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Our ref: 7949

U8 April 2014

LAW COMMISSION REPORT ON MATRIMONIAL PROPERTY, NEEDS AND AGREEMENTS

Further to our meeting on 24 March, I am writing to advise you of the Government's progress in considering the Law Commission's report on Matrimonial Property, Needs and Agreements (MPNA), published on 27 February.

I would first like to formally thank you and your team within the Law Commission for your hard work in this complex and controversial area of law over the last five years. This Government is committed to improving the family justice system so that divorcing couples can achieve the best possible outcomes for themselves and their families. The detailed recommendations within the MPNA report have provided us with material upon which we will reflect carefully in relation to this aim.

In light of the five years that the Law Commission has spent on this project and the complex nature of the subject matter, the Government intends to give the MPNA report thorough consideration before responding in detail. As I indicated when we met on 24 March, I intend to provide formal responses to the report within the agreed timescales laid out in protocol between the Law Commission and Government. I therefore expect to provide a formal interim response by the end of August 2014 and a formal full response by the end of February 2015.

However, I felt compelled to write to you earlier than that protocol requires, to commend the Law Commission's hard work and to let you know my early views with regard to the MPNA report's three broad proposals that:

1. Written guidance is produced to define and explain financial need;

2. The feasibility is assessed of producing numerical guidance to calculate the likely financial outcome of separation; and
3. Qualifying nuptial agreements are made statutorily binding through amendments to the Matrimonial Causes Act 1973.

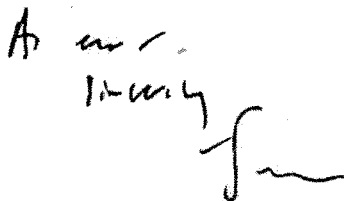
In relation to the first proposal, I am pleased to let you know that I intend to ask the Family Justice Council to produce this guidance. The Government entirely agrees that this is a valuable piece of work to assist couples who have decided to separate. Guidance focused on what 'need' means and what will be taken into account by the court and in mediation will dispel myths about and clarify the family justice system for couples. This will help them to approach the difficult and emotional separation process with better understanding and realistic expectations, and lead to swifter and better resolution of disputes for couples and their children. My officials have already opened discussions with the Family Justice Council and, if they agree to undertake this project, I hope that guidance will be produced by late 2014.

I am also pleased to welcome your proposal that a working group be established to consider the feasibility of numerical guidance to help couples to assess the likely financial outcomes of separation, possibly using a formula or calculator. Although the production of a formula is a complex and long term project, which the Law Commission estimates will take around 5 years, I am keen to support the exploration of this work which could build on and have many of the same benefits as the proposed written guidance. My officials will therefore begin to scope the establishment and make-up of a working group within the next six months.

Your final proposal centres on the draft Bill proposing that nuptial agreements that meet certain qualifications should be statutorily binding, unless enforcement would mean that either party's needs would not be met in the event of separation. As I explained when we met, due to the detailed and complex nature of the Bill, I wish to consider this in more detail before committing to any reform in this area. However, I commend you for the detailed and thorough work that has clearly gone into the recommendations and draft Bill, which provides a strong basis for further consideration of this complex and controversial subject.

I will update you on progress in all three areas in August. In the mean time, I would be grateful if you could press ahead with your consultation on the enforcement of financial orders in family cases. I agree that reform in this area is vital, to ensure that financial orders made following separation are enforceable and that hardship and further emotional distress is not caused to the children and adults involved.

I am grateful again for the Law Commission's thorough and considered review in this area.



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14 September 2014

LAW COMMISSION REPORT ON MATRIMONIAL PROPERTY, NEEDS AND AGREEMENTS

Further to my letter to you in April, I am writing to update you on progress against the recommendations made in the Law Commission's report on Matrimonial Property, Needs and Agreements ('the Report').

Written guidance on financial needs

As you are aware, I have commissioned the Family Justice Council (FJC) to prepare written guidance on the meaning of 'need' in financial disputes and an FJC subgroup, comprised of judges, academics, solicitors and barristers, has been formed to undertake this project. My officials have agreed with the subgroup's Chair, Mrs Justice Roberts, that the guidance will be prepared in two stages: first, guidance for separating couples to explain the key principles relevant to financial remedies cases, then, once this is complete, guidance for judges on financial needs.

I am pleased to update you that work on the guidance for separating couples is progressing positively and I expect it to be completed by the end of this year, in line with my letter to you in April. In line with your recommendations this guidance is designed to clarify the law on financial remedies for separating couples, particularly those who do not qualify for legal aid, by providing straightforward, plain English explanations, along with case studies which demonstrate in quantitative terms the financial outcomes for couples with varying income and capital levels. Once the guidance is complete, the Ministry of Justice will help to promote it as a tool to help separating couples to work together to achieve the best outcomes for themselves and their children, by making sure that they have realistic expectations and the best understanding of key issues.

The same FJC subgroup will also be undertaking guidance for judges on financial need. It is expected that this work will have a longer timescale than that within which the guidance for separating couples will be completed. This is due to the same concerns that you highlighted in the Report, of how to make sure the guidance has sufficient authority and

weight without infringing on the court's discretion. The Ministry of Justice have agreed with the group that it is preferable to prepare the judicial guidance and guidance for separating couples separately, to reflect the different focus and audiences of each, while this does not entirely adhere to your recommendation that one set of guidance should be prepared and issued additionally in plain English, I hope you will agree that our approach follows that recommendation's spirit. This approach also allows the guidance for separating couples to be put into use as soon as possible, following which the group can focus entirely on the judicial guidance. Review arrangements for both sets of guidance will be made once work on both is complete.

Establishment and scope of a Group to consider a numerical formula/calculator

As stated in my letter in April, scoping work is underway on the feasibility of developing a numerical formula or calculator to help separating couples to work out the likely quantitative outcome of their financial dispute. I am at this stage unable to provide timescales on this work, but we still intend to accept this recommendation, subject to further scoping.

Nuptial Property Agreements

The remainder of your recommendations focus on nuptial agreements, including your draft Nuptial Agreements Bill to make qualifying agreements binding. Parliamentary experts have advised that, unfortunately, it is unlikely that there would be time to pass this Bill before March 2015 when Parliament will be dissolved. Even were the Bill to be considered sufficiently uncontroversial to use the special procedure for Law Commission Bills, the limited time remaining for legislation to which the Government has already committed leaves little room for the introduction of new Bills.

I therefore suggest that a final response to the Report be postponed until the next Parliament, when the Government will not face the same time pressures that currently restrict us. I realise that, as nuptial agreements are a focus of the Report, this may be disappointing. However, I hope that you will agree that an interim response at this stage in which we are clear on the position, and a delayed ~~of~~ final response, is preferable to providing a final response in February in which we could still not give a definitive view on legislative change. This is not a rejection of your recommendations; it is a delay to allow the new Government to consider freely a Bill and a policy on which we recognise you have publically consulted, rather than risking this getting lost in the limited parliamentary time that remains in this session.

I would like to reiterate the Government's thanks to the Law Commission for your work on the Report, and to add my personal thanks for the assistance that you and your team has provided to me and my officials.

I have enclosed my letter of April, for reference, and ask that you may consider these two letters together to stand as the Government's protocol interim response to the Report. I also enclose a copy of both letters for the Chairman, Lord Justice Lloyd Jones.

*As ever,
with thanks and best wishes*


SIMON HUGHES