

PART I

INTRODUCTION

1. This Report covers the period from 1 January 1983 to 31 December 1983 and deals with the activities of the Commission under section 4 of the Law Reform Commission Act 1975 and with other matters referred to in section 6 of that Act.

Members of the Commission

2. The Law Reform Commission is a statutory body corporate, established under section 3 of the Law Reform Commission Act 1975 and consists of a President and four other members. The members are appointed by the Government.

3. One change in the membership of the Commission took place during the year. Miss Mary Finlay resigned her membership of the Commission with effect from 31 March 1983. The Commission wishes to record its appreciation of her valuable contribution to its work during the period of her membership.

4. The membership of the Commission on 31 December 1983 was therefore as follows: Mr Justice Brian Walsh, Senior Ordinary Judge of the Supreme Court, President; Professor James Casey, Professor of Law, University College Dublin; Mr Roger Hayes, Barrister-at-Law, and Mr J.H.G. Lovatt-Dolan, Senior Counsel. Professor Casey and Mr Lovatt-Dolan were appointed to serve in a part-time capacity.

Staff of the Commission

5. The staff of the Commission consists of the Secretary, three Research Counsellors, an Executive Officer and three Clerical Assistants.

Functions of the Commission

6. The Commission was set up to keep the law under review and, in accordance with the provisions of the Law Reform Commission Act 1975, to examine and conduct research with a view to reforming the law and to formulate proposals for law reform. The Commission has prepared a programme for the examination of administrative law, civil liability for animals, conflict of laws, criminal law, evidence, family law, privacy, sales, State Side orders and statute law. The Commission is devoting its attention to these branches of the law and has published ten Working Papers and eight Reports.

7. Copies of the Commission's publications are sent to each member of the Houses of the Oireachtas and to all the law schools and law faculties in the country. Copies are also sent on a reciprocal basis to various law reform agencies outside the State. In performance of its obligations under section 6 of the Law Reform Commission Act 1975 the Commission has presented five Reports to the Attorney General prior to the present one. These Reports were duly laid by the Taoiseach before both Houses of the Oireachtas and copies were sent to each member of the Houses of the Oireachtas.

PART II

WORK OF THE COMMISSION IN 1983

8. During 1983, the Commission submitted to the Taoiseach pursuant to the Law Reform Commission Act, 1975 four Reports containing its final recommendations on certain matters. These were (i) the Report relating to the Age of Majority, The Age for Marriage and Some Connected Subjects, submitted on 15 June 1983; (ii) the Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters, submitted on 7 November 1983; (iii) the Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws, submitted on 14 December 1983; and (iv) the Report on Divorce a Mensa et Thoro and Related Matters, submitted on 16 December 1983.

Report on the Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5 - 1983)

9. The Report on the Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects sets out the Commission's final recommendations on the subject matter of its Working Paper No. 2 published in 1977. It contains a draft Age of Majority Bill giving effect to these recommendations and an Explanatory Memorandum on that Bill.

10. This Report originated in a request from the Attorney General to the Commission in 1975 to undertake an examination of, and conduct research into, the law relating to majority and, if it thought fit, to formulate proposals for its reform and submit them to him. As the research progressed it became

obvious that the Commission could not limit itself to the simple question of whether or not an alteration should be made in the age of majority, and that other related questions would fall to be examined. For example, an alteration in the age of majority could affect the age at which the consent of the parents is required for the marriage of their child. It could also affect payments and allowances to the parents or guardians of a minor. Accordingly in its Working Paper No.2 - 1977 and in this Report the Commission considered not only the question of majority but also the minimum age for marriage as well as some connected subjects, such as the age at which certain entitlements should commence or terminate and the minimum age requirement for those adopting children. Before making the Report, the Commission considered observations on Working Paper No.2-1977 submitted by the President of the High Court, by Mr Justice Costello of the High Court, by the Catholic Marriage Advisory Council, the General Synod of the Church of Ireland, the Irish Society for the Prevention of Cruelty to Children and the National Youth Council of Ireland.

