

From Baroness Deech, House of Lords, response to *A Fairer End to Relationships* Questions 1-24

1. Do you agree with the government's view that the objective for the sharing principle is to give equal benefit to the parties of matrimonial property by dividing matrimonial assets equally?

My answer is yes, but I preface it by explaining that the government has chosen the worst of all possible solutions to reform of financial provision. I have been calling for reform for decades; the law should have been reformed a long time ago, and I am glad that my criticisms of it have been vindicated by the Law Commission. But of the 4 options for reform they set out, the government has chosen the one that is most likely to continue the faults of the current system, the uncertainty, propensity to litigation and new interpretations, the expense and the adversarial nature. Adding one or two more criteria to the ones set out in s. 25 will continue all the faults of that section, add to judicial discretion, set the scene for 10 more years at least of fresh court applications to ascertain the meaning of the new wording, more expense for couples, bearing in mind there is no legal aid, more subjectivity and moving England & Wales even further away from the progressive approach taken in many European, N American states and New Zealand. It will further divide England from Scotland, whose law has been reviewed and praised as very well drafted and workable in the report *Built to Last* <https://eprints.gla.ac.uk/117617/1/117617.pdf>. The Scottish provisions would solve many of the ambiguities and drafting problems referred to in this consultation, and it is the model on which Baroness Shackleton and I have based our statutory attempts to reform the law. It is ready for adoption.

By way of contrast the Law Commission codification-plus model, on which the government proposals are based, suffers these defects: it preserves too much judicial discretion, nullifying the main benefit of reform and retaining uncertainty; there will be no judicial uniformity, and more recourse to the Court of Appeal and Supreme Court for clarification; words like "needs" and "fairness" are almost entirely subjective; it will not be easier for litigants to understand and handle the concepts themselves if self representing; it does

not lend itself to the undoubted future AI solutions; there will be more expensive litigation. Only a default formulaic regime will assist couples and provide certainty. It does seem as if government has hearkened more to vested interests than to real public desiderata.

A (backward looking) reformed law would continue to cater mostly to well off couples. Almost nothing could be achieved by these proposals for lower income couples currently either because no order is made or the award is deducted from Universal Credit. ADR is widely used. And there is insufficient concern for children in these proposals, whether by not reforming the Child Maintenance Service or raising the age to which they should be maintained. Retaining so much judicial discretion runs counter to the wishes of divorcing couples, who want to know the outcome of their split. It will continue to place burdens on judges who have to cope with self-representing litigants who may not even know that children's needs should have priority. There will continue to be a huge difference between the law in England and that of the rest of the world, which is unacceptable now that there are so many international marriages: thus English law will continue to be a draw for wealthy foreign wives who set up domicile here in order to use our courts.

The government's proposed reforms will not resolve the risk this law presents to the rule of law. This is so because the law is and will remain unpredictable and vary from region to region, judge to judge; couples will settle for fear of more expense; mediation will continue to merit government support; principles will continue to be changed with retrospective effect, and past awards reopened when for example an ex-husband becomes better off than when the award was made.

Having said that, if it becomes more widely understood that 50-50 sharing is the law, this will shape settlements made out of court, which is a good thing and represents equality.

2. Do you agree with the government's view that the court should consider the sharing principle as the starting point and consider the needs principle where equal sharing would not allow needs to be met?

Yes, but as in Scottish law, needs should be considered in a different calculation, capital adjustment being the preferred method. See s.9(1)(a) and (c) of the Family Law (Scotland) Act 1975. If, unlike Scotland, needs are used to change the 50-50 division of property, there will be no genuine change to the current law, and the clarity of 50-50 and equality will not survive. "Needs" should be defined by advantage and disadvantage, see below. "Needs" as a matter of principle, will not end the status of the ex-wife (usually) as a supplicant asking for her needs to be met by the man she served (her ex-husband), it will not treat her as an equal partner. The needs of a parent for childcare and school fees should however always be considered as they are for the welfare of the child and to advance self sufficiency.

3. Do you agree with the government's view that it should codify the distinctions between matrimonial and non-matrimonial property, in line with the Supreme Court's decision in Standish?

