

The Competence and Compellability of Spouses as Witnesses

In June 1985, the Commission published its Report on [*The Competence and Compellability of Spouses as Witnesses \(LRC 13–1985\)*](#) as part of its First Programme of Law Reform. A general scheme of a Bill to reform the law relating to the evidence of spouses in criminal cases was included in an Appendix to the Report.

The Report recommended that the spouse of an accused should be competent for the prosecution in all cases, but not compellable except in joint trials where the other spouse is tried jointly with other persons. In such joint trials it was recommended that a spouse compelled to testify for the prosecution should be entitled to refuse to answer any question or to produce any document, if to do so would tend to incriminate the spouse who is accused.

In considering whether a spouse should be compellable as well as competent to testify for the defence, the Report proceeded on the basis that it is indefensible that an accused person should be deprived of any evidence which might exculpate him. It recommended, therefore, that a person should be compellable to give evidence for the defence even if his or her spouse is the accused or one of those accused. The rule that the prosecution may not comment on the failure of such a spouse to testify should, as a consequence, be abolished. Where a spouse of one accused is compelled to give evidence for the defence on behalf of another accused, it was recommended that the spouse so testifying should be entitled to refuse to answer any question or to produce any document if to do so would tend to incriminate the spouse who is accused.

The Report contained specific recommendations relating to the position of former spouses, spouses who are judicially separated or parties to voidable marriages which have been annulled.

The Report recommended that the parent or child of an accused should not be compelled to give evidence for the prosecution incriminating that accused unless a certificate from the DPP is tendered stating that he personally has examined the case and, having considered the hardship of compelling the witness to testify, the importance of the evidence that witness could give and the gravity of the offence charged, believes that it is in the public interest that the evidence be heard.

The Report recommended that in both criminal and civil proceedings a witness should have the same right to refuse to answer any question or produce any document or thing tending to incriminate his or her spouse as that witness has not to incriminate himself.

It was also recommended that the existing enactments governing the competence or compellability of spouses of parties in civil proceedings should be repealed and replaced by a provision stating that in civil proceedings the present or former spouse of a party thereto is a competent and compellable witness.

Draft Legislation in Report

The Report is accompanied by a draft *Criminal Evidence Bill*.

Information on Implementation

Recommendations of the Commission were implemented by the *Criminal Evidence Act 1992*.