

# *The Law Reform Commission*

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

---

## SEVENTH REPORT 1984

---

Laid by the Taoiseach before both Houses of the Oireachtas  
on 5th July, 1985, pursuant to section 6 of the Law Reform  
Commission Act 1975

(Pl. 3313)

---

IRELAND

© The Law Reform Commission,  
Ardilaun Centre, 111 St. Stephen's Green, Dublin 2.

£1.00

**PART I****INTRODUCTION**

1. This Report covers the period from 1 January 1984 to 31 December 1984 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 consisting 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 with the death on 6 January of Mr Roger Hayes. Mr Hayes was appointed Director of Research in 1976. In November 1977 the Government nominated him as a member of the Commission to serve for a five-year term in a full-time capacity. In 1982 his term was renewed for a further period. In its formative years the Commission benefited greatly from Mr Hayes' experience and expertise in the preparation and drafting of legislation. The news of his death brought numerous and moving expressions of sorrow and appreciation from many of the most eminent legal experts in the world.

4. During 1984 no appointment was made by the Government to fill the vacancies on the Commission created by Mr Hayes' death and the resignation of Miss Mary Finlay which took

effect on 31 March 1983. The membership of the Commission on 31 December 1984 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 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 eleven Working Papers and ten 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 abroad. In performance of its obligations under section 6 of the Law Reform Commission Act 1975 the

Commission has presented six 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 1984

8. During 1984, the Commission published a Report on Nullity of Marriage, which was submitted to the Attorney General on 30 July. On 24 October, it published a Working Paper on the Recognition of Foreign Divorces and Legal Separations.

Report on Nullity of Marriage (LRC 9 - 1984)

9. The subject of nullity of marriage has been under examination by the Commission for some time. On 26 August 1976, the then Attorney General, Mr Declan Costello, S.C., T.D., pursuant to the provisions of section 4(2)(c) of the Law Reform Commission Act 1975, referred to the Commission two aspects of the subject: the prohibited degrees of relationship in the law of marriage, and the application of foreign law in cases in which the Courts of this country have jurisdiction to grant a decree of nullity of marriage. In August 1977, pursuant to the same statutory provisions, the then Attorney General, Mr Anthony Hederman, S.C., requested the Law Reform Commission to undertake an examination of and conduct research in the "Law relating to Nullity of Marriage" and, if it thought fit, to formulate proposals for its reform and to submit them to him. (A decision to the same effect had already been taken by his immediate predecessor, Mr John Kelly, S.C., T.D., and communicated to the President of the Commission, but the formal letter conveying the request had not been sent before Mr Kelly ceased to hold the office of Attorney General.) Mr Hederman had also suggested to the Commission that it

might be convenient to incorporate in the examination the Commission's views or proposals relating to the two aspects of this subject which had already been submitted by Mr Costello in August 1976.

10. Having regard to the request of the Attorney General to the Commission to examine the law relating to nullity of marriage, it was thought that it would be appropriate to combine an examination of that subject with an examination of the question of existing matrimonial causes generally. To this end the Commission wrote to each of the persons and organisations that made submissions in writing to the Office of the Attorney General relating to the discussion paper published by that Office in August 1976 and entitled "The Law of Nullity in Ireland". Many of these persons and bodies responded positively to the Commission and sent copies of the submissions they had originally made and in some cases elaborated on them.

11. At an early stage in its research, it became clear to the Commission that much of the difficulty about the existing law of nullity could be traced to the fact that there was such a paucity of modern Irish jurisprudence. Consequently the courts had had no opportunity to develop the law in the light of modern advances in psychiatry and psychology. As the Commission continued with its deliberations, the courts increasingly were being presented with nullity cases involving issues of legal principle. Having observed the increasing number of cases in this area and the consequent judicial developments, the Commission considered it advisable to monitor the trend of these developments before committing itself to final recommendations in a Report on the subject.

12. The Report sets out detailed recommendations for reform of the law of nullity of marriage. The question of

choice of law in nullity proceedings will be considered in a forthcoming Report by the Commission on private international law aspects of the subject.

13. Decrees of nullity of marriage given by the ecclesiastical tribunals of the Catholic Church under canon law have no effect under the law of the State. Only decrees of annulment given by the courts of the State are legally effective. In its deliberations the Commission proceeded on the basis that the State law of nullity should not give legal recognition to the decrees of the ecclesiastical tribunals of the Catholic Church. In its view a law recognising the validity of such decrees would raise constitutional difficulties. However it was noted that, under existing State law, as developed in some recent High Court decisions, the grounds for annulment differ less from those recognised by the ecclesiastical tribunals than is perhaps generally appreciated.