11. The Report sets out the existing law, under which a person under twenty-one years is given special status, the law acting "upon the principle that a minor should be protected from his own improvidence and inexperience, provided this is done so as not to cause unnecessary hardship to any person dealing with the minor." The Report lists a number of changes that have over the years been made so as to reduce from 21 years to 18 years the age at which a person is qualified to perform certain acts. The most recent of these changes are to be found in the Succession Act 1965, which allows a person of sound disposing mind to make a will if he has attained the age of 18 years or is or has been married, the Fourth Amendment of the Constitution (1972), which reduces the age at which a person has the right to vote at Dail and Presidential Elections and at Referenda from 21 years to 18 years, the Juries Act 1976,

which reduces the minimum age for jury service from 21 years to 18 years and the Family Law Act 1981 which, for the avoidance of doubt, declares that no consent given by a spouse for the purposes of a sale by the other spouse of the family home is invalid by reason only that it is given by a spouse who has not attained the age of majority.

12. The Report recommends that the age of majority should be reduced to 18 years and that the term "minor" and not "infant" be applied to a person who has not reached that age. It also recommends that on marriage a minor should in law become an adult and should have all the rights and be subject to all the liabilities of a person who has reached the age of majority. The most important practical consequence of these recommendations, if adopted, will be to reduce the age at which persons may enter into binding contracts and sue or be sued in the courts in their own names without the intervention of a next friend or guardian.

13. Having stated the present law governing the minimum age for marriage, the Report recommends that any marriage of a person under 16 should be void and that there should be no provision for exemption in individual cases; accordingly it is proposed that section 1 of the Marriages Act 1972 permitting application to the President of the High Court for such an exemption should be repealed. As regards minors over 16 but under the age of majority, the Report recommends that the marriage of such a person should be void unless the consent in writing of his or her guardians (who will normally be the parents) is obtained beforehand. In cases where a guardian is incapable of consenting on account of mental disability or where the guardians disagree, it is proposed that the High Court should be empowered to give the necessary consent. However, the Report does not follow the provisional recommendation in the Commission's Working Paper No. 2 - 1977 that the High Court should have jurisdiction, as at present,

to give the necessary consent to the marriage of a minor in cases even where there is no disagreement among the guardians in declining to give it. The Report also recommends that the proposed new rules should apply to any marriage solemnised in the State, irrespective of the residence or domicile or nationality of the parties, and to any marriage solemnised outside the State where, at the time of the solemnisation of the marriage, the habitual residence of either or both of the parties is in the State.

14. The Report makes a number of recommendations in relation to matters connected with the age of majority. These include the following:

- (i) the time at which a person attains a particular age expressed in years should be the commencement of the relevant anniversary of his birth; the present rule based on Common Law is that a person attains a particular age at the first moment of the day preceeding the relevant anniversary of his birth;
- (ii) the new legislation should, in so far as the meaning of expressions such as "full age" and "infancy" is concerned, apply to all statutes and statutory instruments (no matter when passed or made) but not to deeds, wills or other private instruments made before the commencement date of the legislation. An Appendix to the Report contains a list of statutory provisions amended under the proposed legislation by substituting "full age" for "21 years";
- (iii) the minimum age requirement of 21 years for certain prospective adopters should be abolished;

- (iv) section 11 of the Guardianship of Infants Act 1964 should be amended so as to bring it into harmony with the Family Law (Maintenance of Spouses and Children) Act 1976, under which an order for maintenance may be made against a parent in respect of a mentally or physically disabled child even though the child has reached the age of majority;
- (v) the age at which a parent ceases to have an obligation to maintain a child should be raised from 16 to 18. However the proposal in the Working Paper No.2-1977 that orders for maintenance might be made in respect of children over 18 and under 21 who are receiving full time education has not been adopted in the Report;
- (vi) the proposed reduction of the age of majority should not affect any statutory provision relating to social welfare or social assistance. However no recommendation is made in respect of the upper age limit for children's allowances, which would continue to be 16, unless the child is receiving full-time education, or is an apprentice, or is physically or mentally disabled, when the age limit is 18;
- (vii) the provision in the Income Tax Act 1967 granting an allowance in respect of a child who becomes permanently incapacitated before reaching the age of 21 should be unaffected by the proposed legislation. However the Report does not otherwise adopt the wider proposal in Working Paper No. 2-1977 that the new age of majority should not affect any taxation statutes;
- (viii) section 6 of the Employers and Workmen Act 1975 should be repealed. This section, which is believed to be

of doubtful constitutionality, gives the District Court power to make an order directing an apprentice to perform his duties under an apprenticeship;

