

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 15: Family Property

Section 198: Abolition of husband's duty to maintain wife

Effect

621. This section abolishes the common law duty of a husband to maintain his wife.

Background

622. The husband's common law duty to provide his wife with the necessities of life was a consequence of now obsolete rules of law which prevented the wife from having capacity to hold property and to enter into contracts. There is no equivalent common law duty for a wife to maintain her husband. There are, however, now adequate statutory provisions requiring both spouses to maintain each other. The common law duty to maintain has little if any practical application.

Example

- Either party to a marriage can apply to the court for a financial provision order against the other party under the Domestic Proceedings and Magistrates' Courts Act 1978 or the Matrimonial Causes Act 1973 on the grounds that his or her spouse has failed to provide reasonable maintenance for them or for any child of the family. There will no longer be any additional common law requirement for a husband to maintain his wife.

Section 199: Abolition of presumption of advancement

Effect

623. This section abolishes the common law presumption of advancement. The abolition does not affect any transfer made before the provision comes into force.

Background

624. The presumption of advancement was a presumption that a man who transfers property to his wife, child or fiancée is making the recipient a gift of that property, unless there was evidence to the contrary. This presumption acted as an exception to the normal rule – that where one person transfers property to another without gaining anything in return, the recipient is presumed to be holding the property on trust for the transferor unless there is evidence that a gift was intended.

625. The presumption of advancement did not apply where a woman transferred property to her husband, child or fiancé.

Example

- A husband transfers property to his wife. It is presumed that she is to hold the property on trust for her husband, unless there is evidence that a gift was intended.

Section 200: Amendment of Married Women's Property Act 1964

Effect

626. This section amends section 1 of the Married Women's Property Act 1964 so that money and property derived from a housekeeping allowance will, in the absence of an agreement to the contrary, be owned by the husband and wife in equal shares regardless of who paid or received the allowance. The provision does not apply to any allowance paid before it comes into force.

Background

627. Under the Married Women's Property Act 1964, if a husband paid a housekeeping allowance to his wife, any money or property derived from the allowance (in the absence of an agreement to the contrary) was treated as belonging to the husband and wife in equal shares. But the 1964 Act was silent on housekeeping allowances paid by a wife to her husband.

Example

- A wife pays her husband a housekeeping allowance. Unless they agree otherwise, the allowance and any property bought from it will be shared equally.

Section 201: Civil partners: housekeeping allowance

Effect

628. This section inserts a new section 70A into the Civil Partnership Act 2004. The new section applies section 1 of the Married Women's Property Act 1964 (as amended by this Act) to allowances paid by civil partners so that money and property derived from a housekeeping allowance is to be treated as belonging to both civil partners in equal shares.

Background

629. The Civil Partnership Act 2004 replicates most of the legal provisions relating to husbands and wives. However, as long as the provisions of section 1 of the Married Women's Property Act 1964 were gender specific, in that they only dealt with housekeeping allowances made by a husband to his wife and not allowances made by either spouse, it was not possible to replicate them for civil partners.

Example

- A woman pays her civil partner a housekeeping allowance. Unless they agree otherwise, the allowance and any property bought from it will be shared equally.