

Response to the Ministry of Justice Consultation

“A Fairer End to Relationships”

Consent, Autonomy and the Constitutional Case for an Opt-In Framework

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House of Lords

Executive Summary

This submission responds to that section of the Ministry of Justice consultation *A Fairer End to Relationships* which concerns the Government's preferred proposals to introduce a new statutory framework governing the financial consequences of cohabitation and to extend intestacy rights to qualifying cohabitants. The remaining responses will be forwarded separately.

In my academic articles and speeches, I have presented the arguments against a cohabitation law for almost fifty years. During that time, family life has changed significantly and the number of couples choosing to live together without marrying has increased substantially. The principled arguments have not. However when children are involved their need is all the greater and it is right to consider whether the law should provide additional remedies for them and their carer parent.

The central issue before Government is whether the State should impose significant legal rights and obligations upon adults who have deliberately chosen not to enter one of the two legal institutions- marriage or civil partnership - that already exist for that purpose, or who have casually cohabited.

The Government's preferred proposals would represent a significant constitutional change. For the first time, adults could acquire marriage-like legal rights and responsibilities not because they had chosen them, but because they had lived together for a prescribed period or had a child together. In substance, the proposals would create a new legal status arising through statutory presumption rather than informed consent and that status might be unknown to the couple when they entered or exited cohabitation.

English private law safeguards consent. Marriage and civil partnership require consent. Contracts, wills, property transfers and other significant legal arrangements likewise depend upon deliberate legal choice.

As Lord Wolfson of Tredegar observed during the Second Reading of the Cohabitation Rights Bill (a Private Members' bill proposing measures very similar to those in the consultation) in the Lords on July 17 2026, *"the common thread running through our private law is not paternalism, but autonomy."* It is important that that principle should remain the foundation of any reform.

The Government has not demonstrated that an automatic statutory framework is either necessary or proportionate. Existing law already provides important protections through property and trust law, the Children Act 1989, the Child Maintenance Service, the

Inheritance (Provision for Family and Dependents) Act 1975, wills and cohabitation agreements. Where Parliament considers those protections inadequate, it should reform them directly rather than fundamentally altering the consequences of cohabitation.

The practical implications also require careful consideration. The proposed scheme would generate new disputes about when cohabitation began, whether statutory criteria were met and what financial consequences should follow. It would increase pressure on the Family Court with an estimate of another 10,000 cases a year, create greater legal uncertainty and require intrusive examination of private relationships after separation or death.

The proposals also pay insufficient attention to divorced, widowed and financially independent people who have consciously chosen cohabitation precisely because they do not wish to recreate the legal consequences of marriage. Many have rebuilt their financial independence, wish to protect assets intended for children or grandchildren, or simply value companionship without financial integration. Reform should not inadvertently deprive them of that choice. It should not be automatically assumed that the needy party is the woman leaving a cohabitation.

Polling conducted by Survation during the consultation provides important evidence of public attitudes. Five weeks after the consultation opened, **72%** of respondents reported having heard little or nothing about the Government's proposals. Even after receiving further information, the largest group remained undecided. The polling also demonstrates broad support for protecting needy cohabitants, but considerably less support for imposing legal obligations automatically. Most significantly, **76%** considered it important that divorced and widowed people should remain free to protect assets intended for their children or grandchildren. **47%** believed the proposed statutory framework should not apply where one partner wished to opt out, compared with **32%** who supported the Government's preferred approach.

Amongst cohabitants, the very group the Government wishes to support, a majority said those rights should require active consent (**51% vs. 43%**) and were more likely to say the law shouldn't bind a partner who wants to opt-out (**52% vs. 47%**).

The Survation survey also generated 721 written comments which reinforced the polling findings. Analysis by Survation found 41% of valid responses spontaneously raised concerns about consent, legal certainty and Government interference in private relationships.

They included:

"I think the new proposed laws are extremely unfair. If I wanted these rights with my partner, I would get married. I've chosen not to get married to protect my financial assets in the event of a relationship split."

"My ex-partner was highly abusive. I was also the breadwinner and he would have been able to claim what he had not contributed towards. It's too risky. If we wanted to share legally, we would marry."

The full survey findings and responses [can be viewed here](#).

Comments made on my recent article in the Guardian about this were even more strongly against a new law. <https://www.theguardian.com/commentisfree/2026/jul/14/david-lammy-cohabitation-law-bad-for-couples-women>

These findings suggest that the public supports access to legal safeguards but not the automatic imposition of legal obligations. The Government has no clear public mandate.

Accordingly, I make three principal recommendations.

First, the **Government should not proceed with its preferred automatic opt-out model.**

Secondly, if Parliament concludes that additional remedies are required, **it should instead introduce a simple statutory opt-in registration scheme founded upon informed consent and agreement from both partners.**

Thirdly, if Ministers nevertheless decide to proceed with an automatic framework, **either partner should be entitled to prevent it applying by giving notice that they do not consent.** In those circumstances, the framework would not apply to either partner.

Existing law already enables deserving cases to seek provision after death of a partner where appropriate without presuming that adults who deliberately chose not to marry nevertheless intended to assume the legal consequences of marriage to arise after death.

Ultimately, this consultation presents Parliament with a constitutional choice. It can preserve the longstanding principle that significant legal rights and obligations arise because informed adults have chosen them, or it can replace that principle with a statutory presumption based upon the presumed existence of a personal relationship. My response is that reform should support needy people while preserving the equally important principles of consent, personal autonomy and legal certainty.

1. Introduction

This submission is made in response to the Ministry of Justice consultation *A Fairer End to Relationships*, published on 5 June 2026. It addresses the Government's preferred proposals to introduce a new statutory framework governing the financial situation of separated former cohabitants and to extend automatic intestacy rights to qualifying cohabitants. My responses to the financial provision part of the consultation paper will follow separately.

The consultation was launched under the then Lord Chancellor and Secretary of State for Justice, David Lammy. He has been succeeded by Alex Norris. That change presents an important opportunity for the Government to consider afresh the constitutional, legal and practical implications of the proposals before deciding whether and how to legislate.

I have studied, written and spoken on cohabitation law for almost fifty years. Most recently, I submitted [written evidence to the House of Commons Women and Equalities Committee during its 2021 inquiry into the rights of cohabiting partners](#) and [spoke during the Second Reading of the Cohabitation Rights Bill](#) in the House of Lords on 17 July 2026.

My position has remained consistent throughout that period. The law should provide appropriate remedies where genuine injustice arises, particularly where children require protection, or existing legal rights require clarification. However, I have never accepted that the appropriate response to the growth of cohabitation is to create a new legal status that arises automatically without the informed consent of the individuals concerned. There is no dispute that some cohabitants experience genuine hardship when relationships end. They need to know the law and to be able to access the existing remedies.

