

Headlines from the Law Commission Report - Part two

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Claire Blakemore

PARTNER | UK

CATEGORY:

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Whilst the recommendations of the Law Commission and draft bill still need to be adopted by the Government, we set out below some of the main issues raised by the proposed reforms. **Binding Qualifying Nuptial Agreements (QNA): A cogent tool offering autonomy and control** Where needs are met, a QNA properly entered into and adhering to strict formalities will be an enforceable contract and will not be subject to the scrutiny of the court. **Formalities which must be adhered to:**

- The document must be contractually valid and able to withstand challenge (e.g. from undue influence or misrepresentation).
- The agreement must be entered into as a Deed.
- The agreement must include a statement that both parties understand they are entering into a QNA and that this will partially remove the discretion of the Court to make financial provision in the event of their separation.
- The agreement must be signed no less than 28 days before the wedding.
- The parties must have exchanged 'material information' about each other's financial situation.
- The agreement must include a legal advice certificate entered into by the parties' advisers confirming that each party has received independent legal advice.

Who will benefit from the introduction of QNAs?

- Individuals who wish to protect assets they bring into the marriage or which they expect to inherit.
- Those with trust interests.
- Couples who marry later in life (perhaps for a second time) and who are financially independent.
- Parties who wish to protect assets for children from previous relationships.
- Those who are financially secure following individual business enterprise and those who wish to protect future business interests.

Who might be disadvantaged?

- The financially weaker spouse/civil partner who is likely to be compromising financial claims on divorce.

Foreign Agreements

- Foreign marriage contracts which do not specifically state that the agreement is to remove discretion of the English Family Court and which do not comply with the requirements will not be QNAs. For international couples moving to England, post-nuptial agreements may be needed to convert their foreign marital agreement into a QNA to benefit from the proposed legislation. Otherwise, the foreign agreement will be one of the factors to be considered in the court's discretionary exercise on division of assets on divorce.

What kind of assets can be protected?

- The introduction of binding QNAs will provide individuals with the opportunity to ring fence 'non matrimonial' assets (such as pre existing or inherited wealth) as well as assets generated during the marriage, provided needs are met.
- There are no recommendations for statutory clarification of what constitutes 'non matrimonial' assets in divorce cases. The Law Commission's rationale being that the responses from consultees made it clear that any statutory amendment would be too controversial. This means that in cases not involving QNAs there will remain scope for debate as to which assets fall into the 'pot' for division on marital breakdown.

Authors

Claire Blakemore

PARTNER | LONDON

Divorce and family

 +44 20 7597 6025

 claire.blakemore@withersworldwide.com