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Law Commission
Reforming the law

Table of contents

Problem
Project
Documents

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Matrimonial property, needs and agreements

Making provision in law for binding nuptial agreements and helping people understand the law on meeting an ex-spouse's financial needs on the breakdown of a marriage. Guidance has been produced, and scoping work undertaken by the government but we await a final response.

Problem

Divorce and the dissolution of civil partnership almost always have financial consequences.

Many couples resolve the financial consequences of divorce or dissolution without going to court.

But where this is not possible, the courts have a very broad discretion to redistribute the parties' property and income.

The law has to deal with the majority who need clear and accessible law and who may have to manage without professional advice. And some for whom sophisticated financial arrangements may be appropriate.

But at the moment individuals struggle to know what the law requires of them.

The project also considered the treatment of pre-nuptial, post-nuptial and separation agreements.

These are agreements made between couples before, during or at the end of their marriage or civil partnership as to how their property and finances will be dealt with if they were to separate.

Such agreements are not currently enforceable but the judgment of the Supreme Court in Radmacher v Granatino [2010] UKSC 42 said that they should be given "decisive weight" unless the agreement is unfair.

Project

The Law Commission commenced a project in 2009 to examine the status and enforceability of marital property agreements.

In January 2011 we opened a consultation, reviewing the current law of marital property agreements and discussing options for reform.

The project was extended in 2012 to cover two further issues of financial provision arising on divorce or the dissolution of a civil partnership.

It was agreed with the Ministry of Justice that the scope of the project should be extended to include a targeted review of two aspects of financial provision on divorce and the dissolution of a civil partnership: financial needs and non-matrimonial property.

We opened a supplementary consultation in September 2012.

The project was not a full-scale reform project directed at the entirety of the law of financial orders. Rather, the aim was to bring clarity and predictability to areas of that law that cause particular difficulties.

Altogether, we received almost 150 consultation responses from members of the public, lawyers and other professionals and organisations. The consultation papers and responses, together with other material related to the project, can also be found on this page.

Our recommendations

The final report was published on 27 February 2014.

The report made recommendations to clarify the law of "financial needs" on divorce or dissolution of a civil partnership. And to introduce qualifying nuptial agreements in England and Wales.

The report sets out and explains our recommendations for reform, which would:

- Clarify, through the provision of guidance by the Family Justice Council, the law relating to "financial needs". This would ensure that the law is applied consistently by the courts and reinforce judicial best practice.
- Guidance to give people without legal representation access to a clear statement of their responsibilities and the objective of a transition to independence that a financial settlement should achieve.
- Investigate the possibility of whether an aid to calculation of "financial needs" could be devised. We envisage that formulae, if developed, would take the form

of non-statutory guidance and would give a range of outcomes, in figures, within which the separating couple might negotiate.

- Introduce "qualifying nuptial agreements". These would be enforceable contracts, which would enable couples to make binding arrangements for the financial consequences of divorce or dissolution. In order for an agreement to be a "qualifying" nuptial agreement, certain procedural safeguards would have to be met. Qualifying agreements could not, however, be used by parties to contract out of meeting the "financial needs" of each other and of any children.

Our report includes a draft Nuptial Agreements Bill, which would introduce qualifying nuptial agreements in England and Wales.

Result

We received two letters from the Minister of State for Justice and Civil Liberties, Simon Hughes MP, dated 8 April and 18 September 2014 which together stand as the Government's interim response to our recommendations.

The Ministry of Justice also issued a press release (https://www.gov.uk/government/news/divorce-myths-to-be-dispelled) dated 17 April 2014.

We recommended that the Family Justice Council produce guidance on needs.

This has now been done with the Family Justice Council producing two sets of guidance, one for the public and litigants in person (https://www.judiciary.gov.uk/wp-content/uploads/2016/04/fjc-sorting-out-financial-needs-april-16-final-revised-nov17.pdf), and the other addressed primarily to the judiciary and legal advisers. (https://www.judiciary.gov.uk/publications/guidance-on-financial-needs-on-divorce-edition-2-april-2018/)

The AdviceNow organisation has also produced guidance on needs for the public (https://www.advicenow.org.uk/guides/sorting-out-your-finances-when-you-get-divorced).

The Ministry of Justice is undertaking scoping work on the feasibility of developing non-statutory and numerical guidance on the calculation of financial needs.

The Government considered that there was unlikely to be time for the Nuptial Agreements Bill to progress through Parliament before it was dissolved in March 2015.

Accordingly, it took the view that the Government's final response regarding nuptial agreements should await the next Parliament, giving the new Government time to consider our policy recommendations on this topic and the Bill.

We await Government's final response.



Documents

Consultation and related documents

Consultation (1)
(https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp198_Marital_Property_Agreements_Consultation.pdf)

Consultation (1): summary of responses
(https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp198_matrimonial_property_responses.pdf)

Supplementary consultation
(https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp208_matrimonial_property.pdf)

Summary of supplementary consultation
(https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-

e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp208_matrimonial_property_summary.pdf)

Supplementary consultation overview (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp208_matrimonial_property_overview.pdf)

Supplementary consultation overview for lawyers (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp208_matrimonial_property_overview_lawyers.pdf)

Supplementary consultation responses (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/04/cp208_matrimonial_property_responses.pdf)

Report and related documents

Report (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/lc343_matrimonial_property.pdf)

Report summary (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/lc343_matrimonial_property_summary.pdf)

Impact assessment (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/lc343_matrimonial_property_impact-assessment.pdf)

Other documents

Resolution survey results (March 2012) (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-

platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/cp208_matrimonial_property_Resolution_survey_results.pdf)

A study of the views and approaches of family practitioners concerning marital property agreements, Emma Hitchings (2011) (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/lc343_matrimonial_property_study.pdf)

Government initial response (https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105350mp_/https:/cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/04/lc343_matrimonial_property_initial_response.pdf)

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