- (ix) special transitory provisions, relating to funds in court, wardship and custody orders, powers of trustees during the minority of a beneficiary, accumulation periods, and limitation of actions, should be included in the legislation.

Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6 - 1983)

15. The Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters was not preceded by the publication of a Working Paper. The Commission felt in the light of past experience that there would be little to be gained by the delay involved in consulting with the public between the publication of a Working Paper and the issue of a Report, having regard to the nature of the issues raised by the subjects under analysis.

16. The Report recommends that proceedings for the restitution of conjugal rights should be abolished. Under the present law, if a spouse fails to comply with a decree for restitution of conjugal rights, that spouse may be committed to prison for a period of up to six months. The Report points out that it is contrary to the values of society to-day to place persons in the position of being required by law to live with another person under sanction of committal to prison and questions whether a right of action having this consequence would be held to be consistent with the Constitution. In fact, proceedings for restitution of conjugal rights are rarely

taken nowadays. It was the Commission's view that reconciliation and conciliation are more successfully encouraged where the procedures are voluntary rather than compulsory. The Report suggests that more support for these procedures should be made available by the State through financial subsidy of existing marriage guidance and conciliation agencies and the creation of new conciliation services.

17. Proceedings by way of jactitation of marriage lie to prevent a person repeating an allegation that he is married to the petitioner. It is a defence to deny that such an allegation has been made or to prove either the existence of the marriage or the acquiescence of the petitioner in the boasting of the respondent. The Report points out that the present law suffers from a general aura of antiquity and is defective in allowing proceedings to be taken against the other party to the alleged marriage and not against those who are spreading the rumour, such as newspapers and the radio. Accordingly, it recommends the abolition of the remedy of jactitation. However, in view of the need to protect privacy from invasion, it goes on to recommend a new remedy giving a right of action for an injunction and, where appropriate, damages, against persons falsely claiming to be married to the plaintiff or falsely stating that another person is married to the plaintiff. The following recommendations are made in the Report in relation to this new action:

- (1) the defences at present available in jactitation proceedings should apply and where a person other than the person claiming to be married is the defendant, the defence of acquiescence should extend to acquiescence by the plaintiff either in the defendant's allegation or in a claim by the alleged other party to the marriage that such a marriage exists;

- (ii) the decree of the Court should bind only the parties to the action;
- (iii) where a person claiming to be married to the plaintiff is the defendant and that person alleges that there is a valid marriage between the plaintiff and himself or herself, the proceedings should be suspended pending the disposition of this question in nullity proceedings.

18. The Commission considered that the present law regarding declarations as to status contained in the Legitimacy Declaration (Ireland) Act 1868 would benefit from restatement. Accordingly the Report recommends the enactment of new legislation enabling a person to apply to the High Court for a decree declaring that his or her marriage was or is a valid marriage. It is proposed that provision should be made that the alleged other party to the marriage and the Attorney General be joined in such proceedings and the Court should also be empowered to join such other parties as it thinks fit. If any party to the proceedings alleges that the marriage is void or voidable, the proceedings for a declaration should be suspended until proceedings for nullity have been determined. The Report also recommends that, while a decree made in declaration proceedings should be binding on all parties to those proceedings, it should be capable of subsequent attack on the basis that the decree had been obtained by fraud or collusion. Moreover, such a decree should not be effective in so far as it is inconsistent with a previous decree regarding the status of the petitioner in either annulment proceedings or proceedings for a declaration as to the validity of the petitioner's marriage. The legislation proposed in the Report would be similar to the Legitimacy Declaration (Ireland) Act 1868 but would differ from the latter

in ensuring that where the validity of a marriage is impunged, proceedings for annulment would take place.