Yes, but not in line with Standish. This question illustrates neatly what is wrong with the codification-plus model. Standish is the law now, but like so many other major judgments intended to clarify the law, it is likely to be refined, overthrown, modified etc at any time. It is only the latest iteration of the division. Judgements subsequent to Standish already take a more nuanced approach to it. Codification-plus with additions like this increase litigation, create a certain ideological stance and will not last for decades, as any reform should, bearing in mind that more than 50 years have passed since the last legislation. To codify Standish (whatever that means) would lock the system into current understandings even if case law moves on. Far better to set out rules about matrimonial and non matrimonial property as in the Family Law (Scotland) Act as follows *The net value of the matrimonial property shall be the value of the property at the relevant date after deduction of any debts incurred by the parties or either of them—*

(a) before the marriage so far as they relate to the matrimonial property, and

(b) during the marriage,

which are outstanding at that date.

(3) In this section "the relevant date" means whichever is the earlier of—

(a)subject to subsection (7) below, the date on which the parties ceased to cohabit;

(b)the date of service of the summons in the action for divorce.

(4)Subject to subsection (5) below, in this section and in section 11 of this Act " the matrimonial property " means all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party)—

(a)before the marriage for use by them as a family home or as furniture or plenishings for such home; or

(b)during the marriage but before the relevant date.

(5)The proportion of any rights or interests of either party under a life policy or occupational pension scheme or similar arrangement referable to the period to which subsection (4)(b) above refers shall be taken to form part of the matrimonial property.

(6)In subsection (1) above " special circumstances ", without prejudice to the generality of the words, may include—

(a)the terms of any agreement between the parties on the ownership or division of any of the matrimonial property;

(b)the source of the funds or assets used to acquire any of the matrimonial property where those funds or assets were not derived from the income or efforts of the parties during the marriage;

(c)any destruction, dissipation or alienation of property by either party;

(d)the nature of the matrimonial property, the use made of it (including use for business purposes or as a matrimonial home) and the extent to which it is reasonable to expect it to be realised or divided or used as security;

(e)the actual or prospective liability for any expenses of valuation or transfer of property in connection with the divorce.

In the review of Scottish Law, *Built to Last*, there was strong approval of the concept of matrimonial property, with many interviewees highlighting the clarity and certainty of the matrimonial property regime.

To add a Standish clause to s.25 would not address the ills identified by the Law Commission, namely the breadth of s.25, and the variability of judicial discretion and attempted definitive rulings. It would reduce flexibility while at the same time increase litigation. Standish is not clear about pensions and their matrimonialisation. To attempt to codify uncertain law which is subject to

further pronouncement by the courts is a waste of time. The attempt to share what one party regards as their own, non-marital property will also lead to litigation and a lasting sense of injustice.

4. Should the court be able to consider how the property has been used, shared and treated by the parties, and over what time period, when deciding whether non-matrimonial property has become matrimonial?

No. The Scottish formulation, ie the *use* made of it, is clearer than investigations of sharing and intention. To codify Standish, however expressed, means that judges will carry on interpreting the matrimonialisation concept as if there were no statutory reform. Thus the very opposite of the Law Commission's aims, of certainty and reduced litigation, cannot be achieved by this in particular, and codification plus in general. The terms "shared" and "treated" are too uncertain, and would open the door to protracted disputes and interpretation.

5. Do you agree with the government's view that the overarching objective of the court when making a financial order should be to reach a fair outcome through the application of the sharing and needs principles?

No, the word fair means different things to different people. To me it means that the needs of children come first; their support may be secured by maintenance of their carer and/or by equal sharing. If the claimant still alleges unmet needs they should be calculated according to the disadvantage/advantage formula. England and Wales appear to be the most "generous" courts in the world, (making a nonsense of the theory of no-fault divorce, clean break, equality and independence), maintained perhaps by the power of vested interests, the government's aim to keep claimants off welfare, and by residual guilt. Germany, France, Spain, Switzerland, Finland, Sweden, Denmark, Russia, the Baltic states, offer time limited maintenance, or none at all, expecting spouses to move to autonomy immediately. There is no reason why this should not be the case here, saving what resources are left for the

support of children (their carer too.) If maintenance is to continue (presumably to relieve the welfare bill) the only possible rationale is the advantage/disadvantage calculation, and even then only for a short period. Women form 58% of Universal Credit claimants and it is a fair assumption that many of them are divorced. Any maintenance paid by the ex-husband reduces the Universal Credit pound for pound, so he and she may see such orders as fruitless. At the wealthier end of the scale, sharing of assets should meet need. That leaves only middle earners, and very few ongoing maintenance orders are actually made. So the elaborate law achieves little.

