

Family Law (Property and Maintenance) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Constitutional Affairs with the consent of Mr Rob Marris, the Member in charge of the Bill, are published separately as Bill 73 – EN.

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TO

Abolish the common law duty of a husband to maintain his wife; to abolish the presumption of advancement in relation to married or engaged couples; to amend the Married Women's Property Act 1964; and to make provision as regards property derived from an allowance made by a civil partner for the expenses of a civil partnership home or for similar purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Abolition of husband's duty to maintain wife

The rule of common law that a husband must maintain his wife is abolished.

2 Abolition of presumption of advancement

- (1) The presumption of advancement (by which, for example, a husband is presumed to be making a gift to his wife if he transfers property to her, or purchases property in her name) is abolished in relation to married or engaged couples. 5
- (2) The abolition by subsection (1) of the presumption of advancement does not have effect in relation to— 10
- (a) anything done before the commencement of this section, or
 - (b) anything done pursuant to any obligation incurred before the commencement of this section.

3 Amendments of Married Women's Property Act 1964

- (1) In section 1 of the Married Women's Property Act 1964 (c. 19) (money and property derived from housekeeping allowance made by husband to be treated as belonging to husband and wife in equal shares)— 15
- (a) for "the husband for" substitute "either of them for", and
 - (b) for "the husband and the wife" substitute "them".
- (2) Accordingly, that Act may be cited as the Matrimonial Property Act 1964.

- (3) The amendments of the Married Women’s Property Act 1964 (c. 19) made by this section do not have effect in relation to any allowance made before the commencement of this section.

4 Civil partners: housekeeping allowance

- (1) The Civil Partnership Act 2004 (c. 33) is amended as follows. 5
- (2) After section 70 there is inserted –

“70A Money and property derived from housekeeping allowance

Section 1 of the Matrimonial Property Act 1964 (money and property derived from housekeeping allowance to be treated as belonging to husband and wife in equal shares) applies in relation to – 10

(a) money derived from any allowance made by a civil partner for the expenses of the civil partnership home or for similar purposes, and

(b) any property acquired out of such money, as it applies in relation to money derived from any allowance made by a husband or wife for the expenses of the matrimonial home or for similar purposes, and any property acquired out of such money.” 15

- (3) After section 194 there is inserted –

“194A Money and property derived from housekeeping allowance

Article 18 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 (money and property derived from housekeeping allowance to be treated as belonging to parties to a marriage in equal shares) applies in relation to – 20

(a) money derived from any allowance made by a civil partner for the expenses of the civil partnership home or for similar purposes, and 25

(b) any property acquired out of such money, as it applies in relation to money derived from any allowance made by a party to a marriage for the expenses of the matrimonial home or for similar purposes, and any property acquired out of such money.” 30

- (4) The amendments of the Civil Partnership Act 2004 made by this section do not have effect in relation to any allowance made before the commencement of this section.

5 Short title, commencement and extent

- (1) This Act may be cited as the Family Law (Property and Maintenance) Act 2005. 35
- (2) This Act (except this section) shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) Subject to subsections (4) and (5), this Act extends to England and Wales only.
- (4) Section 4(3) extends to Northern Ireland only.
- (5) The following provisions extend to England and Wales and Northern Ireland – 40
- (a) section 4(1) and (4);

(b) this section.

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To abolish the common law duty of a husband to maintain his wife; to abolish the presumption of advancement in relation to married or engaged couples; to amend the Married Women's Property Act 1964; and to make provision as regards property derived from an allowance made by a civil partner for the expenses of a civil partnership home or for similar purposes.

Presented by Mr Rob Marris.

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