Report on Domicile and Habitual Residence as Connecting Factors
in the Conflict of Laws (LRC 7-1983)

19. The Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) makes final recommendations on the subject matter of the Commission's Working Paper No. 10, published in September 1981. The Appendix contains the General Scheme of a Bill to reform by law by substituting "habitual residence" for "domicile" as a connecting factor for the purpose of the conflict of laws.

20. The concept of domicile is of considerable importance in a number of areas of law. The domicile of a person is, essentially, the country where that person intends to reside permanently or indefinitely. One's domicile of origin is determined by that of one's father at the date of birth, or, in the case of an illegitimate child, one's mother. The domicile of a child under 21 follows that of the relevant parent while that of a married woman follows that of her husband; such domiciles are known as domiciles of dependency. A person who has an independent domicile may acquire a new domicile, called a domicile of choice, by moving to reside in another country with the intention of remaining there permanently or indefinitely. Domicile is a connecting factor or link between a person and the legal system or rules that will apply to him in specific contexts, such as marriage, divorce, legitimacy or succession. Thus, the law of the country of the domicile of a person determines whether, as regards such requirements as age and capacity, that person may validly be married elsewhere and whether a

person may obtain a divorce which will be recognised in Ireland. Liability to taxation is also sometimes determined by the domicile of the taxpayer.

21. This Report originated in a request by the Attorney General to the Commission to undertake an examination of, and conduct research in, the law relating to the domicile of married women. This request followed upon doubts expressed by Mr Justice Walsh in Gaffney v Gaffney [1975] I.R. 133 at p. 154 as to whether the common law rule that the domicile of a married woman followed that of her husband was consistent with the Constitution. At an early stage of their examination of this rule it seemed to the Commission that it would be appropriate to consider the broader question whether domicile should be replaced by habitual residence as a connecting factor between a person and a particular legal system. In its Working Paper No. 10-1981 the Commission analysed the alternative solutions of abolishing the domicile of dependency of married women or replacing domicile generally by habitual residence. Draft schemes of legislation to give effect to either alternative were appended to the Working Paper in order to facilitate discussion. Having considered observations submitted on the Working Paper, the Commission came to the view that it would be better to replace domicile by habitual residence as a connecting factor rather than attempt to reform the law of domicile. The Report so recommends. In coming to this conclusion, regard was had to the fact that, having expressed the same view provisionally in its Working Paper, the Commission received no submission from any interested person or organisation arguing that such a step would be undesirable. The Working Paper had argued that if a person's residence is sufficiently strong to be described as habitual, the present realities should determine his situation rather than an intention that is clouded, perhaps, by a degree of self-delusion as regards long-term plans. The adoption of

habitual residence would, moreover, be in harmony with trends in European private international law. In regard to the specific problem of the domicile of married women, the adoption of habitual residence would remove any discrimination as it treats both spouses in exactly the same manner.

22. The General Scheme of a Bill designed to give effect to the Commission's proposals provides that the habitual residence of a person is a question of fact, to be determined having regard to the centre of his personal, social and economic interests; in making a determination of a person's habitual residence, account is to be taken of the duration of his personal, social and economic interests and of his intentions relative thereto. Rebuttable presumptions relating to the habitual residence of certain persons are prescribed; thus where spouses are residing together, they are to be deemed to have the same habitual residence unless the contrary is shown; similarly, a child under 16 is to be presumed to have the habitual residence of its parents or of that parent with whom he has his home. The General Scheme also provides that a person retains his habitual residence in one State until such time as he acquires an habitual residence in another State. On the question of testamentary capacity, the General Scheme specifies that this should be determined by the law of the habitual residence of the testator at the time of the execution of the will. Finally it is stipulated that a spouse's right to maintenance is not to be affected by the fact that the other spouse has obtained by default a decree of divorce, legal separation, nullity or annulment in a State in which the spouse seeking maintenance was not habitually resident.