6. Do you agree with the government's view that the objective for meeting needs should be to enable both parties to transition to independence, as far as resources allow?

Yes, see above. This is in keeping with the theory behind the Divorce and Dissolution Act 2022, that there is no blame attaching to divorce, that conflict and litigation should be avoided and that there should be a fault free transition to a new life. The more forward looking approach of other countries towards support after divorce is set out for example in the Law Commission scoping report paras. 5.54-57

7. Do you agree with the government's view that the court should apply the needs objective using a three-stage hierarchical approach?

Yes, provided children's needs come first, and they should include appropriate housing and support for their carer, childcare and school costs. Then needs of the claimant to be met from equal sharing of their assets and compensation for advantage/disadvantage arising from the relationship. There should be no place for discretionary needs. A better approach to calculation is set out in the most recent draft of my Bill, the Divorce (Financial Provision) Bill which was introduced in the Lords several times and reached Third Reading in 2018 [https://hansard.parliament.uk/lords/2018-12-19/debates/861B8F12-4011-4034-A02B-6EF97BA11229/Divorce\(FinancialProvision\)Bill\(HL\)](https://hansard.parliament.uk/lords/2018-12-19/debates/861B8F12-4011-4034-A02B-6EF97BA11229/Divorce(FinancialProvision)Bill(HL)). This was based on the Scottish law:

Periodical payments and lump sums

(1) In deciding whether and in what terms to exercise its powers to make a periodical payments order in favour of one of the parties to the marriage, the court must take into account—

(a) any economic advantage derived by either party from contributions by the other, and any economic disadvantage suffered by either party

in the interests of the other party or of their family;

(b) the fair sharing between the parties of any economic burden of caring after divorce for a child of the family under the age of 16 years; and

(c) that a party who has been dependent to a substantial degree on the financial support of the other party should be awarded such periodical payments as is reasonable to enable that party to adjust to the loss of that support on divorce over a period of not more than five years from the date of the decree of divorce, such period not to be exceeded unless the court is satisfied that there is no other means of making provision for a party to the marriage and that that party would otherwise be likely to suffer serious financial hardship as a result.

(2) In applying subsection (1)(a), the court must take into account—

(a) any advantage or disadvantage whether incurred before or during the marriage, including any gain or loss in capital, income or earning capacity;

(b) contributions made before or during the marriage, including indirect and non-financial contributions, such as a contribution made by looking after the family home or caring for the family, and supporting the family financially,

and must consider the matters mentioned in subsection (3).

(3) The matters are—

(a) the extent to which any economic advantage or disadvantage incurred by either party is balanced by any economic advantage or disadvantage incurred by the other party;

(b) the extent to which any imbalance of advantage and disadvantage has been, or would be, corrected, including correction by the making of an order in relation to the sharing of the value of the matrimonial property.

(4) In deciding whether and in what terms to exercise its powers to make a periodical payments order in favour of one of the parties to the marriage, the court must also take into account—

(a) the age, health and earning capacity of that party;

(b) the duration and extent of the dependence of that party prior to divorce;

(c) any intention of that party to undertake a course of education or training;

(d) any support available to that party from a third party;

(e) the needs and resources of the parties; and

(f) all the other circumstances of the case.

(5) An order to which this section applies ceases to have effect on the marriage

or death of the receiving party, except in relation to any arrears due under it

[Note, there is no assistance given to a private member when drafting a Bill. Accordingly the wording above is a guide rather than exact legislative wording.]

