



Mark Harper

*Disadvantage and Discrimination
in Cohabitation Relationships*

**Disadvantage and Discrimination
in Cohabitation Relationships
Affecting Children and Adults**

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UK Models for Cohabitation Law Reform

Law Society Proposals (1)

- **Published October 1999**
- **Definition of Cohabitation to be based on Department of Social Security criteria namely:–**
 - Membership of the same household
 - Stability and duration of the relationship
 - Financial support
 - Sexual relationship
 - Whether there are children
 - Public acknowledgment of the relationship

UK Models for Cohabitation Law Reform

Law Society Proposals (2)

- **Right to Apply for Maintenance on Separation**
 - Resources for training and retraining
 - To reflect economic advantages and disadvantages not catered for by award of capital
 - Duration no longer than four years, save in exceptional cases
- **Transfer of and succession to tenancies should be possible for same sex couples, as well as opposite sex couples**

UK Models for Cohabitation Law Reform

Law Society Proposals (3)

- **Reform should apply to same sex and opposite sex couples, while not equating remedies for married couples**
- **Right to apply for capital on separation; applications determined on the basis that:-**

“Fair account should be taken of any economic advantage derived by either party from contributions by the other, and of economic disadvantages suffered by either party in the interests of the other party or of the family”

– Contributions to include domestic contributions, not just contributions to property

UK Models for Cohabitation Law Reform

Law Society Proposals (4)

- **Pension Sharing should be available on separation.**
- **Cohabitation contracts to be enforceable subject to safeguards**
- **Same sex cohabitants to be able to apply for financial provision on death, as opposite sex cohabitants can.**
- **Immigration rules should enable cohabitants to acquire Citizenship**
- **Possibility of taxation changes**

UK Models for Cohabitation Law Reform

Solicitors Family Law Association Proposals (1)

- **Published October 2000**
- **Definition of Cohabitation to be based on Australian Capital Territories' Legislation, slightly modified:-**

“A personal relationship (other than a legal marriage) between two adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other.”

UK Models for Cohabitation Law Reform

Solicitors Family Law Association Proposals (2)

- **emphasises protective nature of the Legislation**
- **no analogy drawn between cohabitation and marriage**
- **applies irrespective of gender or sexuality**

UK Models for Cohabitation Law Reform

Solicitors Family Law Association Proposals (3)

- **Financial relief to be available to cohabitants who have lived together for 2 years or where there are children of the family**
- **Presumption that each of the couple should be self supporting as quickly as possible**
- **Power to make lump sum and property adjustment orders, based on the principle of economic advantage derived or economic disadvantage suffered**

UK Models for Cohabitation Law Reform

Solicitors Family Law Association Proposals (4)

- **Maintenance of up to 3 years' only from the date of separation, except in cases of severe financial hardship**
- **Children Act 1989 to be amended to give mothers a life interest in properties transferred**
- **Ability to opt out by way of cohabitation contract, with adequate safeguards.**

UK Models for Cohabitation Law Reform

Scottish Law Commission Proposals (1)

- **Published 1994**
- **Scottish Executive announced in 2000 that they intended enacting the Reforms**

UK Models for Cohabitation Law Reform

Scottish Law Commission Proposals (2)

- **Definition – relationship of a man and woman not legally married but living together**
- **Capital sum to be awarded on the basis of economic advantage derived or economic disadvantage suffered**
- **On death cohabitants could apply for discretionary provision out of the Estate**
- **Cohabitation contracts should be enforceable**

UK Models for Cohabitation Law Reform

Lord Lester and Stonewall's Civil Partnership Bill (1)

- **Civil Partnership Campaign**
- **Launched by Stonewall and Lord Lester at the Houses of Parliament July 2001**
- **Draft Bill to be presented to the House of Lords in ? November 2001**

UK Models for Cohabitation Law Reform

Lord Lester and Stonewall's Civil Partnership Bill (2)

- **To be available to couples of the same or opposite sex, not necessarily cohabiting**
- **3 months' notice to the Registrar to be given**
- **Declaration of partnership required**
- **Ability to agree division of assets in advance**
- **Dissolution after common statement to the Court and wait of 3 months' delay**

UK Models for Cohabitation Law Reform

Lord Lester and Stonewall's Civil Partnership Bill (3)

- **On dissolution each to take what they brought into the partnership, the rest divided equally**
- **This is subject to the Court's ability to make property adjustment and maintenance orders to protect the best interests of any children and in cases of grave financial hardship**
- **Any increase in value of a property, brought into the partnership, to be shared equally**

UK Models for Cohabitation Law Reform

Jane Griffiths MP's Bill

Partnerships Civil Registration Bill

- **To be moved in the House of Commons on 24 October 2001 – 10 minutes Rule Bill**
- **Terms of the Bill as yet unclear but likely to be similar to Lord Lester's draft Bill**

UK Models for Cohabitation Law Reform

Which model is best?

- **Blanket rights for all, or a limited category?**
- **Opt-out of blanket rights?**
- **Opt-in for those who register their partnerships?**
- **Equating cohabitation with marriage**
- **Law Commission's Consultation Paper on Homesharing**