Equally, there is no single model of modern cohabitation. Some couples enter a trial period before deciding eventually to marry; others consciously choose to avoid legal entanglement. Many divorced or widowed people choose cohabitation precisely because they wish to preserve financial independence, protect assets intended for children or grandchildren, or to avoid recreating the divorce process they may have been through. Any reform should respect that diversity of intention.

The existing legal framework is not devoid of safeguards. Couples may regulate their affairs through cohabitation agreements, declarations of trust, wills and other private legal arrangements.

Parliament has also enacted important statutory remedies, including under the [Trusts of Land and Appointment of Trustees Act 1996](#), [Schedule 1 to the Children Act 1989](#) and the [Inheritance \(Provision for Family and Dependants\) Act 1975](#).

If the existing legal framework is found to be inadequate, Parliament should first consider whether it can be strengthened directly before creating an entirely new statutory framework applying automatically to millions of adults.

My responses to the questionnaire are based on my belief that (a) personal autonomy and informed consent should remain the constitutional foundation upon which significant legal rights and obligations arise between adults; (b) the Government has not demonstrated that replacing that principle with an automatic statutory framework is either necessary or proportionate, particularly where less intrusive alternatives remain available; and (c) if Parliament concludes that additional legal remedies should be available to cohabitants, it should arise through positive informed choice rather than automatic legal status imposed by the State.

These assertions underlie the detailed analysis of the following questions.

2. Public Attitudes to the Government's Proposals

During this consultation, independent polling was conducted by Survation among 2,060 adults across the United Kingdom between 10 and 14 July 2026. It was commissioned by the campaign group Your Relationship Your Choice and the [full survey can be accessed here](#).

The objective was to gauge public attitudes towards the Government's preferred proposals. The findings suggest that public awareness of the proposals remains limited and that opinion is considerably more nuanced than a simple division between support and opposition. Several themes emerge consistently and I believe they merit careful consideration.

Limited public awareness

- **72%** of respondents said they had heard "**not very much**" or "**nothing at all**" about the Government's proposals.
- Even after respondents were provided with further information about the proposals, **41%** remained either undecided or neither supported nor opposed them.

These findings suggest that, despite the constitutional significance of the proposed reforms, public awareness of the consultation remains limited. I am sure the Government would not want another "Waspi"-type movement based on ignorance of changes made by the law.

Support for safeguards, but not automatic legal obligations

The polling demonstrates a clear distinction between support for providing legal safeguards for needy cohabitants and support for automatically imposing legal rights and obligations.

In particular:

- respondents were evenly divided between an **automatic framework (43%)** and an **opt-in system (43%)**;
- **47%** believed the statutory framework should **not apply if one partner wished to opt out**, compared with **32%** who supported the Government's proposal requiring both partners to agree.

These findings indicate no clear public mandate for the Government's preferred automatic opt-out model.

Strong support for preserving financial independence

The strongest consensus identified in the polling concerned protecting the financial independence of divorced and widowed people who choose to cohabit rather than remarry.

- **76%** considered it important that such individuals should be able to protect assets intended for their children or grandchildren.
- Among divorced respondents this rose to **81%**, with **41%** describing the issue as "**very important**".
- Women were also more likely than men to regard preserving financial independence as very important.

Cohabitants favour safeguards - but also consent

Current cohabitants were more likely than married respondents to believe that additional legal remedies are needed. However, they were also more likely to believe that:

- legal rights should arise through **active consent (51% vs 43%)**; and
- the law should **not bind a partner who wished to opt out (52% vs 47%)**.

This suggests that even among the group most likely to benefit from reform, support for legal remedies does not necessarily equate to support for automatic legal obligations.

No settled public view on the proposed remedies

Across each of the Government's principal proposals -

- inheritance rights;
- property adjustment; and
- pension sharing -

support and opposition each stood at approximately **30%**, while the largest group (**37–40%**) remained undecided.

Similarly, respondents were almost evenly divided on whether existing legal remedies are sufficient:

- **42%** considered the current law broadly adequate;
- **41%** believed new rights are required.

Taken together, these findings indicate that public opinion has not yet reached a settled view on the Government's preferred reforms.

Overall conclusion

The polling demonstrates that the public distinguishes between the objective of helping needy cohabitants and the mechanism by which that should be achieved.

There is broad support for addressing hardship and preserving financial security, particularly for divorced and widowed people, but considerably less support for automatically imposing marriage-like legal rights and obligations without express consent. These findings reinforce the constitutional arguments put forward in this submission.

They suggest that, if Parliament concludes that further legal remedies are required, a framework founded upon informed consent would be more consistent both with established legal principles and with public attitudes than the Government's preferred automatic opt-out model.

It seems that a change in the law is supported more by lawyers than by members of the public.

3. Constitutional Principles

Autonomy Before addressing the individual consultation questions, it is necessary to identify the fundamental constitutional principles that should guide any reform of the law relating to cohabitation, namely whether a new personal status should arise through informed consent or through statutory imposition.

As Lord Wolfson of Tredegar, a former Justice Minister and current Shadow Attorney General [observed during the Second Reading of the Cohabitation Rights Bill](#) on 17 July 2026:

"Significant legal obligations should arise not because people have chosen to undertake them but because Parliament has inferred them from the existence of a relationship. That is a significant constitutional step."

He also said the choice between an opt-in and an opt-out model is *"not a drafting detail but a fundamental issue."*

I agree. Those observations identify the constitutional question at the heart of this consultation, consent or statutory imposition.

Marriage and Cohabitation Are Not Equivalent Marriage and civil partnership are legal institutions created by an express act of mutual consent. Cohabitation is not. It is simply a description of living arrangements. People cohabit for many different reasons. Some intend eventually to marry. Others consciously reject marriage. Many divorced or widowed people choose cohabitation because they wish to preserve financial independence, protect assets intended for children from previous relationships or avoid recreating the legal consequences of marriage. This is not a moral argument - I see no evidence that marriage is undermined by more recognition of cohabitation. It is a question of freedom.

There is therefore no single legal intention that can properly be inferred from cohabitation itself. The Government's preferred proposals would nevertheless treat this diverse group as though they had all made the same legal choice. They have not. Parliament should therefore be cautious before attributing legal intentions that many couples have never expressed.

Proportionality and Article 8 [Article 8 of the European Convention on Human Rights](#) protects the right to respect for private and family life. That protection includes the autonomy of competent adults to organise their personal relationships and financial affairs without unnecessary interference by the State.

Reducing hardship and improving fairness are plainly legitimate legislative objectives. The constitutional question, however, is whether imposing automatic legal obligations is a necessary and proportionate means of achieving those objectives. It is not.