8. Do you agree that the stages should be focused on the following:

- 1) first consideration to the welfare of any children of the family;**
- 2) capital and income needs, including their housing and pension needs in keeping with the standard of living during the marriage;**
- 3) where resources allow, discretionary need, in keeping with the standard of living during the marriage?**

Yes in part. As above, the children's needs should have priority including their housing with their carer. In response to this question and to all others where the definition of "needs" is raised, and in keeping with the principles of the priority of children's welfare and the transition to independence, "needs" must always include the cost of childcare, for example, nursery fees, and school fees where relevant. These are important financial issues which are good for children, and represent a sharing of the burdens of childcare and the way in which a wife (usually) will be able to move towards self sufficiency. Pensions should be included in the assets available for sharing if accumulated during the marriage. No discretionary need should be available, as there is no rationale for it. See here https://financialremediesjournal.com/assessment-of-hierarchical-needs-under-the-governments-proposed-reforms/?mc_cid=a2c934ef1a&mc_eid=UNIQID for an analysis of how this distinction would not work. In practice it would be impossible to adjudicate between needs and discretionary extras.

9. Do you agree with the government's view that there should be a checklist of factors that the court must consider when applying the needs and sharing objective? No, in that the proposed retention of the s.25 factors demonstrates that reform of financial provision has in effect been rejected by the government. S.25 has been extensively criticised, by the Law Commission (and the Marriage Foundation, Resolution and others) in its scoping paper Law Com

417 <https://lawcom.gov.uk/publication/financial-remedies-scoping-report-and-summary/> ch. 8. That list of factors in s.25 is the very centre of the problems with the law and the need for reform. Other than giving the needs of the child priority, to retain it, as seems to be the government's intention, is to continue indefinitely its uncertainty, overly discretionary nature, and lack of an overarching objective ("fairness" and "needs" not being much better.) Because of its deficiencies s.25 has been the source of much litigation. The desirability of avoiding that plays little part in this consultation paper. As is well documented, the decisions on s.25 factors, varying by region and by judge, have remained unchanged for over 50 years and serve little purpose in an age of self representation and forthcoming AI determinations. The reported case law is often in regard to wealthy couples, eg Standish, and while it is said that these are not typical and should not be relied on as criticisms of the law as used by average couples, it remains the case that these major judgments from the Court of Appeal form the basis of years of conferences, articles, analysis in further arguments before judges and so on. They appeal to academics and lawyers as fruitful grounds for dispute and differentiation, but remain largely unknown to the litigants and the public. The criticisms are that the list of factors is in no particular order (save for children) and without any public understandable driving aim, they foment more litigation, make settlement harder and can create more hostility than is necessary. To retain them, and then add one or two more, means many more years of judgments refining them, overturning earlier judgments, all very interesting for lawyers and academics but not for the people caught up in the system. "You cannot be serious"! as has been said in another context, if the proposals are simply to add another factor or two to s.25.

There is no evidence in the consultation paper that the government is familiar with the years of studies criticising s.25 and the many judgments on it. I can forward you a reading list if required and am confident that if the research was thoroughly considered this part of the consultation would be entirely overhauled.

10. Do you agree that this checklist should include an explicit reference to any disadvantage suffered as a result of the relationship?

Yes. This is the only criterion that makes sense, in that it provides a rationale for one stranger having to continue to maintain another after the end of their relationship. It echoes the exemplary Scottish provision quoted here:

10(a) any economic advantage derived by either party from contributions by the other, and any economic disadvantage suffered by either party in the interests of the other party or of their family;
(b) the fair sharing between the parties of any economic burden of caring after divorce for a child of the family under the age of 16 years

It is also a guiding principle in France, Spain and other jurisdictions. It would reflect the nature of marriage as a partnership of equals that has to be dissolved.

11. Do you think that domestic abuse should more readily be taken into account in relation to the distribution of assets by the court in financial remedy and cohabitation proceedings?

