

Call for views – rights of cohabitants

As the professional body for Scottish solicitors, the Law Society of Scotland has an important duty to work in the public interest. We take this duty seriously and it is reflected in our five year strategy, [Leading Legal Excellence](#). A critical part of our strategy is our goal to INFLUENCE the creation of a fairer and more just society by being an international centre of excellence in thought leadership. Towards achieving our goal, we gave a commitment in our annual corporate plan (2018-19) to:

‘... undertake new proactive policy projects on reform of co-habitants’ rights.’

This consultation, which reflects part of our annual plan commitment, seeks the views of our members and interested stakeholders on the law providing rights for cohabitants. We would be pleased to hear from you with your views and experiences.

The Family Law (Scotland) Act 2006 provides certain rights for cohabitants when cohabitation ends otherwise than by death (section 28) and on the death of a cohabitant (section 29). We are not undertaking a full review of the law relating to cohabitation. The purpose of this project is to consider the following matters:

- The extent of section 28 claims – should the common law claim of unjustified enrichment remain available to parties in circumstances where the one-year period within which a claim under section 28 must be made has been missed? Should the time period for applications be subject to judicial discretion in limited circumstances?
- The time period for an application under section 29 – should the period for application remain within 6 months of the date of death? Should the period be linked to the grant of confirmation rather than date of death? Should the time period for applications be subject to judicial discretion in limited circumstances?
- The extent of section 29 claims – should section 29 claim be extended to testate cases? We note that the Scottish Government does not plan to extend section 29 to testate claims.

We would welcome your views and experiences on the above matters and more generally about the provisions relating to cohabitants within the Family Law (Scotland) Act 2006.

You can respond by:

- Filling out the form below
- Emailing your views and experiences to policy@lawscot.org.uk
- Writing to Alison McNab, Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh, EH3 8EX

The consultation will close at 10:00am on Monday 3 December 2018.