Less intrusive alternatives are readily available. Existing legal remedies may be strengthened where necessary. Targeted reforms may address particular areas of hardship. Most importantly, Parliament could establish a simple statutory opt-in registration scheme enabling couples who wish to acquire legal rights and responsibilities to do so voluntarily. Where Parliament's objectives can be achieved through a materially less intrusive mechanism, the case for imposing legal obligations automatically becomes correspondingly weaker. France, the Netherlands and Belgium for example have opt-in cohabitation regimes.

Legal Certainty The rule of law requires that citizens should be able to know with reasonable certainty when legal rights and obligations arise.

Marriage satisfies that principle because legal status is established through an objectively verifiable act. Civil partnership does likewise. The Government's preferred proposals do not. Instead, courts would be required retrospectively to determine questions such as:

- when cohabitation began;
- whether the statutory criteria were satisfied;
- whether temporary separations interrupted qualification;
- the nature of the parties' financial arrangements; and
- whether the relationship met the statutory definition.

These questions determine whether substantial legal rights arise at all. They are inherently fact-sensitive and likely to generate increased litigation, greater legal uncertainty and intrusive examination of private relationships after separation or death. An opt-in registration scheme avoids those difficulties by making legal status depend upon a clear and identifiable act of consent.

A Constitutionally Preferable Alternative This submission should not be understood as opposing legal safeguards for cohabitants. The Government is right to consider whether the law should better protect needy individuals. However, Parliament is not faced with a binary choice between the present law and an automatic statutory framework. A third option exists. A statutory opt-in registration scheme would enable couples who wish to acquire legal rights to do so through a simple administrative process. Such a scheme would:

- respect personal autonomy;
- preserve legal certainty;
- reduce litigation;
- support couples who actively seek legal recognition; and
- preserve the freedom of those who deliberately choose not to enter a legally regulated relationship.

If Parliament nevertheless concludes that an automatic statutory framework should be introduced, the minimum constitutional safeguard should be that either partner is entitled to prevent its application by giving notice that they do not consent.

Conclusion

The constitutional question raised by this consultation is straightforward. Should Parliament continue the longstanding principle that significant legal rights and obligations arise because adults have freely chosen to undertake them? Or should it instead presume a major new status should arise from the existence of a personal relationship? I believe the former approach remains the sounder constitutional course. The law should provide an appropriate safety net for needy people, but it should do so in a manner that preserves personal autonomy, legal certainty and informed consent. Those principles inform my responses to the consultation questions which follow.

4. Responses to Consultation Questions

Introduction

The preceding comments identified the constitutional principles which, in my view, should guide any reform of the law relating to cohabitation. Those principles provide the framework within which the Government's detailed proposals should be assessed.

The consultation then turns to a series of specific questions concerning the definition of qualifying cohabitants, financial remedies on separation and rights on intestacy proposals. Where I disagree with a particular proposal, it is generally because I consider it inconsistent with those principles of personal autonomy, legal certainty and informed consent. My objection is to the creation of such a scheme in the first place. Objection to the scheme as a whole, and its principles, is not put as a question in the consultation, which lessens the ability of those who object to it to be able to express their opinion.

Accordingly, where I comment on matters such as qualifying criteria, duration periods or judicial discretion, that should not be read as agreeing with the underlying policy. I making suggestions intended to ameliorate the details if Parliament nevertheless decides to legislate with the aim of making the scheme as clear, proportionate and legally certain as possible.

There are severe practical objections too. The consultation gives relatively little attention to the broader consequences of creating this new jurisdiction. In particular, the Government should consider its likely impact upon the administration of justice.

His Honour Judge Edward Hess, Deputy National Lead Judge of the Financial Remedies Court, [wrote an article following the publication of the Government's proposals that](#) warned that extending financial remedies to separating cohabitants would **"inevitably lead to a substantial increase of case load for the FRC."** He estimates that it could generate approximately **9,400–10,800 additional consent applications** and around 3,500 additional contested applications each year. He further criticises the Government's Regulatory Impact Assessment as providing **"only the most superficial and unsatisfactory analysis"** of the

resource implications and concludes that a proper and objective assessment of the costs should be undertaken before reform proceeds.

The Family Court is already under considerable pressure. Judicial resources are limited. Legal aid for most private family proceedings has been substantially reduced. Introducing thousands of additional complex financial disputes is therefore likely to increase delay not only for cohabitants but also for divorcing couples and children awaiting decisions in other family proceedings.

The Government should also consider behavioural consequences. Some individuals - particularly divorced or widowed people - may choose not to enter new relationships if doing so creates legal uncertainty. Others may feel compelled to seek legal advice before moving in together. The law should encourage informed choice, not discourage companionship through uncertainty. This came through in comments from the public.

There are also broader economic implications. Greater litigation inevitably means greater expense for individuals and increased pressure upon the court system. The principal beneficiaries of an uncertain discretionary jurisdiction are likely to be legal advisers rather than families.

Finally, the use in the consultation of the words "vulnerable" and "protection" are designed to elicit a favourable response by appealing to the emotions. They are not accurate descriptions of the position of cohabitants nor of the proposals. A woman (typically) is not rendered "vulnerable" simply by living with a man (typically) and being wholly supported by him for a number of years. Ask any single unpartnered woman which of the two is better off! And a new law that allows for lengthy and expensive legal proceedings for those who might be able to afford them, or settlements to avoid further legal disputes, is not "protection."

Defining a Qualifying Cohabiting Relationship - *Responses to Questions 25–31*

Question 25

Do you agree that cohabitants captured within the framework should be two people living together as a couple in an enduring family relationship?

Response. No.

The proposed definition is one of the most problematic aspects of the consultation because it seeks to convert a diversity of social relationships into a legal status carrying significant financial and property consequences. The relationship could never be defined as "enduring" because it will have ended when the proposed framework comes into play.

Unlike marriage or civil partnership, cohabitation has no single legal, social or personal meaning. Two people may live together in superficially similar circumstances while having entirely different intentions regarding their finances, property, inheritance and legal obligations. The Government's proposal therefore requires the courts to determine, after

the event, whether a relationship satisfies a statutory definition rather than identifying a recorded legal act.

As Lord Wolfson of Tredegar observed during the Second Reading of the Cohabitation Rights Bill on July 17 2026:

"The law should not leave people guessing where and when legal obligations arise."

Marriage and civil partnership provide that certainty because legal status begins with an objective public recorded act of mutual consent. The Government's proposed definition does not. The proposal would therefore attribute legal intentions to many couples that they have never expressed. That is not an appropriate foundation upon which Parliament should impose significant financial rights and obligations

Question 26

What factors. . . do you think the court should take into account when considering whether individuals are cohabitants?

Response Other

The consultation invites respondents to identify additional factors that might improve the proposed definition. The question illustrates the underlying difficulty with the Government's approach rather than offering a solution to it.

Every additional factor introduced into the statutory definition increases complexity, uncertainty and the likelihood of litigation. For example, two people may form a household in order to save money and because of a shortage of rental property, as is currently not unusual.

