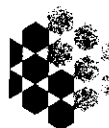


**From the Office of the  
Minister for Finance & Personnel**



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Your reference:

Our reference: SUB/572/09

Ms Jennifer McCann  
Chairperson  
Committee for Finance and Personnel  
Room 149  
Parliament Buildings  
Stormont  
Belfast

17 December 2009

I am writing to you to seek the views of the Committee for Finance and Personnel on a proposed amendment to the GB Equality Bill which would extend to Northern Ireland in the transferred field. The proposed UK Government amendment would abolish the doctrine of presumption of advancement in family property law in England & Wales and Northern Ireland. The attached Memorandum explains in detail what the rule is in Northern Ireland and the reasons why abolition is now regarded as appropriate.

I have informed Vera Baird QC (Solicitor General and Minister in charge of the Bill) that I am content in principle to seek the agreement of the Executive to a legislative consent motion being tabled in my name in the Assembly, but that I would need to consult with the Assembly Statutory Committee beforehand.

The GB Equality Bill has just been introduced into the House of Lords following its passage through the Commons. Second Reading in the Lords takes place on 15<sup>th</sup> December. Given that Committee Stage is scheduled for January/February 2010 it would be very helpful if I could have the Committee's views on this proposal as soon as possible after the Christmas recess. My officials will, as always, be happy to provide further briefing as required.

I am copying this letter to Peter Weir, deputy Chairman of the Committee.

Yours sincerely

**SAMMY WILSON MP MLA**

**PROPOSED AMENDMENT TO GB EQUALITY BILL**  
**LEGISLATIVE CONSENT MOTION REQUIRED:**  
**ABOLITION OF DOCTRINE OF PRESUMPTION OF**  
**ADVANCEMENT**

**BACKGROUND**

1. The UK Government has written to the Minister for Finance and Personnel seeking his agreement to the GB Equality Bill containing a provision, extending to Northern Ireland in the transferred field, which would abolish what remains of the doctrine of presumption of advancement in Northern Ireland. The DFP Minister has agreed in principle to seeking the consent of the Executive and Assembly to the proposed amendment, subject to hearing the views of the Committee for Finance and Personnel.

**KEY ISSUES**

The Presumption of Advancement

2. The presumption of advancement is one of the means by which a court allocates ownership of property, based on the presumption of the intention of the donor of the property. The starting point for ascertaining ownership by intention is the presumption of the resulting trust – if a person transfers money or property to another without receiving anything in return, the law presumes that the donor intends to retain the beneficial interest in the value of money or in the property.
3. In certain circumstances, for example where a special relationship exists between the donor and the recipient of the gift, the presumption of advancement displaces the operation of the presumption of the resulting trust. One of the few remaining examples of this under the law of Northern Ireland is that money or property given by a father to his child is presumed to be a gift to the child, subject to any contrary intention at the time the gift was made. The father loses any beneficial interest in the money or property he had prior to making the gift.
4. By contrast, no such presumption of advancement arises in relation to gifts made by a mother to her children. In this case the primary rule of the presumption of the resulting trust applies; so money or property gifted by a mother to her child is presumed to be held by the child on a resulting trust for the benefit of the mother. The child may acquire a legal interest (for example legal title to property) in the gift, but the beneficial interest in the money or property remains with the mother. The rule is subject to any contrary intention arising at the time the gift was made by the mother to her children.
5. Although the rules on how the presumption of advancement works rarely arise in practice today, they clearly represent a difference in the treatment of gifts by parents to their children depending on whether the gift was made by the father or the mother of the children.

6. Some parts of the presumption of advancement rule have already been abolished by statute. Article 16 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 abolished the rule in relation to gifts between spouses (previously the presumption of advancement applied in relation to gifts of money or property by a husband to his wife, but not in relation to a gift of money or property from a wife to her husband). Article 16 also abolished the rule as it applied in relation to gifts of money or property between engaged couples (previously a gift between a man and his fiancée was subject to the presumption of advancement whereas a gift between a woman and her fiancé was subject to the presumption of the resulting trust) .

#### Convention Rights

7. The rules on the operation of the presumption of advancement have long been regarded as offending against the equality of spouses provision in Article 5 of Protocol 7 to the European Convention on Human Rights. Article 5 reads as follows:

“Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.”

8. The UK Government has long been committed to ratifying Protocol 7 and to do so it needs to remove the remaining aspects of UK law which offend against the rule on equality of spouses in the rights and responsibilities between both themselves and in their relations with their children.

#### The GB Equality Bill

9. The GB Equality was passed by the House of Commons on 2<sup>nd</sup> December 2009 and introduced into the House of Lords. Second Reading in the Lords takes place on 15<sup>th</sup> December, with the remaining Stages taking place in the New Year. The GB Equality Bill consolidates and extends a range of disparate discrimination legislation applying in England & Wales and Scotland.

10. It is likely that the Equality Bill will be used as the legislative vehicle through which to remove these anomalies and so enable the UK to ratify Protocol 7 to the Convention. Although the specific amendment has yet to be drafted and tabled it is likely to be in the following form:

#### **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.

(2) The abolition by subsection (1) of the presumption of advancement does not have effect in relation to-

(a) anything done before the commencement of this section, or

(b) anything done pursuant to an obligation incurred before commencement of this section.

## **NEXT STEPS**

11. As soon as the Committee has considered and reported on this issue, a final decision will be taken on seeking the consent of Executive Committee and the Assembly.

12. The proposed amendment to the GB Equality Bill is likely to be laid and debated in the House of Lords in January/February 2010.

**DFP**

**14/12/2009**