

Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws

In December 1983, the Commission published its [Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws \(LRC 7-1983\)](#) building upon its work on the 1981 [Working Paper Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws \(LRC WP 10-1981\)](#) as part of its First Programme of Law Reform. 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.

The domicile of a person is, essentially, the country where that person intends to reside 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 context, such as marriage, divorce, legitimacy or succession. 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 women followed that of her husband was consistent with the Constitution.

The Commission has come 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 and this Report so recommends. 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. 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.

Draft Legislation in Report

A draft *Conflict of Laws (Habitual Residence) Bill* is included in the Report.

Information on Implementation

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