Courts may be required to determine matters such as when cohabitation began, the parties' financial arrangements, periods of separation, representations made to others and their respective intentions. None provides a reliable dividing line between relationships that should, and should not, attract automatic legal consequences. The stability of the relationship is an inconsistency in the list because it has, by definition, broken down.

Such disputes would inevitably require courts to examine highly personal aspects of former relationships and, following a death, may place surviving partners, adult children and other family members in conflict over matters that the deceased can no longer explain. It would be better not to devise an increasingly elaborate statutory definition, but to avoid creating automatic legal status based upon perceived relationships altogether.

If Parliament nevertheless decides to legislate, statutory guidance would be preferable to leaving the matter entirely to judicial development. However, a checklist cannot overcome the fundamental difficulty with the proposed scheme. It may assist courts in determining whether a qualifying relationship exists, but it cannot resolve the prior question of whether Parliament should impose significant legal consequences upon people who never consented

to them. Nor would it eliminate uncertainty. Different judges could legitimately reach different conclusions on substantially similar facts, thereby increasing litigation rather than reducing it.

If Parliament adopts a statutory checklist, it should expressly require courts to consider evidence demonstrating that one or both parties did **not** intend to assume legal obligations comparable to marriage or civil partnership. Relevant evidence might include:

- express statements rejecting such obligations;
- legal documents, including cohabitation agreements, declarations of trust and wills;
- separate ownership of property and independent financial arrangements; and
- evidence that the parties consciously chose not to marry despite having the opportunity to do so.

The consultation pays insufficient attention to evidence demonstrating that adults have deliberately chosen not to create mutual legal obligations. If Parliament legislates in this area, evidence of non-consent should occupy a central place within the statutory framework.

The consultation focuses primarily upon those who might benefit from automatic legal rights. It gives considerably less attention to those who may be adversely affected. Particular consideration should be given to divorced people who have consciously decided not to remarry, widows and widowers wishing to preserve assets for their children, older couples who deliberately maintain financial independence, and families who may become involved in costly litigation following a death.

Independent polling conducted by Survation during this consultation found that **76% of respondents considered it important that divorced and widowed people who choose to cohabit should be able to protect assets intended for their children or grandchildren while maintaining their financial independence.**

That finding reflects an important reality: many people consciously choose cohabitation precisely because they do not wish to assume the legal consequences of marriage. The law should respect that choice. Before defining who should become a qualifying cohabitant, Parliament should therefore address the more fundamental question:

Should adults acquire such a legal status automatically in the absence of their express agreement?

They should not.

Do you agree that those who are already married or in a civil partnership with each other, or those who are too closely related to each other to have married, should be ineligible for the framework?

Response

No

Those who are already married or in a civil partnership already have a regime for financial provision on the dissolution of their relationship. It is however illogical to exclude from the proposed new law those who are related. The adult child who has cared for elderly parents for years, the co-dependent sisters faced with tax burdens on the death of one of them (the well known *Burden* case), even the single woman, perhaps with a child, who never cohabited, or was abandoned by her partner years ago, those are the truly "vulnerable" people who need "protection", and yet they are excluded. There is no good reason why a sexual relationship, even a non-caring one, should qualify for financial claims but not a caring family relationship (one which might fall outside the Inheritance (Provision for Family & Dependents) Act). If, as the consultation implies, remedies are required to meet a situation of vulnerability and need that has been created by a relationship, then those family relationships should be included. This is the case in the laws of Catalonia and Belgium.

Question 28

Do you agree that the minimum age to be eligible for the framework should be 18?

Response If there is legislation, **Yes**

Question 29

Do you agree that couples without children must have lived together for a minimum of 3 years, before they can access the cohabitation framework?

Response

Undecided.

I do not support selecting any particular qualifying period because the question proceeds from an assumption with which I disagree. The constitutional objection to the Government's preferred model does not depend upon whether the qualifying period is two years, three years or five years. Time alone cannot transform a factual relationship into one carrying significant legal rights and obligations. Duration is therefore an unreliable proxy for legal intention.

This is the wrong question. If Parliament wishes to provide legal protection for children as well as adults, it should instead establish an accessible statutory opt-in registration scheme.

Potential unintended consequences of setting either a shorter or longer minimum duration

Whatever period Parliament selects, arbitrary outcomes will inevitably follow. A shorter period risks capturing couples who never intended legal obligations to arise, while a longer period merely postpones the same difficulty and creates disputes as relationships approach the qualifying threshold. The median duration of a marriage in the England and Wales before divorce is around 12 years - that might make a rational qualifying duration, if any.

The existence of a statutory threshold is therefore likely to generate boundary disputes and increase litigation rather than reduce it.

Question 30

Do you agree that where cohabitants are living together and there is a child of the family, the minimum duration requirement should be disapplied?

Response

Undecided.

I do not believe that the existence of a shared child should automatically generate legal rights *between adults*, but only as parents.

Children unquestionably deserve legal protection, and the law already provides substantial powers to safeguard their welfare and financial security. However, the existence of a child does not establish that the parents intended to acquire mutual property rights or obligations towards one another, save as needed to supporting the caring parent. If Parliament concludes that children's financial protection requires strengthening, it should address that issue directly rather than creating automatic quasi-marital rights between adults.

Risks and benefits of setting a minimum period where there is a child

The principal benefit identified by the Government is greater support for some primary carers. That objective is understandable. However, automatic legal rights may discourage individuals from entering new relationships after divorce or bereavement, undermine carefully planned arrangements for children from previous relationships, increase uncertainty over property ownership and generate further litigation following both separation and death.

The existence of a child should remain an important consideration for the law. There are existing laws dealing with the maintenance of children. It should not become the mechanism by which Parliament creates a new legal status for adults who have never chosen one.

Question 31

Do you agree that a time limit should be introduced to prevent claims being made after 2 years have passed since the relationship ended?

Response.

Yes, if there is to be legislation. But there should be no retrospective eligibility at all. To impose such claims on people after the relationship has broken up, when there was no such law when they entered or left it, is unfair and contrary to the rule of law. Retrospective entitlement destroys certainty and would open the door to much more litigation, based on events of long ago. It might invite blackmail, ie a claim is made; the person against whom the claim is made believes it to be wholly unfounded but settles because it would be less stressful and expensive to buy off the claimant than go to court.

Summary of 'Defining a Qualifying Cohabiting Relationship' responses

The Government's proposed definition of a qualifying cohabitant represents the foundation upon which the remainder of the proposed statutory scheme depends. However, the concept of cohabitation is inherently diverse. People live together for many different reasons and with many different intentions. Unlike marriage or civil partnership, cohabitation does not constitute a recorded legal act from which Parliament can safely infer consent to significant legal rights and obligations.