14. The Report sets out the existing grounds for annulment of marriage under State law and makes detailed recommendations for reform as follows:

(1) Prior subsisting marriage

A prior subsisting marriage renders a marriage void. A marriage which has been annulled by an ecclesiastical tribunal of the Catholic Church but not by the courts of the State is a prior subsisting marriage and renders a subsequent marriage by either of the parties invalid under the law of the State. The Report does not propose any change in this ground.

(2) Formal defect

Failure to comply with certain (not all) statutory formalities of marriage renders a marriage void. No proposals for change in the laws relating to the formalities of marriage are made in the Report. However the Report expresses the view that while the present law works well in practice it needs to be updated and consolidated.

(3) Lack of age (nonage)

Under the Marriages Act 1972 the minimum age for marriage is sixteen years, subject to an exemption being granted by the President of the High Court (or a Judge of that court nominated by the President) when the marriage is justified by serious reasons and is in the interests of the parties to the intended marriage. The Act also provides that the consent of the guardians (normally the parents) is required for marriage by a person under the age of twenty-one, again subject to the power of the President of the High Court (or a Judge of that Court nominated by the President) to give the necessary consent where the guardians refuse to consent to the marriage. In its Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5 - 1983) the Commission recommended that a marriage between persons either of whom is under the age of 16 years should be void and that there should be no provision (as there is at present) for an appeal to the President of the High Court where either of the parties is below that age. The Commission also proposed that parental consent should be required only for the marriage of persons under 18, which was the new age of majority recommended by the Commission. Where the parents disagree the consent of the High Court could be sought but where both parents are opposed to the proposed marriage, there should be no recourse to the High Court. The Report reiterates these proposals.

(4) Prohibited degrees of relationship

There are legal prohibitions on marriages between persons closely related by blood (consanguinity) or through marriage (affinity). Marriages celebrated in breach of these prohibitions are void. The prohibited degrees under both headings are wide-ranging. The Report recommends that the existing prohibitions on the basis of consanguinity should be retained. This would mean that marriages between cousins would continue to be permitted but not those between uncle and a blood related niece or aunt and a blood related nephew. The Report further recommends that all prohibitions based on affinity should be abolished. It is also proposed that the legislation should state that marriages between a parent and adoptive child and between adoptive brothers and sisters are void.

(5) Impotence

Incapacity on the part of a spouse to have sexual intercourse with the other spouse, invalidates a marriage. Under existing law a spouse's entitlement to petition for a decree of nullity on the ground of his or her own impotence is subject to certain limitations. The Report recommends that these limitations should be removed. Wilful refusal (as distinct from inability) to consummate the marriage is not a ground for annulment and the Report proposes no change in this regard.

(6) Want of mental capacity

It is settled that a marriage is invalid if one of the parties at the time of the marriage does not have sufficient mental capacity to understand the nature of the marriage contract and the obligations normally attaching to marriage. In recent years the courts have applied a broader test. In

one case (R.S.J. v J.S.J., [1982] I.L.R.M. 263) it was recognised that a decree might be granted if at the date of the marriage one spouse "through illness lacked the capacity to form a caring or considerate relationship" with the other spouse. In another case (D. v C., [1984] I.L.R.M. 173) a decree of annulment was awarded because one spouse "at the time of the marriage was suffering from a psychiatric illness and as a result was unable to enter into and sustain a normal marriage relationship" with the other spouse. The Report recommends that this ground of annulment should be formulated as follows: a marriage should be invalid on the ground of want of mental capacity where, at the time of the marriage, either spouse is unable to understand the nature of marriage and its obligations or where a spouse enters a marriage when, at the time of the marriage, on account of his or her want of mental capacity, he or she is unable to discharge the essential obligations of marriage.

(7) Homosexual orientation

The Report recommends that there should be a separate ground whereby a marriage might be annulled, on the petition of either spouse, if one spouse has at the time of the marriage so strong a homosexual orientation as to make it impossible for the couple to form a genuine life-long marriage relationship.

