

Recognition of Foreign Divorces and Legal Separations

In April 1985, the Commission published its Report on [*Recognition of Foreign Divorces and Legal Separations \(LRC 10-1985\)*](#) which built upon its Working Paper on the [*Recognition of Foreign Divorces and Legal Separations \(LRC WP 11-1984\)*](#) and formed part of its First Programme of Law Reform.

The Commission proceeded on the basis that its proposals had to be made within the context of, and have regard to the prohibition on, divorce contained in the Constitution. Accordingly, the Report recommended that different rules for the recognition of foreign divorces should apply to people who have close connections with the State than should apply to those who do not have such close connections.

The Report proposed the following rules for person who would be regarded as having close connections with the State:

- (1) Where both spouses are habitually resident in the State at the date of institution of the divorce proceedings, a foreign divorce thus obtained by either of them should not be recognized.
- (2) Where
 - a. One of the spouses is an Irish citizen, and
 - b. One spouse is habitually resident in the State, and
 - c. The spouses last habitually resided together in the State,

a foreign divorce should be recognized here only if the spouse who is habitually resident in the State submitted to the jurisdiction of the foreign court granting the divorce is obtained in the country where the other spouse was habitually resident at the date of institution of the divorce proceedings. Entering an appearance as respondent in the divorce proceedings, unless solely for the purpose of challenging the foreign court's jurisdiction, would constitute submission to the court's jurisdiction. The idea underlying this proposal is that, where the spouse who is habitually resident in the State has submitted to the foreign court's jurisdiction, he or she may be regarded as having consented to the divorce proceedings.

Wider rules were proposed in the Report for recognition of foreign divorces obtained by those who have not close connections with Ireland. The rules proposed for such people are those contained in the 1970 Hague Convention on Recognition of Divorces and Legal Separations. These rules would allow for recognition of foreign divorces in a number of different sets of circumstances. The Report recommended that these rules should apply to the recognition of foreign legal separations whether or not the parties are habitually resident in Ireland. In cases where a foreign divorce or legal separation is recognised in Ireland, the Report recommended that the courts should have a discretionary power to act on principles of domestic legislation in order to protect the rights of a spouse with regard to maintenance, occupation and beneficial ownership of the family home and barring orders.

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Domicile and Recognition of Foreign Divorces Act 1986* and the *Family Law Act 1995*.