The proposed definition would require the courts to attribute legal intentions that many couples have never expressed. Determining whether a qualifying relationship existed would inevitably involve detailed and often intrusive examination of private lives, creating uncertainty, increasing litigation and placing considerable pressure upon the courts.

The central difficulty is therefore not one of drafting. It is constitutional. Parliament is being asked to create a new legal status arising from perceived circumstances rather than informed consent, contrary to English private law principles.

If Parliament concludes that additional remedies for cohabitants are required, the preferable course would be to establish a simple statutory opt-in registration scheme. Such an approach would provide legal certainty, respect individual autonomy and ensure that significant legal rights arise because adults have consciously chosen them, rather than because the law presumes they intended them.

Responses to Consultation Questions 32–42: Financial Remedies and the Proposed Opt-Out Scheme

The questions in this section move from defining a qualifying relationship to determining the legal consequences that should follow when such a relationship ends. In doing so, the consultation assumes that once Parliament has identified a qualifying cohabiting relationship, the court should have powers closely resembling those exercised on divorce or dissolution.

It is here that the constitutional implications of the Government's preferred approach become most apparent.

The existing law recognises an important distinction between resolving disputes between any two adults over property, and creating a discretionary system of redistributing assets between former spouses. The Government's proposals would move English law decisively towards the latter model.

That change has not been justified.

Question 32

Do you agree that needs should be the guiding principle the court follows for determining outcomes when cohabitants separate?

Response: No.

The proposed jurisdiction would create a new class of financial remedy proceedings alongside those already available on divorce and the dissolution of civil partnerships. That represents a significant extension of judicial discretion into the private affairs of adults who deliberately chose not to enter a legally recognised relationship.

The principal difficulty is not that courts cannot exercise discretion - they do so every day - but that the proposed jurisdiction would permit the redistribution of property in circumstances where the parties never agreed that their relationship should give rise to such legal consequences. Existing legal remedies already resolve disputes by applying property and trusts laws.

[The Children Act 1989](#) protects children's welfare. The Child Maintenance Service exists to provide support for children in one parent families. It is defective. Many £millions of debt are outstanding and thousands of parents have failed to pay for their children. There is no reason to believe that including this in a cohabitation framework would be any more successful. There is an urgent need for the government to reform and improve the Child Maintenance Service.

[The Inheritance \(Provision for Family and Dependents\) Act 1975](#) provides relief after death. Contract law enforces agreements. The Government has not demonstrated why these established remedies should be supplemented by an entirely new discretionary jurisdiction applying to relationships that were never formalised. The concept of "needs" is far too subjective and unlimited to provide certainty.

If Parliament nevertheless decides to legislate, any jurisdiction should be tightly confined. It should compensate clearly identifiable economic disadvantage directly arising from the relationship rather than becoming a broader mechanism for redistributing wealth.

The distinction is important. Compensation for measurable disadvantage is fundamentally different from discretionary redistribution based upon broad concepts of fairness (as in the title of the consultation paper) or need. The latter inevitably produce uncertainty because reasonable judges may differ in their assessment of what fairness and need require. Compensation linked to demonstrable financial loss is more objective, more

predictable and less intrusive. Even so, I remain unconvinced that a new statutory jurisdiction is necessary, given the remedies already available under existing law.

Question 33

Do you agree that the objective for meeting needs should be to do so in such a way as to enable termination of dependence and obligations as soon as is just and reasonable?

Response Yes, if it becomes legislation.

Question 34

Do you agree that discretionary needs should be excluded from the consideration of needs for cohabitants?

Response: Yes.

Question 35

Do you agree that the court should be able to take account of needs arising from wider circumstances than the relationship?

Response

No. Since they are not connected to the relationship there is no rationale for placing the burden on the former cohabitant.

Question 36

Do you agree there should be a checklist of the matters the court must particularly consider when applying the needs principle?

Response No

But if Parliament does legislate, the proposed list of factors is likely to increase, rather than reduce, uncertainty. It reproduces exactly the uncertainty that has dogged financial provision on divorce for 50 years, leading to the need for reform now.

Children's needs should have priority, under existing legislation. Other than compensation, which has a rationale, many factors are inherently subjective. Such litigation is unlikely to be straightforward. Bearing in mind that cohabitants are in general less well off than married people, litigation over needs will consume a disproportionate amount of their assets, at the expense of any children.

Question 37

Do you agree with our proposed approach in relation to remedies for cohabitants?

Response: No.

These powers closely resemble those exercised upon divorce. Their introduction would therefore create what is, in substance, a parallel system of financial remedies for people who have not married. Property rights should ordinarily reflect ownership, agreement and established legal principles. They should not become subject to redistribution simply because two adults lived together for a prescribed period.

Pension rights deserve particular caution. Pensions frequently represent savings accumulated over many years, often before the relationship began. Automatic statutory claims against pension provision would interfere with long-term financial planning undertaken in reliance upon the current law.

Similarly, discretionary lump-sum awards risk creating uncertainty for individuals attempting to organise their financial affairs after separation. Where Parliament interferes with established property rights, the justification should be compelling. It has not been demonstrated. It may be that the government's proposals are driven by the aim of keeping as many people as possible off welfare.

Question 38

Do you agree with the following statements in relation to maintenance?

Response: Yes, if there is to be legislation. But, as appears to be the principle in many other countries whose laws limit maintenance, there is no reason why one person should keep another when the relationship has ended, other than compensation and parental responsibilities.

Question 39

Do you agree there should be an explicit requirement that the court cannot award cohabitants a higher award than one which would have reasonably been made if they were a married couple divorcing?

Response Yes in theory. But a calculation as to what might have been awarded were they married, and then reducing it, would amount to lengthy litigation, given the uncertainty of financial provision awards to married couples. The latter is the subject of this consultation too, and is unlikely to be reformed to provide the certainty that it should.

Question 40

Do you agree that all of the safeguards listed above should be required in order for an opt-out agreement to be valid?

Response: No.

This is one of the most important question in the consultation.

The distinction between an opt-in and an opt-out system is not a matter of legislative drafting. It is a constitutional question. Under the Government's preferred model, adults acquire significant legal rights and obligations automatically unless they successfully opt out. That reverses the traditional approach of English private law.

If Parliament concludes that cohabitants should be able to obtain legal remedies, the proper approach is a simple statutory **opt-in registration scheme**.

Rights should arise because people have chosen them, not because Parliament presumes they intended them. The proposed opt-out mechanism is also objectionable because it requires **both** partners to agree. That means one person could become subject to substantial legal obligations despite making it clear that they do not consent, simply because the other partner refuses to opt out. That is inconsistent with the principle upon which every other legally recognised adult relationship in England and Wales is founded.

Independent polling conducted by Survation during this consultation further supports this conclusion. Respondents were evenly divided between automatic rights and an opt-in system, demonstrating no clear public mandate for the Government's preferred approach.