(8) Duress

Under the existing law, if duress, exercised by the other party to the marriage or some third person, vitiates the consent of a party to a marriage, the marriage is invalid. Until recently fear "properly" or "justly" imposed (e.g. the threat of prosecution or civil proceedings) was not regarded as constituting duress. In some recent court decisions relating to duress a less stringent approach has been taken.

The Report recommends that it should be made clear by legislation that a petition for nullity of marriage based on duress should not be dismissed by reason only of the fact that a party married as a result of a "just threat".

(9) Fraud, mistake and non-disclosure

Under present law fraud or mistake will render a marriage void only in very narrow circumstances - essentially where either party is misled or mistaken as to the nature of the ceremony or the identity of the other party. The Report recommends that there should also be a more general ground of fraud or mistake and that it should be a ground for annulment that a party was induced to enter into a marriage as a result of a fraudulent misrepresentation made by or on behalf of the other party to the marriage. It is also recommended that certain cases of fraudulent non-disclosure should afford grounds for nullity. These are

- (a) non-disclosure of an intention at the time of entering the marriage not to consummate the marriage;
- (b) non-disclosure of an intention at the time of entering the marriage to desert the other partner immediately and permanently;
- (c) non-disclosure of an unqualified intention never to have children with the other spouse, by reason of which the other spouse was induced to marry;
- (d) non-disclosure of a known condition of permanent sterility, by reason of which the other spouse was induced to marry.

15. The Report recommends the retention of the distinction between void and voidable marriages. In the case of a void marriage there is no valid marriage from the outset, whereas a voidable marriage is treated as valid until it is annulled and it is then retrospectively rendered invalid. In the case of a voidable marriage a decree of nullity is required. With void marriages no decree is necessary - any person may treat the marriage as void without obtaining a court decree (though in many instances it may be desirable for practical reasons to obtain one). The validity of a void marriage may be challenged by anyone with a sufficient interest even after the death of the parties, whereas a voidable marriage may be challenged only by one of the parties during the lifetime of both. The Report recommends that formal defect, prohibited degrees of relationship, lack of age and prior subsisting marriage should continue to render a marriage void but that all the other grounds of nullity should render a marriage voidable. This would mean that marriages at present void on the ground of lack of consent would be voidable and, as under the present law, impotence would render a marriage voidable.

16. At present marriages void on the ground of lack of consent may be "ratified" and voidable marriages may be "approbated". The effect of a finding of ratification or approbation is that the petitioner for a decree of nullity is precluded by his conduct with regard to the marriage from asserting that it is invalid. The Report recommends that void marriages should not be capable of ratification and that approbation of voidable marriages should be replaced by a more generally-expressed criterion whereby the court may refuse to grant a decree where in all the circumstances it would not be proper to do so. The Report does not recommend that the legislation should specify any time-limit within which proceedings for a voidable marriage would have to be taken.

17. The Report recommends that wide-ranging judicial powers should be introduced regarding property and maintenance rights of parties to an invalid marriage, including a power to make an order for the payment of maintenance by either party for the benefit of the other party and of the children, and an order securing such payments. It is also recommended that the court should be given a wide discretion to make property orders, including the power to make an order, with the consent of a party, for the transfer of property from that party to the other or to any of the children, or an order for the settlement of property for the benefit of either party or the children.

18. The Report recommends that children of persons whose marriage is void or voidable should have the same succession rights as children born to parents who are validly married but parties to a void marriage or to a voidable marriage that has been annulled should have no succession rights in each other's estate.

19. The Report examines the question whether the proposals made in it should apply to all marriages or only to those celebrated after the passage of the legislation. It recommends that:

- (a) the grounds of formal defect, prior subsisting marriage, mistake, duress, impotence, lack of mental capacity and homosexual orientation (all of which are identical with or similar to an existing ground) should apply retrospectively;
- (b) no marriage celebrated before the enactment of the legislation which was void on the ground of prohibited degree of relationship should be validated retrospectively by the legislation;

- (c) the proposed grounds of fraudulent misrepresentation and of fraudulent non-disclosure (other than fraudulent non-disclosure of an intention not to consummate the marriage) should not be retrospective;
- (d) the proposals made in relation to bars to a decree or and its effects should apply retrospectively.

Working Paper No. 11 - 1984. Recognition of Foreign Divorces and Legal Separations.