23. The Report refers to the question of the recognition of foreign divorces. It seems that these are recognised under Irish law at present if they are granted in the country where both parties to a marriage are domiciled. The Report notes

the view that the effect of its proposed legislation would be that a foreign divorce would be recognised here only if both parties have their habitual residence in the country where the divorce was granted. This would mean that foreign divorces would not be recognised in a number of cases where they are recognised under existing law. The Report states that the Commission is conscious of the close relationship between its proposals and the recognition of foreign divorces, legal separations and annulments and that it hopes to present a report on the latter subject at an early date. Submissions from interested persons and bodies on this latter subject are requested.

Report on Divorce A Mensa Et Thoro and Related Matters

(LRC 8-1983)

24. The Report on Divorce A Mensa Et Thoro and Related Matters was not preceded by the publication of a Working Paper. The Report sets out the present law in some detail before making recommendations for reform. The Report proceeds on the basis of the existing constitutional position under which legislation providing for the grant of a dissolution of marriage is prohibited. The Commission did not consider that it was its function to make proposals on such questions of fundamental social policy which necessarily require resolution through the democratic process and ultimately by way of Referendum.

25. The Report observes that the number of decrees of divorce a mensa et thoro granted in any one year has never been more than six since the enactment of the Family Law (Maintenance of Spouses and Children) Act, 1976, as this legislation together with a number of other statutes enables questions of property, maintenance and custody to be resolved. However, the Commission felt that there was a sound justification in

policy for retaining legal proceedings enabling one spouse to be relieved formally of the obligation to live with the other. Accordingly, the Report recommends the retention of proceedings for legal separation.

26. The Report recommends that adultery and cruelty should, as at present, constitute grounds for legal separation. As regards adultery, it is recommended that the legislation should make it clear that proof is on the balance of probabilities, that the onus of proof remains on the petitioner even where the act of intercourse is established and, that, where a confession of adultery is regarded as reliable, the fact that there is no corroborating testimony should not affect the right of the petitioner to a decree of separation. The Report recommends that unnatural practices should be abolished as a specific ground for legal separation while envisaging that such conduct could, in appropriate cases, provide a basis for legal separation on some other ground, such as cruelty or unreasonable behaviour.

27. The Report recommends that legislation should provide for certain new grounds for legal separation, which would supplement the existing grounds of adultery and cruelty. Thus it would be a ground for legal separation that the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with him or her. This would cover cases where the element of intention necessary to ground cruelty is absent as, for example, in some cases where a spouse suffers from gross addiction to drugs or alcohol or engages in what are categorised as unnatural practices under existing law. The Report goes on to recommend that the legislation should not include gross addiction to drugs or alcohol as a specific ground for legal separation.

28. The Report also recommends that desertion should be made

a ground for legal separation and that it should include constructive desertion i.e. where a spouse behaves in so deficient a manner that the other spouse is justified in leaving him or her. Special provision should be made for cases where mental incapacity is of such a nature and extent as to render the deserting spouse incapable of having the necessary animus deserendi.

29. Further grounds of legal separation recommended in the Report are the breakdown of marriage and the fact that the parties have lived apart continually for a specified period. In cases where both parties consent, the Report recommends that one year's separation should suffice but, where this consent is not forthcoming, five years' separation should be required. It is also recommended that the court should be empowered to convert a voluntary separation agreement between spouses into a decree for legal separation provided it is satisfied that the agreement is a fair and reasonable one.

30. The Report considers certain bars to a decree of divorce a mensa et thoro under the present law. The bar of recrimination prevents a spouse from obtaining a decree to which he or she would otherwise be entitled where that spouse is guilty of conduct entitling the other spouse to a separation. The Commission favoured the abolition of this bar because it did not believe it to be sound policy to require spouses to live with each other as a penalty for previous misconduct on the part of both of them. The Report also recommends the abolition of the bar of collusion. However it does not recommend the abolition of the bar of connivance which covers cases where the petitioner has actually encouraged the other spouse to misbehave and suggests that legislation should provide that conduct conducing to adultery should constitute a substantive (rather than a discretionary) bar. At present, condonation, i.e. forgiveness legally releasing the injury, is

a complete defence in separation proceedings. The Report recommends that the defence of condonation should be abolished but it should remain as a discretionary bar.

