



## The Odysseus Trust

### RESPONSE TO THE LAW COMMISSION CONSULTATION

#### ‘Cohabitation: The Financial Consequences of Relationship Breakdown – A Consultation Paper’

1. The Odysseus Trust<sup>1</sup> is a non-profit company limited by guarantee which seeks to promote good governance and the effective protection of human rights. The Trust is directed by Lord Lester of Herne Hill QC, together with his Parliamentary Legal Officers, Kate Beattie and Alex Wilks. This paper responds to the Law Commission consultation on proposals to introduce a new scheme providing remedies for cohabiting couples on separation or death.
2. In 2002 Lord Lester introduced the Private Member’s Civil Partnerships Bill which proposed a new legislative scheme for the recognition of the relationships of unmarried couples in long-term relationships, irrespective of their sexuality, and provided a package of benefits and responsibilities for registered couples. The Bill was given a Second Reading, and in due course the Government introduced its own Bill confined to same-sex couples. Lord Lester was closely involved during the debates on the Bill in the House of Lords.

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<sup>1</sup> For more information about the work of the Trust, please visit [www.odysseustrust.org](http://www.odysseustrust.org)

3. We welcome the Law Commission's willingness to review and suggest possible reforms to the law relating to cohabiting couples. However, we regret that the consultation is narrowly restricted by the terms of reference agreed with the Government, which mean that its recommendations involve replacing one incomplete patchwork with another incomplete patchwork.
4. Paragraph 1.1 of the consultation explains that during the passage of the Civil Partnership Act 2004 concern was expressed by members of the House of Lords at 'the absence of any coherent scheme of remedies to relieve the potential financial hardship suffered by cohabitants on the termination of their relationships', following which Lord Filkin asked the Law Commission to review the law and to suggest possible reforms.
5. In fact, the concern expressed in the Lords during the passage of the Act was of a far more fundamental nature and related to the general absence of a coherent scheme of rights and obligations for cohabitants, particularly in the context of unmarried opposite sex cohabitants who fell outside the scope of the Bill. This concern was raised by several peers during the Second Reading debate<sup>2</sup> and at Grand Committee. In Committee, Lord Lester argued:

'[I]f there is any indication by the Government that they are open to long-term considerations of law reform in respect of cohabitation, personally I shall find that far more convincing than resting the whole case on what may be an illusory choice... I am not talking about social security,

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<sup>2</sup> HL Hansard 22.04.04/Cols 396, 412 & 429

pensions or tax; I am talking about providing some basic legal protection for the basic rights for both sets of couples'.<sup>3</sup>

6. On 12 May 2004, Lord Filkin wrote to Lord Higgins, Lord Goodhart, Lord Lester of Herne Hill, Lord Alli and all the peers who spoke at Second Reading indicating that the Law Commission was considering the case for fundamental legislative reform regarding opposite and same sex cohabitation. The letter did not indicate the narrow scope of the terms of reference.
7. Unmarried cohabiting couples in long-term relationships need to be given the same rights and responsibilities, irrespective of their sexuality, or whether they have children. They need a scheme of voluntary registration which provides for rights and responsibilities similar to what is contained in the Civil Partnership Act 2004. That is the approach upon which Lord Lester's Civil Partnerships Bill 2002 was based, and is the approach in some other European and Commonwealth countries. It does not require unmarried opposite-sex couples to marry, but gives them a choice.
8. Currently there is a lack of a coherent legal framework which gives full partnership rights to couples, who live together but either do not marry or (in the case of same sex couples) register a new civil partnership. The patchwork comprising the general law of property and trusts and certain statutory provisions has given rise to a set of remedies which is illogical, uncertain and unfair.
9. A coherent legal framework requires a more comprehensive approach than the current terms of reference permits. The consultation should

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<sup>3</sup> HL Hansard 10.05.04/Col GC 32

extend beyond the consideration of the consequences of separation or death on the relationship, and cover for example, issues arising from physical or mental incapacity, or damages arising for wrongful death<sup>4</sup>. It should consider a regime which provides comprehensive legal protection for cohabiting couples, including parental responsibility, next-of-kin rights, and insolvency, tax and social security – issues which are specifically excluded from the consultation.

10. A coherent legal framework can be achieved through the establishment of a registration scheme which provides the full range of basic legal rights and obligations for qualified cohabitants. Those couples who do not wish to register their relationships can be covered by a presumptive scheme which imposes certain rights and obligations for cohabitants.
11. The Law Commission should follow the example of the Irish Law Reform Commission in its *Consultation Paper on the Rights and Duties of Cohabitees* which recommended a presumptive scheme and law reform in areas such as property law, succession, maintenance, social welfare, taxation and healthcare.

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<sup>4</sup> The Fatal Accidents Act 1975 does not allow partners to claim bereavement damages for the wrongful death of a partner. The Law Commission, in its report *Claims for Wrongful Death*, 1999, Law Com 263, recommended that this injustice be removed.