20. The Working Paper sets out the existing law on the recognition of foreign divorces and foreign legal separations. Article 41.3.2° of the Constitution provides that no law shall be enacted providing for the grant of a dissolution of marriage. However, this does not necessarily mean that a divorce obtained abroad will be refused recognition here. Article 41.3.3° of the Constitution provides as follows:

"No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved."

Since before 1937 it has been a rule of common law that our courts will recognise a foreign divorce granted by the courts of the common domicile of the spouses. The validity of such a divorce is recognised "under the law for the time being in force" in the State and Article 41.3.3° does not

affect such recognition. Under the common law rule as to a wife's domicile of dependency, spouses always have a common domicile - that of the husband. In its Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7 - 1983) the Commission proposed that domicile should be replaced by habitual residence as a connecting factor in cases involving a foreign element. This would mean that the domicile of dependency rule would no longer obtain in Irish law. The existing rule as to recognition of foreign divorces is, therefore, in need of review since it is based on the assumption that a husband and wife always have a common domicile.

21. While recognising that nothing in the Constitution prevents the Oireachtas from legislating so as to change the rules as to which foreign divorces will be recognised here, the Working Paper proceeds on the basis that its proposals should not undermine the constitutional prohibition on divorce. It is argued that if a divorce obtained by an Irish person on the basis of a short visit to a foreign country were recognised here, this would effectively subvert that prohibition. Such a wide recognition rule would also favour the better off and more mobile members of society. Accordingly, the Working Paper proposes that different rules for the recognition of foreign divorces should apply to people who have close connections with the State and those who do not. Wider recognition rules are proposed for the latter than for the former.

22. The Working Paper proposes the following rules for persons who have close connections with the State:

- (1) Where both spouses are habitually resident in the State at the date of the institution of the divorce proceedings, a foreign divorce obtained by either of them should not be recognised.

(2) Where

- (i) one of the spouses is an Irish citizen, and
- (ii) only one spouse is habitually resident in the State, and
- (iii) the State is the country where the spouses last habitually resided together,

a foreign divorce should be recognised here only if the spouse who is habitually resident in the State submitted to the jurisdiction of the foreign court and 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, which is not solely to protest against the foreign court's jurisdiction, would constitute submission to that 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.

For the purpose of the above rules the Working Paper proposes that a person should be deemed to be habitually resident in the State who, having been habitually resident here, has temporarily ceased to reside here and acquired a temporary residence abroad for the primary purpose of acquiring a foreign divorce. The reason for this is that it should not be possible to evade the policy of Irish law (as represented by the constitutional prohibition on divorce) by establishing a residence of short duration abroad for the primary purpose of acquiring a foreign divorce which would be recognised here. Of course, where a person has genuinely

established an habitual residence abroad, there would be no question of that person being deemed to be still habitually resident here for divorce recognition purposes.

23. Wider rules are proposed in the Working Paper for the recognition of foreign divorces obtained by people who do not have close connections with Ireland in the sense described above. 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 - for example, where both spouses are nationals of the State of the divorce, or the respondent was habitually resident there at the time of the institution of the proceedings, or the petitioner was habitually resident there for at least one year prior to that time. The special rules proposed for persons who have close connections with Ireland would be covered by certain reservations that are available under the Convention. Accordingly the Working Paper proposes that Ireland should become party to that Convention subject to these reservations.

24. The Working Paper notes the lack of Irish authority and the consequent uncertainty in the law relating to the recognition of foreign legal separations. It recommends that the rules contained in the 1970 Hague Convention on Recognition of Divorces and Legal Separations should be adopted.

25. The Working Paper, which was published on 25 October, invites observations on its proposals from interested persons and bodies before 1 February 1985. The Commission renews its request for such observations which will be considered if submitted prior to the preparation of a Final Report on the subject.

**PART III****WORK IN PROGRESS****(1) The Law Relating to Minors**

26. A draft Report on Minors' Contracts has been submitted to the Commission. A revised draft Report on the Liability of Minors in Tort and of Other Persons for Damage Caused by Minors has been prepared for submission to the Commission.

**(2) Family Law**

27. The Commission has under consideration a draft Report on the legislation required to become party to the Hague Convention on the Civil Aspects of International Child Abduction (1980). The draft also examines the legal measures which might be enacted to prevent the kidnapping of children out of the jurisdiction.

28. Work has continued on a number of aspects of Family Law relating to the Conflict of Laws. These include the subjects of jurisdiction in relation to proceedings for nullity of marriage, choice of law and recognition of foreign nullity 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) Tort Liability of Mentally Disabled Persons**

29. A draft Report on the subject of the liability in tort

102

of mentally disabled persons is in the course of preparation.