31. The Commission felt that the law relating to the payment of alimony consequent upon a legal separation is too restrictive in limiting the right of alimony to wives and allowing only orders for periodical payments. The Report recommends that the present discrimination between the sexes regarding alimony should be abolished and also that the courts should be permitted to make orders for the payment of lump sums and, with the consent of the parties, for the transfer of property. It also recommends that the law relating to payments for maintenance of spouses and children consequent upon a legal separation should be brought into line generally with the Family Law (Maintenance of Spouses and Children) Act 1976. At present, the Court, when granting a decree for legal separation, is not empowered to make an order for the maintenance of children.

32. The Report recommends that legislation should provide explicitly that where the Court grants a decree of legal separation, the parties to the marriage should no longer be obliged to cohabit. For the avoidance of doubt, special provision should be made for the rescission of decrees of legal separation by the Courts and for the automatic discharge of any such decree where the parties resume cohabitation.

33. As regards succession rights, the Report recommends that legislation should provide that, on the granting of a decree for legal separation, each spouse is to be precluded from taking any share in the other's estate. The Commission noted the argument that this could be unfair in depriving an innocent spouse of succession rights but it was satisfied that the Court could take this factor into consideration in the exercise of

its powers relating to alimony and property rights after the decree. In cases where a decree of legal separation is rescinded or discharged, the Report recommends that the succession entitlements of the spouses should be revived.

34. The Report notes that a major criticism of the law and procedure governing the conduct of matrimonial proceedings is that the proceedings are adversarial, that no real attempt is made to have an independent inquiry into the facts of the marriage, that the witnesses are the parties' witnesses and not the court's witnesses, that the proceedings are too formal and that the system militates against reconciliation instead of encouraging it. To meet this criticism the Report recommends that the legislation should provide specifically that, in proceedings for legal separation, the court should proceed with the minimum of formality, that neither the judge nor the legal representatives should be robed, that the order of address of these representatives and of the parties should be at the court's discretion and that the court should be empowered to call witnesses additional to those suggested or called by the parties. The legislation should, in express terms, require the court to enquire into the case and not just permit it to proceed on whatever basis the parties may choose to present it. If proper counselling services are made available, the Report suggests that it could be made a necessary preliminary to the institution of court proceedings that the spouses should have had recourse to those services.

35. The Report proposes that the court should have imposed on it the duty of protecting the children of legally separated spouses; and it should be enacted that a decree of legal separation should not be granted unless there are no children of the marriage who are under 18, or, where there are such children, proper arrangements have been made for their welfare.

36. One member of the Commission, the late Mr Roger Hayes, made a number of counter-proposals which are included in a separate chapter of the Report. It was his view that legislation should, in general, follow the model of the Matrimonial Causes (Northern Ireland) Order, 1978 and the Australian Family Law Act, 1975. He argued that breakdown of marriage should not be made an additional ground for legal separation which, in his view, would be more aptly described as "judicial separation". He expressed the view that "unreasonable behaviour" clearly covers "cruelty" and there was no need, therefore, to specify cruelty as a separate ground for a decree. He suggested that before any legislation came into operation, there should be established a proper counselling service that would assist the parties in considering a reconciliation. He considered that the proposed legislation should state that the court shall have jurisdiction to entertain proceedings if, and only if, either of the parties to the marriage has his habitual residence in the State on the date when proceedings are begun, and such habitual residence has continued for not less than one year immediately before that date.

PART III

WORK IN PROGRESSSubjects from the Commission's First Law Reform Programme and
Matters Referred by the Attorney General(1) The Law Relating to Minors

37. Work has continued on the subjects of minors' contracts and the liability of minors in tort. The Commission intends to publish a Report on minors' contracts in 1984, and a Report on the liability of minors in tort shortly thereafter. The Commission has decided to proceed directly to make Reports on both these subjects without publishing any Working Paper beforehand.

(2) Family Law

38. A draft Report on the law of nullity of marriage has been considered by the Commission. The Report on the subject will be published soon.