More significantly, **47% agreed that the law should not apply where one partner wishes to opt out, compared with only 32% who supported the Government's position requiring both partners to agree**. The public therefore appears to distinguish clearly between a legal framework based upon consent and legal obligations imposed without it.

Opting out will require expensive legal advice and financial investigation. It is unlikely that cohabitants will know of the ability to opt out or be able to afford the costs. Opting in is fairer. If Parliament nevertheless retains an opt-out model, it should at the very least permit **either partner** to prevent the statutory framework applying by giving notice that they do not consent.

Question 41

Do you agree an opt-out should not be able to prevent an application being made on behalf of a child

Response: Yes.

Children deserve appropriate legal protection. However, that does not require Parliament to create automatic financial rights between their parents.

The welfare of children should become and remain the paramount consideration. Existing legislation already enables courts to make substantial financial provision for children where necessary. The government should reinforce the Child Maintenance Service powers.

If Parliament concludes that child support law requires strengthening, it should legislate directly for children rather than indirectly by altering the legal relationship between adults. I note the contradiction that elsewhere in the consultation the government rejects the proposal to raise the age to which parents should support their children.

The existence of a child does not necessarily demonstrate that two adults intended to share property, pensions or future income. The law should avoid conflating these distinct issues.

Question 42

What do you think if the most effective way to communicate these reforms to the public, particularly to help dispel the common law marriage myth and raise awareness of the new legal rights?

This is only necessary because of the forced element of the proposal. Opting in would be require similar communication. The government was well able to publicise for example Covid lockdown requirements, the lifting of the 2 child benefit cap, and, currently, the hose pipe ban. Notice in newspapers, on television etc.

Before legislating, the Government should reflect upon whether there is a sufficient public understanding of proposals of this constitutional significance.

The Survation polling, conducted five weeks after this consultation commenced, found that **72% of respondents had heard little or nothing about the proposals.**

That finding is remarkable. The consultation concerns reforms capable of fundamentally altering the legal consequences of millions of personal relationships. Yet most of those potentially affected remain unaware that such reforms are even under consideration.

The Government should also reflect upon the cumulative effect of the proposals. Taken together, the definition of qualifying cohabitation, the discretionary financial remedies, the extensive judicial powers and the proposed opt-out framework amount to the creation of a new legal status existing alongside marriage and civil partnership.

That is a constitutional development of considerable significance. It should not proceed unless Parliament is satisfied that:

- the case for change has been clearly established;
- the public has had a meaningful opportunity to understand the proposals;
- less intrusive alternatives have been fully considered; and
- the principle of personal autonomy has been given appropriate weight.

Those conditions have clearly not yet been met.

Summary of Financial Remedies and the Proposed Opt-Out Scheme responses

The Government's proposals would create a broad discretionary financial jurisdiction closely resembling that exercised upon divorce, despite the absence of any formal legal commitment between the parties. Parliament has not demonstrated that such a jurisdiction is either necessary or proportionate. Existing legal remedies already provide for redress through property and trust law, the Children Act 1989, the Inheritance (Provision for Family and Dependents) Act 1975, the Child Maintenance Service, and private legal agreements. Where those remedies require improvement, they should be strengthened directly rather than be supplemented by an entirely new statutory framework.

The Government's proposed opt-out model raises the clearest constitutional objection. Marriage and civil partnership require mutual consent before legal rights arise. The proposed scheme would reverse that principle by imposing substantial legal obligations automatically unless individuals successfully opt out. Such an approach lacks both constitutional justification and clear public support.

If Parliament nevertheless legislates, any jurisdiction should be tightly confined, not retrospective, accompanied by robust safeguards and, at a minimum, allow either partner unilaterally to prevent the statutory framework applying by giving notice that they do not consent.

Responses to Consultation Questions 43–49: Intestacy and the Inheritance (Provision for Family and Dependents) Act 1975

The Government's proposals concerning intestacy represent one of the most significant changes contained within this consultation. Unlike the proposals relating to financial remedies on separation, these reforms would take effect following the death of one partner, at a point when the person whose intentions are most relevant is no longer able to explain them.

The law of intestacy has never been intended to achieve perfect fairness in every individual case. Rather, it represents Parliament's assessment of how the property of a person who dies without making a will should ordinarily be distributed. It is necessarily based upon assumptions about what most people would have wished.

For many years, Parliament has treated marriage and civil partnership as the legal relationships which justify automatic succession rights. Those relationships arise through an express public act of consent, undertaken with knowledge that significant legal consequences will follow during life and after death.

The Government now proposes to confer substantially the same rights upon qualifying cohabitants who have undertaken no equivalent legal act. That represents a profound change to the law of succession which has not been justified.

Question 43

Should qualifying cohabitants receive the same intestacy rights as spouses or civil partners?

Response: No.

Litigation between surviving cohabitants and members of the deceased's family, as reported, are some of the most unpleasant and expensive cases, eating up the deceased's assets in costs.

Marriage and civil partnership occupy a unique position within the law of succession because they represent formal legal commitments voluntarily entered into by both parties. Cohabitation does not. The law should be cautious before assuming that adults who deliberately chose not to marry nevertheless intended their surviving partner to inherit in precisely the same way as a spouse or civil partner.

- Many people consciously remain unmarried for reasons that are entirely rational.
- Some have children from previous relationships whom they wish to benefit.
- Some are divorced and have rebuilt their financial independence.
- Some are widowed and wish ultimately to leave their estate to their own family.
- Others deliberately maintain separate financial arrangements throughout their relationship.

The Government's proposals risk frustrating those intentions. In the case of a person who has consciously declined to marry but dies intestate, legislation would attribute to them an intention that they never expressed. That is a significant interference with testamentary freedom. The law should encourage individuals to make wills, not replace their likely intentions with assumptions that may prove incorrect.

Moreover, deserving cases are not without remedy. The **Inheritance (Provision for Family and Dependants) Act 1975** already enables surviving cohabitants to apply to the court where appropriate. That jurisdiction allows claims to be considered individually in light of the particular facts rather than by creating automatic succession rights irrespective of the deceased's intentions. It is possible that the deceased did not maintain the children of a previous relationship as should have been done, and to relegate them to the claims of the surviving cohabitant makes the situation worse. Parliament should therefore be cautious before fundamentally altering the existing law of intestacy.

Question 44

Should qualifying cohabitants have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate?

Response: No.

The right to administer an estate carries important practical and legal consequences. Giving qualifying cohabitants the same priority as spouses and civil partners assumes that Parliament should treat these relationships as legally equivalent. For the reasons already explained, that assumption is not justified.

Granting priority to a surviving cohabitant may also create unnecessary conflict where adult children, former spouses, parents or other close relatives dispute whether a qualifying relationship existed. The surviving cohabitant may not be in possession of the necessary information. Because the deceased can no longer explain his or her wishes, disagreements concerning the nature of the relationship may become both more frequent and more contentious. The result is likely to be increased litigation at precisely the moment when families are grieving. The law should seek to reduce such disputes rather than encourage them.