No. To do so would take the law back not only to pre-the Divorce Dissolution and Separation Act 2020 but right back to the Divorce Reform Act 1969 and the ground for divorce based on behaviour, even to the ground of "cruelty" in the Matrimonial Causes Act 1937. The rationale for introducing "no-fault" divorce incrementally over nearly a century was set out in the Law Commission scoping paper, when the arguments against bringing in domestic abuse as a factor in financial considerations were set out. (Ch.9) It can already be considered, albeit not explicitly as abuse, when the court considers the overall position of the parties; to bring it in explicitly in relation to finance is inevitably to open the door to disputes in many more cases about conduct and who was responsible for what, because a finding of domestic abuse would reduce - or increase - the financial provision to be made. Such an allegation, which would not doubt be widely made, would increase hostility, difficulties of proof, length of negotiation or litigation or even provoke more abuse. Domestic abuse is, after all, only the modern iteration of what was called "unreasonable behaviour" or "cruelty". The definition of domestic abuse in the Domestic Abuse Act 2021 is so wide that it encompasses all the old grounds for divorce, including adultery. An allegation of this nature could be seen as the key to obtaining legal aid, and retaining sole "custody" over children. Domestic abuse is better dealt with under the Domestic Abuse Act 2021, and by reform of the

Jewish Beth Din courts' jurisdiction over divorce, a process that positively invites and shields domestic abuse. Regrettably that will have to be dealt with by religious authorities or possibly by a charge of blackmail

<https://www.thejc.com/judaism/rabbis-could-go-to-jail-if-get-practices-dont-change-warns-new-book-fh9kd6ax>

12. To what extent should domestic abuse, if established, influence the court's decision-making in financial remedy and cohabitation proceedings?

It should not be considered as a separate head. Its effects could still be taken into account in determining whether some property is matrimonial or not, and in considering compensation for disadvantage suffered, and housing for children whose welfare is paramount. To make it a general consideration would be to undo nearly a century of eliminating fault from divorce law.

13. If domestic abuse were more routinely considered in financial remedy and cohabitation proceedings, how do you think this should affect the division of assets between parties? For example, what principles should guide how misconduct is reflected in financial outcomes and how should this be applied in practice?

It should only be considered where it had financial consequences or created economic disadvantage, for example when one spouse wilfully dissipated assets or the victim was rendered too ill or damaged to be able to work or take care of herself (usually) and children. It might reflect on the nature of housing required for the victim and her children. It might be that the abuser concealed assets or took them away from the abused spouse, and that affects the calculation of an equal share. But it should not lead to any other financial provision, for example, altering the 50-50 share as a sanction; we will be back into fault-based divorced if that became possible. Indeed including domestic abuse as a special factor in financial provision law is likely to have this effect in any case. The fact that reformers have not been able to abandon issues of conduct of one spouse towards another despite the reforms of 1969 and 2020 exposes the myth that all divorces are and should be treated as if fault free, and

recognises public feeling that in some cases there is clearly severe misconduct on one side, which they would want recognised. It is also the case that some organisations such as Resolution and the FLBA are still wedded to the notion of divorce being permeated with conduct issues.

14. If courts were more readily able to take domestic abuse into account in financial remedy and cohabitation proceedings, what impact do you think this would have on those proceedings (for example, the length of cases, evidential requirements, costs to parties and the overall experience of victim-survivors)?

As explained above, it would reverse in part or whole the "no-fault" principle of recent substantive divorce reform. It would likely lead to many allegations of domestic abuse, which would open the way to obtaining legal aid. It would result in more court cases, which would be lengthier, more costly, and more bitter with difficult evidential issues. There would be an array of different responses by different judges. The abuser might refuse to participate in mediation or court appearances and drag out proceedings. It might be used as leverage in child residence and maintenance issues and also be a source of stress for the allegedly abused spouse. The pros and cons are explored in the Law Commission scoping report ch.9

15. Do you agree that the language currently used to describe the threshold for considering misconduct in financial remedy proceedings (sometimes referred to as the "gasp factor") is inappropriate and should be replaced?

This is a misplaced question. If consideration of conduct/domestic abuse is only relevant, as it should be, to financial provision then it should be conduct with a quantifiable effect on the parties' finances. Otherwise, no interpretation will necessarily satisfy the person who was allegedly abused and much court and out of court time will be taken up in defining non financial misconduct. With a financial focus misconduct would be relevant if it affected for example the children's need for housing, maybe even in a better location, with their carer.