39. Work is in progress on several aspects of Family Law which relate to the Conflict of Laws. These include the recognition of foreign divorces and legal separations, the recognition of foreign nullity and foreign annulment decrees, the law applicable to maintenance obligations in the Conflict of Laws and the law applicable to matrimonial property regimes in the Conflict of Laws.

(3) The Law of Evidence

40. The Law Reform Commission Working Paper No. 9 on the Rule Against Hearsay was published in May 1980 and the Commission requested that observations be submitted before 1 August 1980. This request was renewed in the last three years' Annual Reports and specific requests were made to some interested parties but no observations whatsoever have been received as yet. Where this subject is concerned, observations from interested persons on the provisional proposals contained in the Working Paper would be particularly useful to the Commission in the preparation of its final Report.

41. A draft Working Paper is before the Commission containing a General Scheme of a Bill to implement the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970). The Hague Convention Abolishing the Requirement of Legislation for Foreign Public Documents (1961) and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) are also being examined.

42. A draft Working Paper dealing with the competence and compellability of spouses of parties as witnesses in civil and criminal cases has been submitted to the Commission.

(4) Review of the Vagrancy Acts and the Dublin Police Acts

43. Revised draft Working Papers on the Vagrancy Acts and on the Dublin Police Acts have been prepared. However, as these Reports cover some matters for which provision is made in the Criminal Justice Bill now before the Oireachtas the Commission has decided that the Working Papers should not be finalised while that Bill is being considered by the Oireachtas.

PART IV

ACTION ON REPORTS OF THE COMMISSION(1) First Report on Family Law (LRC 1-1981)

44. The First Report on Family Law was submitted to the Taoiseach in March 1981. In the Family Law Act 1981 legislative action was taken in relation to some recommendations in the Report. However, no action was taken on most of the Commission's recommendations. These related to actions for loss of consortium, personal injury to a child, seduction of a child, enticement of a child and harbouring of a child, and to the determination of questions as to property between spouses. In April 1983 the Minister for Justice announced that the Government had decided in principle that legislation would be introduced to give each spouse equal rights of ownership in the family home and contents. He emphasised that the proposal approved by the Government went further than the proposal made by the Commission which was to the effect that a spouse, by reason of the contribution to the family welfare involved in looking after the home and caring for the family, would become entitled to such share in the family home as the court would feel was just and equitable in the circumstances. The Minister stated that a legal presumption would be established that a spouse is entitled to an equal share in the ownership of the home without requiring that spouse to produce proofs in Court about the value of his or her contribution. No Bill has yet been published.

(2) Report on Civil Liability for Animals (LRC 2-1982)

45. The Report on Civil Liability for Animals was submitted

to the Taoiseach in June 1982. The Government stated at that time that it was arranging to have it considered fully by the Departments concerned. In February 1983 the Minister for Justice told the Dail that the Report was under examination in his Department but he was not in a position to say when he was likely to be in a position to seek Government decisions on the various issues that arise.

(3) Report on Defective Premises (LRC 3-1982)

46. The Report on Defective Premises was submitted to the Taoiseach in June 1982. The Government stated at that time that it was arranging to have it considered fully by the Departments concerned. There has been no subsequent indication of what action it is proposed to take on the Report.

(4) Report on Illegitimacy (LRC 4-1982)

47. The Report on Illegitimacy was submitted to the Taoiseach in August 1982. On 24 October 1983 Mrs Nuala Fennell, Minister of State at the Department of Justice, announced that following consideration of the Commission's Report on Illegitimacy, the Government had decided to introduce legislation to reform the law in this area at the earliest possible date. In regard to succession rights, she stated that the Government had decided to accept, subject to further consideration being given to the prevention of injustice to any party concerned, the Commission's recommendation that a child born out of marriage should have the same succession rights as other children on the intestacies of their fathers and mothers and of relatives of their fathers and mothers. She said that the Government had also accepted the Commission's recommendation that the present rule of construction, under which words such as

"children" and "issue" when used in wills, deeds, or other instruments are presumed to refer to children born within marriage, should be set aside. However, as regards parental rights, she announced that the legislation would not, as recommended by the Commission, automatically give unmarried fathers the same rights as married fathers enjoy, but it would provide for the giving of parental rights to the unmarried father, subject to the guiding principle of what is in the best interests of the children. She also stated that the Government did not propose to accept the Commission's recommendation that a child should be able in its own right to apply for maintenance and barring orders. She said that the proposed legislation would also deal with actions to prove parenthood; blood testing as an aid to proof of paternity; registration of births; and maintenance of children born out of marriage - all of which matters were covered in the Commission's Report.