Question 45

What, if any, other factors should the Government consider when deciding on the definition of a cohabitant for the purposes of intestacy rights?

The Government should recognise that defining cohabitation is even more problematic following death than during life.

When relationships have ended through separation, both parties are available to explain their positions. After death, one of those voices has been permanently lost. The courts may therefore be asked to determine:

- when cohabitation began;
- whether temporary separations interrupted the qualifying period;
- the extent of financial interdependence;
- whether the relationship remained exclusive;
- whether marriage had been discussed or rejected;
- the deceased's intentions regarding inheritance.

Those questions are inherently difficult. They also invite extensive investigation into deeply private aspects of a relationship that the deceased is no longer able to address. The Government should also give greater weight to evidence demonstrating that the deceased consciously intended **not** to create marriage-like legal consequences.

Relevant evidence might include:

- existing wills;
- declarations of trust;
- separately owned property;
- separate financial arrangements;
- provision already made for children or grandchildren;

- evidence that marriage had been deliberately rejected.

These matters may provide far better evidence of intention than the mere duration of cohabitation.

Question 46

What do you consider to be an appropriate minimum duration period where the couple do not have a child together?

Response: Undecided.

I do not support any particular qualifying period because the difficulty lies not in the length of time selected but in the assumption that time alone should generate succession rights.

Whether Parliament chooses five years, a longer period or a shorter one, the constitutional objection remains unchanged. The passage of time cannot establish consent. It cannot demonstrate that two adults intended the survivor automatically to inherit under the intestacy rules. Some couples remain together for decades while deliberately maintaining separate estates. Others marry precisely because they wish intestacy rights to arise immediately. Duration therefore provides an imperfect and often misleading proxy for legal intention.

The more appropriate question is whether Parliament should create automatic succession rights in the absence of an express legal commitment. It should not.

Potential unintended consequences of different qualifying periods

A shorter qualifying period risks extending succession rights to relationships that neither party regarded as creating long-term legal obligations. A longer period merely postpones the same problem while encouraging litigation concerning precisely when the qualifying period began. Whichever threshold is selected, boundary disputes will inevitably arise.

Question 47

What do you consider to be an appropriate minimum duration period where the couple have a child together?

Response: Undecided.

The existence of a child should not automatically determine the law of succession between adults.

Children undoubtedly require protection. They must have their own rights against their parents. However, their welfare should not be confused with the property rights of their parents. Many parents deliberately organise their affairs so that their estate ultimately passes to their children rather than to a subsequent partner. Others make wills reflecting complex family arrangements involving children from previous relationships.

The Government's proposal risks disturbing those carefully considered decisions. Accordingly, I do not believe that the birth of a child should itself create automatic intestacy rights between adults.

Risks and benefits

The principal benefit identified by the Government is greater financial protection for some surviving partners. However, the risks include:

- reducing testamentary freedom;
- creating uncertainty for second families;
- increasing costly litigation between surviving partners and children;
- discouraging later-life cohabitation among divorced and widowed individuals;
- undermining long-established estate planning arrangements.

The law should instead encourage individuals to make wills tailored to their own circumstances.

Question 48

Do you agree with the Government's proposal to extend eligibility for claims under the Inheritance (Provision for Family and Dependants) Act 1975 where cohabitants have shared children?

Response: Qualified yes.

This proposal differs from the wider intestacy reforms because it concerns eligibility to apply to the court rather than the automatic redistribution of an estate. The 1975 Act already enables the court to consider individual circumstances and to determine whether reasonable financial provision should be made. That is a more flexible and targeted jurisdiction than automatic intestacy rights. If Parliament concludes that parents caring for dependent children need greater support, extending eligibility under the 1975 Act may be preferable to creating automatic succession rights.

However, any extension should be carefully confined. Its purpose should be to address genuine financial need arising from dependency rather than to create, by another route, a system of quasi-marital inheritance rights. The Government should therefore ensure that any reform remains closely connected to the needs of children and does not become a general mechanism for redistributing estates between unmarried adults.

Question 49

Are there any wider impacts of extending eligibility for claims under the Inheritance (Provision for Family and Dependants) Act 1975 where cohabitants have shared children that the Government should consider?

Response: Yes.

The Government should consider the cumulative effect of its inheritance proposals upon testamentary freedom, family relationships and public confidence in succession law.

England and Wales have long recognised the importance of allowing individuals substantial freedom to decide how their estates should be distributed. While that freedom has never been absolute, any further restriction should be justified by compelling evidence.

The Government should also consider the impact upon second families. Modern family life is increasingly complex. Many individuals have children from previous marriages or civil partnerships, stepchildren, grandchildren and other dependants whose interests they wish to balance carefully. Automatic succession rights or broader inheritance claims may disturb those carefully planned arrangements and generate conflict between surviving partners and children.

There are also practical consequences for the administration of estates. Greater uncertainty over who qualifies as a cohabitant is likely to increase litigation, delay probate proceedings and increase costs borne by estates.

Finally, the Government should recognise that these proposals may alter behaviour. Individuals wishing to preserve financial independence or protect assets intended for their children may decide against entering new cohabiting relationships altogether. This concern is not theoretical. Independent Survation polling conducted during this consultation found that **76% of respondents considered it important that divorced and widowed people should be able to protect assets intended for their children or grandchildren while maintaining their financial independence if they chose to cohabit.**

That finding reflects an important reality of modern family life. Many people choose cohabitation precisely because it enables companionship without creating the legal consequences of marriage. The law should respect that legitimate choice.

Accordingly, I urge the Government not to extend automatic intestacy rights to cohabitants. If they conclude that additional claims are necessary in particular circumstances, it should be achieved through carefully targeted reform of existing legislation rather than by fundamentally altering the law of succession or presuming intentions that the deceased never expressed.

Summary of Intestacy and Inheritance responses

The proposals concerning intestacy would fundamentally alter the law of succession by extending automatic inheritance rights to qualifying cohabitants who have undertaken no legal act equivalent to marriage or civil partnership. Unlike disputes arising on separation, these issues arise after death, when the individual whose intentions are most relevant can no longer explain them.

Existing law already provides an important safeguard through the Inheritance (Provision for Family and Dependants) Act 1975, enabling the courts to consider deserving cases individually without creating automatic succession rights that may frustrate the deceased's intentions. That remains a more proportionate response than presuming that adults who deliberately chose not to marry nevertheless intended marriage-like legal consequences to arise after death.

If further reform is considered necessary, it should be carefully targeted towards genuine hardship while preserving testamentary freedom, respecting the diversity of modern family life and recognising the legitimate choice of many adults to cohabit without assuming the legal consequences of marriage.

