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SEPARATION RIGHTS TO COHABITANTS WOULD UNDERMINE MARRIAGE

Cohabiting partners who separate could for the first time soon have the right in law to claim a share of their partner's financial assets. At present such claims can only be made by married couples and civil partners.

The Cohabitation Bill, a Private Member's Bill introduced in the House of Lords by Lord Lester of Herne Hill, would, if enacted, provide the individuals in a cohabiting couple with a right to make a claim from the other party, where the couple had cohabited for two years and had not entered into an opt-out agreement.

At present the Bill is awaiting the outcome of a public Consultation recently held by the Law Commission to consider a number of intestacy issues in respect of cohabiting partners. The Consultation, entitled *Intestacy and Family Provision Claims on Death*, closed on 28 February and the final report of the Commission is expected to be published in the Autumn of 2011. Whether the Bill then makes further progress will depend on the outcome of that report, the view then taken by the government of the day, and the will of Parliament.

In the light of the moves toward granting greater rights to cohabitants, The Jubilee Centre has compiled a report entitled *Cohabitation in the 21st Century*, which contains an in-depth analysis of available statistical data, and an assessment of the impact which the proposed legislation will have on marriage, and on the national economy.

The Centre has submitted this report as its response to the Law Commission's Consultation. The territory covered by the Consultation includes consideration of the extent to which intestacy and family claim rights, in the event of death, should be provided in law for cohabiting partners. At present, intestacy legislation only makes provision for spouses, civil partners and blood relatives.

Any extension of rights to cohabiting partners, whether in the event of death or of separation, is significant, as it would be likely to encourage some couples to cohabit who would otherwise marry. It would therefore have the effect of undermining marriage, which research constantly

shows to be the longest-lasting form of relationship, and, for children, the safest, happiest and most fulfilling context in which to be brought up.

The following are some of the key findings of The Jubilee Centre's report:

- Cohabitation is generally short-lived. Couples live together for a mean of three years, with more than half of all cohabitantes who separate doing so within two years.
- Cohabitation is a less stable form of relationship today than it was 15 years ago. Even then, cohabitation was markedly less stable than marriage. Less than a quarter of first cohabitations last five years and just one in nineteen of all cohabiting couples (5.3 per cent) has been together for 10 years or more.
- This is particularly pronounced for couples with children. The proportion of couples still cohabiting by the time their first child is 16 has dropped more than five-fold over the past 14 years. In contrast, over the same period, marriage has become a more stable family background for children. Married couples are now more than 10 times as likely to stay together until their child is 16 (75 per cent, compared with just 7 per cent of cohabiting couples).
- Contrary to popular opinion, cohabitation does not serve as a 'trial marriage' or reduce the odds of divorce. First cohabitantes who have never married and who then marry their cohabiting partner are 60 per cent more likely to divorce than those who marry without having first lived together.
- This increased divorce rate among former cohabitantes is not explained by taking into account the length of time that cohabitantes have already lived together. Couples who live together before marriage are 60 per cent more likely than married couples to divorce within 10 years of the start of their live-in relationship.
- The marriages of people who do not cohabit before marriage tend to last an average of four years longer than those who do cohabit before getting married – 13 years compared with 9 years.

The Centre's conclusion is that, given the proposed legislation as it stands, comparatively few cohabiting couples will be helped, since the minimum period of cohabitation which can lead to a claim being made is set in the range of two to five years. Almost half of all cohabitations end within two years, and more than three-quarters within five years. A large proportion of these ends in marriage, which already has its own legal protections.

This, claims the Centre, goes against the intended purpose of the legislation, which is to 'provide certain protections [in the event of death or separation] for persons who live together as a couple or have lived together as a couple; and for connected purposes.'

Perhaps of more concern, says the Centre, is the strong probability that by providing such protections for a minority – and therefore providing a cohabitation incentive for many who would either have married or would not have lived together – the Law Commission will disadvantage a much larger number of people, resulting in increased cost to the taxpayer.

These proposals must be considered as part of an integrated family policy. There is no easy solution to the legal problems posed by couples whose cohabitation ends in separation or death. However, given the cost to the taxpayer of family breakdown, the Law Commission must consider the financial implications of any recommendation that encourages couples to cohabit – either as an alternative to marriage or as a prelude to it – since in both cases it is associated with a serious risk of separation and associated private and public costs.

A full version of the Jubilee Centre’s report can be downloaded from the Centre’s website, at http://www.jubilee-centre.org/resources/cohabitation_in_the_21st_century

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