(5) Report on the Age of Majority, the Age for Marriage and some Connected Subjects (LRC 5-1983)

48. The Report on the Age of Majority, the Age for Marriage and some Connected Subjects was, as has been noted, submitted to the Taoiseach in June 1983. On 25 November an official spokesman for the Government announced that the age of majority is to be reduced under the terms of a Bill which had been authorised by the Cabinet. The Bill has not, so far, been published.

PART V

GENERALOffices of the Commission

49. In previous annual reports reference has been made to the difficulties the Commission has experienced resulting from the lack of suitable accommodation. Alternative accommodation has now been obtained in the Ardilaun Centre, St. Stephen's Green, Dublin 2 and the Commission transferred its offices there in December 1983. The Commission received much assistance in securing new premises from the Department of Finance, the Office of Public Works, the Chief State Solicitor and the Assistant Chief State Solicitor, Mr James Lynch. The Commission wishes to record its gratitude to all of those mentioned as well as to its own Secretary, Mr Frank Ryan, whose tireless efforts in effecting the move far exceeded the call of duty.

International Meetings

50. With the assent of the Minister for Justice, the late Mr Roger Hayes attended as the Irish Expert at two meetings of a Special Commission convened by the Hague Conference on Private International Law to consider the question of the international validity and recognition of trusts. At the second of these meetings, in October 1983, the Special Commission adopted a preliminary draft Convention of the Law Applicable to Trusts and their Recognition which will be submitted to the Fifteenth Session of the Hague Conference which will take place in October 1984.

51. The late Mr Roger Hayes was also nominated by the Minister for Justice to attend as the Irish Expert at a meeting of a Special Commission on the law applicable to international sales of goods convened by the Hague Conference from 7 to 18 November 1983. He was a Vice-President of this Special Commission. The Commission adopted a draft Convention on the law applicable to contracts for the international sale of goods which will be submitted to the Extraordinary Session of the Hague Conference to be held in October 1985.

Examination of Other Legal Systems

52. In preparing its publication the Commission examines the laws of other countries. The Commission is grateful for the continuing assistance in this research provided by foreign embassies and legal authorities in foreign countries. During the year the Commission received a visit from Mr Justice Kirby, President of the Australian Law Reform Commission. A valuable exchange of views took place.

Assistance from Departments of State

53. The Commission wishes to record once again its appreciation of the assistance that it has received from a number of Departments of State in carrying out its functions. The Commission wishes to thank especially the Department of Justice. The nomination by the Minister of members of the Commission to represent Ireland at the Hague Conference on private international law is an example of the close co-operation between the Commission and that Department.

Observations on Working Papers

54. In previous annual reports attention has been drawn to the need for an interaction between the Commission and interested and informed persons as part of the process of formulating law reform proposals. Indeed one reason for establishing the Commission was to ensure a wider participation in the preparation of legislation than had previously existed. The Commission has frequently indicated and takes this occasion to reiterate that it welcomes oral or written representations from persons or bodies interested in reforms in those branches of the law dealt with in the Commission's First Programme (Prl. 5984; 1977). The Commission has also on a number of occasions appealed for observations on its various published Working Papers. Few observations have been received. It has been a source of surprise and disappointment to the Commission that law teachers and bodies representing the various branches of the legal profession have not contributed more in view of their oft-stated interest in law reform. The Commission takes this opportunity to renew its appeal once again. The object of publishing Working Papers is to obtain comments from interested parties on the provisional proposals they contain in order to assist the Commission in the formulation of its final recommendations. If comments are not forthcoming, this object is largely defeated.

514