examples are set out below.

6.1 Early Day Motion

On 22 November 2017, Caroline Lucas (Green Party) tabled an EDM, [Legal rights for cohabitees who separate](#):

That this House notes that there are currently more than six million people in the UK who live together without being married or in a civil partnership, and that such cohabitees are the fastest growing family type; is concerned that, in England and Wales, such cohabitees have little or no legal protection or ability to access support if their relationship breaks down and they separate; further notes that countries such as Australia, Canada and Scotland legally recognise cohabitation relationships and provide legal protection; notes that Resolution's Cohabitation Awareness Week takes place from 27 November to 1 December 2017 to help counter the widely held belief that cohabitees are protected under so-called common law marriage, and highlight the benefits of cohabitation, separation and living together agreements; and calls on the Government to act upon Resolution's proposal that cohabitees meeting eligibility criteria indicating a committed relationship have a legal right to apply to the courts for certain financial orders if they separate.⁷⁸

The EDM gained 27 signatures.

6.2 Private Members' Bills

Private Members' Bills intended to establish a framework of rights for cohabitants on separation and/or death have been introduced on several occasions and in both Houses. None of these bills completed their passage through Parliament.

For example, in the 2008-09 Parliamentary session, the late Lord Lester of Herne Hill (Liberal Democrat), introduced the [Cohabitation Bill \[HL\] 2008-09](#),⁷⁹ and Mary Creagh (Labour) sought leave, under the Ten Minute Rule motion, to introduce the [Cohabitation \(No 2\) Bill](#).⁸⁰

Lord Marks of Henley-on-Thames (Liberal Democrat) has introduced a Cohabitation Rights Bill [HL] in a number of Parliamentary sessions, most recently the [Cohabitation Rights Bill \[HL\] 2019-21](#), which was introduced on 6 February 2020.⁸¹

A previous, similar bill had its [Second Reading](#) on 15 March 2019.⁸² The Bill did not make any further progress. A [House of Lords Library briefing](#), prepared in advance of Second Reading, provides information about this bill.

⁷⁸ EDM 582 of 2017-19

⁷⁹ HL Bill 8 of 2008-09

⁸⁰ [HC Deb 25 March 2009 cc309-11](#)

⁸¹ HL Bill 97 of 2019-21

⁸² HL Bill 34 of 2017-19, [HL Deb 15 March 2019 cc1258-76](#)

6.3 Resolution campaign

[Resolution](#) "is campaigning for cohabiting couples to have at least basic rights on relationship breakdown or death of their partner and is also working to raise awareness so cohabiting couples can take measures to protect themselves".⁸³

6.4 Opposition to proposals: Baroness Deech

The crossbench peer, Baroness Deech, has expressed opposition to proposals to reform the law relating to cohabitation. For example, on 17 November 2009, Baroness Deech delivered a Gresham College lecture, *Cohabitation and the law*, in which she argued against giving new rights to cohabitants:

The message is one of freedom of choice and respect for rights. Why should we make them pay when young educated people live together, or when a young woman with a good career is deserted by the young man whom she had hoped would marry her but instead demands money from her? What are the expectations of cohabitants? Whatever they are, they know that they are not married, and they have chosen to avoid the married state. There is nothing to stop them marrying, for divorce is easily enough obtained if one is already married. If they are dissatisfied with their legal lot, why not marry in order to obtain marital rights? And if they are dismissive of marriage as a mere piece of paper, or an unnecessary legal bond, then why so keen to turn to the court for compensation in reliance on the law when the free union ends? Couples may be trying out their relationship before taking the step of marriage, and we should not impose the penalties of a failed marriage on those who were experimenting in order to avoid this outcome. There should be a corner of freedom where couples may escape family law with all its difficulties. Cohabitation is not marriage, now or historically, and people ought to have the freedom to try alternative forms of relationship, not to have one form imposed on them, especially one that treats women as perpetual dependants.⁸⁴

⁸³ Resolution, [Cohabitation](#) [accessed 27 April 2021]

⁸⁴ Baroness Deech of Cumnor, [Cohabitation and the Law](#), Gresham College [accessed 27 April 2021]

7. Scotland and Northern Ireland

7.1 Scotland

Under the [Family Law \(Scotland\) Act 2006](#), which came into force in May 2006, cohabitants (opposite-sex and same-sex couples) may make limited claims against each other in the event of their relationship terminating or on the death of one cohabitant. However, couples living together do not have the same rights as married couples and civil partners.

Citizens Advice Scotland provides further information:

- [Living together and opposite-sex marriage: legal differences](#);
- [Living together and same-sex marriage: legal differences](#).⁸⁵

7.2 Northern Ireland

The NI Direct website provides information about the status and rights of people who live together:

Most people think that after they've been living with their partner for a couple of years, they become 'common law husband and wife' with the same rights as married couples. This is not the case. There is no such thing as 'common law marriage'.

In fact, couples who live together, also called co-habitants, have hardly any of the same rights as married couples or civil partners.

Legal and financial problems can arise if you decide to separate, or if one of you dies. And while you do have legal protection in some areas, you should take steps to protect yourself and your partner.⁸⁶

⁸⁵ Accessed 27 April 2021

⁸⁶ NI Direct, [Find out your rights](#) [accessed 27 April 2021]

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