16. What forms of behaviour do you think should be considered as "misconduct"?

As above, only misconduct having a substantial effect on the couple's finances and their children: concealment, dissipation, false information. I equate misconduct with domestic abuse, as is it hard to think of an example of misconduct which is not also domestic abuse and vice versa.

17. What sort of impact do you think misconduct should have on a financial remedies claim or a cohabitation claim?

There should be no cohabitation claims but in divorce, then it may affect costs, housing for children, arriving at the right definition of matrimonial and non-matrimonial assets.

18. If you believe misconduct should be more readily taken into account by the court, do you think misconduct which has financial consequences should be treated by the court in the same way as misconduct without financial consequences?

Misconduct without financial consequences should not be in the law or litigation at all, otherwise "no-fault" divorce will have been abandoned as a principle.

19. Do you agree with the government's view that the court should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders?

Yes. Pensions may well be the most substantial asset for some couples, accrued during the marriage specifically as a retirement asset for both, and therefore should be included in the equal sharing, being valued from the date of the marriage (and prior cohabitation if that becomes legally recognised, which it should not) up until the date of separation.. Nevertheless it is difficult to know how to divide a pension. The difficulties are not addressed in the consultation, but are examined in the Law Commission scoping report ch. 10. As a better, more principled way of generating support for a lesser earning partner, it would make sense for the sharing to be a deferred income, coming into play when the pension payer starts to receive his or her pension, or a share of a lump sum if that is the way the pension payer is to receive the benefit. This topic needs much more detailed examination.

20. Do you consider that these proposed safeguards will ensure individuals understand the consequences of their agreement and provide sufficient protection against coercion?

Yes. It is questionable whether legal advice is necessary, given that consent orders on divorce do not require it; and if required, collaborative, ie joint legal advice should be sufficient. Coercion is no doubt assumed to be of the woman by the man. It can however be the other way around, and there should be no assumption that women cannot understand agreements or take care of their own financial arrangements. The Victorian view of marriage and the "trad wife" are very much alive in this consultation!

21. Do you agree with the government's view that when considering meeting "needs" under the qualifying nuptial agreement model proposed, this should exclude discretionary needs in the same way as proposed for cohabitants?

Yes, if needs are to be considered at all. Consideration of needs will in effect undermine the utility and certainty of qualifying agreements. Only the needs of children should be taken into account beyond the agreement.

22. Beyond housing, capital, income and pension, are there any other elements that you think should be included in, or excluded from the assessment of needs with in the context of qualifying nuptial agreements?

If needs are to be considered, then they must primarily focus on children, their upkeep, childcare and school fees and costs.

23. Do you agree with the government's view that the court should consider a pre-marital cohabiting relationship as counting towards the length of a marriage, where that relationship moves seamlessly from cohabitation to marriage?

No. Given that cohabitation is not, and should not be a recognised status, especially retrospectively, and that the parties would not be aware of its significance, then it should not count. Moreover the definition is difficult, as explained in my response to the cohabitation part of the consultation. The parties themselves, by ending mere cohabitation and entering marriage, would have shown themselves aware of the difference and have taken a deliberate action to change their status to the new one of marriage, terminating the previous one, whatever its consequences.

24. Which factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when assessing whether there has been seamless cohabitation prior to the marriage? Tick all that apply:

☐ Existence of a joint household ☐ Stability of the relationship ☐ Financial arrangements ☐ Responsibility for children ☐ Presence of a sexual relationship ☐ Public recognition of the relationship

None of these should count, as explained above. Moreover "stability" as a factor makes no sense because the cohabitation has come to an end and there has been a change of status. It would be difficult to explore, whatever the definition, many years later.

