

Comparing countries — more on maintenance

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In a two-part analysis, we compared how different jurisdictions dealt with spousal maintenance. The countries surveyed were California; Cyprus; England and Wales; France; Germany; Ireland; Italy, Jersey; Malta, New York; New Zealand; Portugal; Scotland; South Africa; Spain and Switzerland. Copies of both articles and the tables showing the comparisons, which first appeared in the Family Law Journal can be viewed [here](#) and [here](#). Perhaps one of the most interesting points to come out of our analysis is the recognition that the label attributable to London as being the 'divorce capital of the world' does not necessarily derive from the Courts approach in respect of spousal maintenance. Upon reflection it seems likely that the label has more to do with the overarching discretion of the Court to reach a 'fair' outcome. The Court is not constrained by a fixed formula or default marital property regime as it is in a number of other jurisdictions. Having said that, fairness obviously feeds into the determination of the appropriate level of spouse maintenance. In its Report on Matrimonial Property, Needs and Agreements, the Law Commission was tasked with examining the extent of 'financial needs'. In its report it acknowledged that whilst practitioners know what is meant by 'needs' within the family law context, further guidance is needed for the growing body of litigants in person. The Law Commission proposed that authoritative guidance should be drafted on the meaning of financial needs on divorce which would include a statement of independence. The report highlights the following: (a) Level and duration will be referable to the resources of the parties and standard of living; (b) Where there are children, spousal income needs will be greater; (c) A duration of spousal support – the objective will be as now to enable a party to make transition to independence; – The objective will be to enable a party to make transition to independence – There should be consideration as to whether a joint lives order is appropriate – When considering term orders, perhaps the expectation would be in the region of say 2 to 10 years – Where there are minor children, the spousal support term could endure until the end of secondary education – In a childless marriage, perhaps there should be no spousal support (d) Consideration of whether there should be a Joint Lives Order where there is no or limited income or earning capacity; (e) Should there be Term Orders? Perhaps the expectation should be in the region of two to ten years. However, if it is expected that spousal support will be required for longer than that perhaps consideration should be given to a Joint Lives Order; (f) Where there are minor children, the spousal support term could endure until the end of secondary education; (g) In a childless marriage perhaps there should be no spousal support. It will be interesting to see in more detail what the guidance says when it is issued by the Family Justice Council. Also, the Law Commission proposed a five year project to work on the possible development of a formula to generate ranges of outcomes for spousal support along the lines of the Canadian model. Both recommendations are in response to the growing number of litigants in person who are accessing the Court system and the Government's desire to equip couples to determine the financial outcome following any divorce, themselves. It is hoped that the guidance will help and in the not too distant future a formula would provide a clear bracket for litigants in person to work with. So there are many potential changes afoot in this area and it is interesting to see now where we are in comparison to the rest of the world and how we may be influenced by their models to make changes.