5. Recommendations and Conclusion

The Government's consultation recognises that the law governing cohabitation should be kept under review and that, in some circumstances, existing legal remedies may not adequately address genuine hardship. I share the objective of ensuring that the law is fair, accessible and capable of supporting the needy. However, for the reasons set out in this submission, I do not believe that the Government's preferred proposals strike the appropriate balance between fairness and personal autonomy.

I therefore make the following recommendations.

Recommendation 1: Do not create automatic legal rights and obligations for cohabitants

The Government should not proceed with legislation that automatically imposes financial rights and obligations upon adults solely because they have lived together for a prescribed period or have a child together. Such a reform would represent a fundamental departure from the longstanding principles of English private law, under which significant legal obligations arise through informed consent rather than legal presumption.

The distinction between marriage, civil partnership and cohabitation should remain one of legal choice, not merely one of perceived circumstance.

Recommendation 2: Introduce a simple statutory opt-in scheme

If Parliament concludes that additional legal remedies should be available to cohabitants, it should establish a straightforward statutory registration scheme through which couples may voluntarily acquire defined legal rights and responsibilities.

Such a scheme would:

- respect individual autonomy;
- provide legal certainty;
- minimise litigation over whether a qualifying relationship existed;

- enable couples to make informed choices about their legal status;
- protect partners who wish to formalise their legal relationship; and
- preserve the freedom of those who deliberately choose not to do so.

This would extend legal rights and duties without removing personal choice. It would also mirror the constitutional principle already reflected in marriage and civil partnership, namely that legal obligations of this significance arise because adults have chosen them.

Recommendation 3: If an opt-out model is retained, either partner should be able to prevent it applying

If the Government nevertheless remains committed to an automatic statutory framework, the proposed opt-out model should be fundamentally amended.

The consultation proposes that the statutory framework should only be disapplied where **both** partners agree to opt out. That approach is difficult to reconcile with the principle of consent. One person should not be able to impose significant legal obligations upon another simply by refusing to participate in the opt-out process. If Parliament retains an opt-out system, **either partner** should be entitled to give notice that they do not consent to the statutory framework applying.

This recommendation is supported not only by constitutional principle but also by public opinion. Independent Survation polling conducted during this consultation found that **47% of respondents believed the law should not apply where one partner wishes to opt out, compared with only 32% who supported the Government's proposal requiring both partners to agree.**

Recommendation 4: Preserve the distinction between cohabitation and marriage

Parliament should avoid creating what would, in substance, become a third legally recognised adult relationship and would be doing so without full transparency and public understanding. Marriage and civil partnership are legal institutions entered into through deliberate public commitment. Cohabitation is a factual description of living arrangements. The law should continue to distinguish between those concepts.

To treat them as functionally equivalent risks undermining the significance of consent while creating uncertainty about the legal consequences of ordinary domestic relationships.

Recommendation 5: Strengthen targeted remedies rather than creating a general jurisdiction

Where evidence demonstrates genuine gaps in legal remedies, Parliament should address those problems directly.

This may include consideration of:

- improving public legal education regarding cohabitation;
- encouraging the use of cohabitation agreements;
- simplifying declarations of trust;
- strengthening remedies where children require protection;
- reviewing aspects of existing property and inheritance legislation where clear deficiencies can be demonstrated.

Targeted reform is preferable to creating a broad discretionary jurisdiction applying automatically to millions of relationships with widely differing characteristics.

Recommendation 6: Do not extend automatic intestacy rights

The Government should not confer automatic intestacy rights upon cohabitants equivalent to those enjoyed by spouses and civil partners. Such a reform would significantly alter the law of succession and may undermine testamentary freedom, prejudice second families and create unnecessary litigation between surviving partners and children. Existing remedies under the **Inheritance (Provision for Family and Dependants) Act 1975** already enable deserving cases to be considered on their individual merits. That remains a more proportionate response than creating automatic inheritance rights.

Recommendation 7: Undertake further public engagement before legislating

The consultation concerns proposals that would fundamentally alter the legal consequences of millions of personal relationships.

Independent polling conducted by Survation five weeks after the consultation opened found that **72% of adults had heard little or nothing about the Government's proposals**. That finding suggests that public awareness remains remarkably limited. Before introducing legislation of this constitutional significance, the Government should undertake further public engagement to ensure that those potentially affected understand both the nature and consequences of the proposed reforms. Meaningful consultation requires informed participation.

Conclusion

This consultation has frequently been presented as a debate about fairness for cohabiting couples. It is certainly about fairness.

But it is about something more fundamental as well. It is about the relationship between the individual and the State. English private law respects the principle that adults should ordinarily decide for themselves whether to assume legally enforceable obligations towards one another. While a minority of couples believe the common law myth, the majority are well aware of their choices. The Government now proposes that significant financial rights

and obligations should instead arise automatically unless adults take formal steps to prevent them. That is a profound constitutional change. It should not be undertaken unless Parliament is satisfied that it is both necessary and proportionate. The consultation has not yet established that case. The proposals rest upon an understandable desire to prevent hardship. However, hardship can often be addressed through more targeted reforms that do not require the creation of an entirely new legal status.

Nor should Parliament overlook those whose interests are less visible within the consultation. Modern family life is increasingly diverse. Many divorced and widowed people consciously choose cohabitation precisely because it allows them to enjoy companionship while preserving financial independence and protecting assets intended for their children or grandchildren. Others maintain separate finances throughout long relationships because that reflects their mutual wishes. Women are as likely as men to object to a new law. The law should respect those choices as much as it respects the choices of those who decide to marry.

The Survation polling undertaken during this consultation reinforces that conclusion. It demonstrates not only limited public awareness of the proposals, but also a clear distinction in public opinion between supporting legal safeguards and supporting automatic legal obligations. The public appears to recognise that fairness and consent are not competing values. Both matter.

The consultation therefore presents the Government with an opportunity to adopt a different approach. Rather than creating a new automatic legal status, Parliament could establish a simple, accessible opt-in system through which couples who wish to acquire legal rights may do so voluntarily, albeit that it too would require legal advice. Such an approach would provide a framework where it is wanted while preserving the autonomy of those who have made a different choice.

If the Government nevertheless decides to legislate on the basis of an automatic framework, the minimum safeguard should be that **either partner** is able to prevent it applying. No person should become subject to substantial legal obligations because another individual refuses to opt out.

The issue before Government is therefore not whether the law should give cohabitants extra remedies. The issue is whether Parliament should replace consent with presumption. I believe it should not. Article 8 of the European Convention on Human Rights would be infringed.

That is why I urge the Government to reject the proposed automatic opt-out model and instead develop reforms founded upon informed consent, legal certainty and personal autonomy. Only such an approach properly reflects the principle that should remain at the heart of family law, namely the right to choose one's relationships freely.