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Pre-nuptial agreements could become legally binding. Are they a good idea or only for wealthy cynics?

Most married couples don't bother with a pre-nup but changes proposed by the Law Commission could mean they become more popular.

Most people don't get married thinking they're going to end up getting divorced, but around 40% of marriages do break up. If you do get divorced there's a lot of uncertainty about what it means for your finances (except in Scotland where the rules are clearer). At the moment only a minority of couples have a pre-nup, but the Law Commission's proposals could change that.

What the Law Commission is proposing

The Law Commission's **consultation on pre-nups** looks at whether they should be made legally enforceable and – if so – what safeguards are needed. Among its proposals it says:

- **The pre-nuptial agreement must be signed in writing.** Most contracts are still paper-based and need the signature of both parties but some contracts are valid even though they've only been agreed verbally. The Law Commission says that pre-nups should be written documents, signed by both parties.

- **Couples must tell each other how much money they have.** The consultation says that full and frank disclosure is important. This seems logical as there's no point in signing something as serious as a pre-nup without knowing the context.

SAVVY TIP: In October a court ruling about a German heiress and her ex husband (**Radmacher v Granatino**) said that couples didn't necessarily have to have 'full and frank disclosure' about their finances for a pre-nup to be legally binding. The Law Commission is taking a different view.

- **The pre-nup doesn't have to be signed by a specific date.** At the moment many family lawyers recommend that a pre-nuptial agreement should be signed at least 21 days before the wedding. The idea is that the closer to the wedding the pre-nup is signed the more pressure you're likely to have come under but the Law Commission said that courts would have to decide whether pressure or duress had been used and that can't always be determined by when someone signs an agreement.

SAVVY TIP: The Law Commission says that if it stipulated that a pre-nup should be signed 21 days before the wedding it would just shift the pressure point, so that someone would come under pressure to sign a pre-nup 22 days before the wedding.

- **The couple should take individual legal advice.** The Law Commission acknowledges that it's unusual to insist that someone takes legal advice before they sign a contract but it believes that both parties should at the very least get an explanation of what signing the agreement could mean.

SAVVY TIP: The Law Commission says that if one partner doesn't take legal advice the pre-nup shouldn't be binding on them. David Allison of **Family Law in Partnership** who's SavvyWoman's **divorce and relationship breakdown expert** says that strict safeguards should be in place. "These contracts could last for a long time and have a significant impact on couples so it's right that you know what you're signing up to."

- **Pre-nups may be limited to only 'ring-fence' certain assets.** The Law Commission is consulting on whether a pre-nup should be able to set out what happens to everything that a couple owns or just specific assets, such as a second property, investments or a business.

- **Pre-nups should not be 'manifestly unfair'.** The Law Commission says it would be hard to say that a pre-nup shouldn't be fair as it's possible to argue about what's fair for days. Instead, it's proposing that a pre-nup should be enforceable unless it's manifestly unfair or leads to 'serious injustice'.

SAVVY TIP: It's proposing that a pre-nup wouldn't be able to leave someone needing to claim state benefits after divorce (unless they were benefits they already claimed during the marriage), but David Allison of

Posted 11-01-2011

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Sarah Pennells



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SavvyWoman is the brainchild of Sarah Pennells, who's a well known personal finance journalist and broadcaster. Sarah has appeared regularly on BBC Saturday Breakfast and writes for several magazines.

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Family Law in Partnership says that this is quite a tough test. "Using state benefits as a test is setting the bar quite low and there's a danger that some people who aren't entitled to benefits may be left struggling financially."

Who needs a pre-nup?

For many people, there's probably no point in having a pre-nuptial agreement because it's hard enough to make the money they have stretch to cover two households after a divorce, never mind keep certain assets (such as an inheritance, property or business) out of the equation. However, there is likely to be an increase in the number of couples who take out a pre-nuptial agreement if the Law Commission's proposals are adopted. That's because:

- **The price of pre-nups could come down.** At the moment you could pay around £2,000-£3,000 for a pre-nup drawn up by a London lawyer. If lawyers (and couples) are clearer about what makes a pre-nup legal the costs should start to fall.
- **There's more certainty for couples who take out a pre-nup.** Even though pre-nuptial agreements are normally taken into account by the courts in England and Wales (and they're viewed as legally binding in Scotland), there is an argument that it could be money down the drain if you have a contract that's not legally binding.

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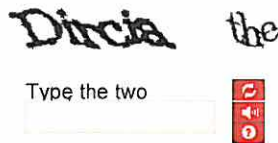
SAVVY HELP: David Allison of Family Law in Partnership is one of SavvyWoman's panel of experts. Why not ask David a question by [clicking here](#)? The answer will be displayed on the website but your surname will never be used.

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