Conclusion

To summarise my responses to the financial provision calculation sections of this consultation, it is clear that the choice by the government of "codification plus" is the least satisfactory of the 4 options outlined by the Law Commission, and the details presented for consideration in the consultation paper would, if implemented, result in no reform at all. It would leave couples and courts with too much discretion, too little predictability, open to too much further interpretation by new judgments, hence too much cost and more conflict and insufficient clarity for couples to understand the law and negotiate. This option retains the well known defects of the current law, uncertainty, hostility, out of date. Adding more law about maintenance, conduct, "fairness" etc would exacerbate the problems. Contested and evolving concepts could be frozen into place by being codified. There could well be an intensification of legal disputes over eg premarital cohabitation, "needs", what is discretionary and luxury, pension division, matrimonialisation and so on.

The proposals read as if without consideration of the wealth of literature on this topic available for the last 50 years, and without regard to the advantages of different schemes in Scotland and other countries around the world, which show up England and Wales' scheme as an outlier. On the one hand the government proposals would introduce new rules intended to clarify the calculation, on the other they would be diluted or even negated by the many concepts requiring even more interpretation and judicial discretion. For decades it has been pointed out by judges and analysts that the law in this area suffers from the breadth of s. 25 MCA, the lack of accepted and clear objectives and the inconsistent treatment of concepts such as marital property and self sufficiency; the variability of the clean break, the differences over conduct's relevance, the relatively low priority given in practice to children's needs and hence the cost of legal advice and proceedings. None of this is resolved in the consultation, but it all might become even more divisive.

Of the four options presented for choice by the Law Commission, codification-plus is the one that solves nothing. Default regimes work well in other countries as does guided discretion. There is no explanation as to why they have been rejected, leaving one to surmise that there has been excessive reliance on (presumed) arguments and pleadings put forward by those with a vested interest in a scheme that is litigiously expensive. Also that this might have been coupled with a government wish to reduce reliance on welfare. This welfare position is unlikely to change, whatever the option, as less well off couples do not have the assets, however calculated, to enable the formation of two post-divorce households with acceptable living standards out of one pre-divorce household.

The comments in the consultation paper following question 24 are surprising and very disappointing. The government has dismissed without any explanation the three elements that have been most widely discussed as being real reforming and forward looking elements in financial provision, and which are adopted in much of the western world. The policy justification for limiting maintenance is that it is hard to enforce; is deducted pound for pound from universal credit where that is received; that it ties a couple long after divorce; there is no rationale for one spouse to keep an ex spouse after their partnership has been dissolved, in theory without fault on either side, and where the alleged inability of an ex-spouse to keep her(usually) self is not connected with the conduct of the other spouse during the marriage. England and Wales are again outliers. Cf Scotland. If as alleged joint lives orders are rare, there seems no point in retaining an elaborate legal system for such a small result. Where a mother needs maintenance that is justified by her (usually) caring for children. That should be recognised in the treatment of the home in the division of assets; by applications under Children Act sched 1 and the Child Maintenance Service.

.The default position in relation to the support for children and their carer should be that it is to last until the children are 21, given modern conditions, with cut off to be considered if it is clear that the child has reached independence by leaving home or becoming employed. There should not be retrospective claims for assets or maintenance because a dissolution is a dissolution and the ex spouse is no longer responsible.

It is also incomprehensible that the consultation takes no account of the imminence of AI and how it is already being used eg in Australia, see above, to settle claims and minimise the use of lawyers. This short sighted. It is obvious

that the way forward for many couples is digital calculation and settlement, as successfully pioneered in Australia. <https://amica.gov.au/> The government is failing in its duty if it does not promote new law that would enable couples to find out with some certainty their liabilities on dissolution and which would by using AI reduce cost for the couple and their lawyers. The proposals here are so uncertain that they would, if enacted, make things worse. No certainty, new vague criteria, a continuation of the worst features of the existing law, no familiarity with the research undertaken over the last 50 years, or the systems that work better than ours in other countries.

It is difficult to come a set of consistent proposals in response, given the vagaries of the consultation. With that warning, I propose

Equal sharing of matrimonial property, as defined the the Family Law (Scotland) Act

Needs limited to the result of advantage/disadvantage during the marriage, child support, childcare and school costs, housing for the children and their carer even if only during their real minority, ie still in education.

Qualifying prenuptial agreements, subject only to needs related to children as above.

Maintenance only in exceptional circumstances related to the marriage and then for only a limited time.