

Rights and Duties of Cohabitants

In 2006, the Commission published a Report on the [Rights and Duties of Cohabitants](#) (LRC 82 – 2006), following from its Consultation Paper on the [Rights and Duties of Cohabitees](#) (LRC CP 32-2004). The Report – which was launched at the Commission’s Annual Conference 2006 - makes substantial recommendations for reform of the law concerning cohabitants, defined as opposite sex or same sex couples who live together in an intimate relationship and who are not related to each other. It covers cohabitants who do not marry or who have not registered their relationship through, for example, civil partnership. In light of the publicly-stated views of most elected public representatives and of the approach outlined in *Options Paper on Domestic Partnership* published by the Working Group on Domestic Partnership in 2006, the Report assumes that a form of civil partnership for same sex couples is likely to be introduced in the near future. The Report emphasises that its recommendations are not an alternative to public registration systems – whether marriage or civil partnership – but deal with a different situation, which is the position of cohabitants who do not publicly register their relationship (for whatever reason). The Commission concluded that this group of cohabitants – whether same-sex or opposite-sex – should be considered separately in any reform of the law.

The Report deals with the rights and duties of cohabitants under a wide range of topics. The Report makes recommendations aimed at encouraging cohabitants to make agreements on financial matters (cohabitant agreements), how transactions between “qualified cohabitants” (discussed below) should be dealt with under tax laws, and what succession entitlements qualified cohabitants should be entitled to apply for. The Report also recommends that there should be general recognition of same sex and opposite sex cohabitants under, for example, social welfare law, private tenancy law, in the health care and hospital setting, and under domestic violence law. The Report also recommends the enactment of a “safety net” redress system for “qualified cohabitants,” who could apply to court for financial relief at the end of a relationship but only if they can show that they had become “economically dependent”. The Commission recommends that, in such an application, a Court could make any of the following orders: a property adjustment order, a compensatory maintenance order, or (as a last resort) a pension splitting or pension adjustment order.

The Report also states that, where cohabitants wish to claim some public benefit (such as tax benefits) or redress through the courts (such as succession rights or a property adjustment order) this will only be available to “qualified cohabitants,” which is defined as cohabitants who have been living together for at least 3 years (or, if they have had a child, 2 years). The Report emphasises that, in many cases, a much longer period would be required before a cohabitant would obtain any entitlements, because the Court would also have to take into account a wide range of factors, including contributions and sacrifices made to the relationship. The Report recommends that, for couples who do not register their relationship (whether through marriage or civil partnership), most entitlements will not be automatic and will only apply where various “qualifying criteria” have been met, including the requirement that a cohabitant shows he or she is “economically dependent.”