(4) The Law of Evidence

30. 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. 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, which will be prepared shortly.

31. 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 Legalisation 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.

32. 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.

(5) The Vagrancy Acts and the Dublin Police Acts

33. The Commission has been considering a draft Report on Vagrancy and Related Offences with a view to publication in

1985. A draft Report on the Dublin Police Acts is also before the Commission.

(6) Judicial Review of Administrative Action: The Problem of Remedies

34. The Law Reform Commission Working Paper No. 8 on Judicial Review of Administrative Action: The Problem of Remedies was published in December 1979. Some of the recommendations are proper for consideration by the Superior Courts Rules Committee when making recommendations as to the amendment of the Rules of the Superior Courts. The Commission has decided to defer the preparation of its final Report until the outcome of the deliberations of the Superior Courts Rules Committee is known.

## PART IV

ACTION IN 1984 ON REPORTS OF THE COMMISSION(1) First Report on Family Law (LRC 1 - 1983)

35. The First Report on Family Law was submitted to the Taoiseach in March 1981. In the Family Law Act 1981 effect was given to the Commission's recommendations that the actions for criminal conversation and harbouring of a spouse should be abolished. However, the Commission's proposals that there should be a family action for adultery and for the enticement of a spouse were not accepted. The Act also gave effect to the Commission's proposals for the abolition of the action for breach of promise of marriage and for the determination of questions relating to the property of engaged couples and gifts obtained by them. No action has been taken on the other recommendations in the Report but the Taoiseach told the Dáil on 6 November 1984 that legislation arising from them is in the course of preparation. These recommendations included the replacement of the actions for loss of consortium, for loss of services of a child, for seduction of a child and for enticement and harbouring of a child by a single action for the benefit of members of the family. There were also recommendations relating to the determination of questions as to property between spouses, the effect of which would be that a spouse who directly or indirectly makes a contribution in money or money's worth to the acquisition, improvement or maintenance of the family home would be entitled to such share in the family home as appears to the court just and equitable in the circumstances. 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 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. He emphasised that the proposal approved by the Government went further than that made by the Commission.

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

36. The Report on Civil Liability for Animals was submitted to the Taoiseach in June 1982. Legislation on the subject was drafted in 1984 but the Animals Bill, prepared following consideration of the Report, was not presented to the Dáil until 2 January 1985 and so does not fall within the scope of this Annual Report.

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

37. The Report on Defective Premises was submitted to the Taoiseach in June 1982. The Taoiseach informed the Dáil on 6 November 1984 that the Report was being considered in the light of the passage through the Dáil of the Building Control Bill, 1984, and the introduction of building regulations.

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

38. 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 children born outside 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 married 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 are covered in the Commission's Report. On 6 November 1984, the Taoiseach told the Dáil that the general scheme of a Bill to reform the law in this area is in the course of preparation.

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

39. 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 26 September 1984 the Minister for Justice presented the Age of Majority Bill 1984 to the Dáil. The Bill adopted with minor modifications the central recommendation of the Report that the age of majority should be reduced from 21 to 18 or the age at which the person concerned marries and that a person who has not attained that age should be described as a minor instead of an infant. The Bill did not provide for the implementation of the recommendations in the Commission's Report in relation to the minimum age for marriage or the effect on the validity of a marriage of the failure to obtain the consent of parents or guardians of a party who is below a certain age. The Minister for Justice stated that the Government considered that it was better to deal with this as a separate issue having taken account of the Report to the Oireachtas Committee on Marital Breakdown. Other recommendations in the Report which the Minister stated were "being left over for another day" are those relating to an increase from 16 to 18 as the age up to which parents can be obliged to maintain a child under the Illegitimate Children (Affiliation Orders) Act 1930 and the Family Law (Maintenance of Spouses and Children) Act 1976, and those relating to the age at which a parent ceases to be liable to maintain a child for the purposes of social welfare legislation. The Commission's recommendations in relation to certain ages for the purposes of adoption were also not included in the Bill because it was felt that any changes in this area were more appropriate for consideration in the context of the recently published Report of the Review Committee on Adoption Services established by the Minister for Health.

40. The Bill passed all stages in the Dáil on 12 December 1984. At the Committee stage an amendment was adopted to ensure the continuation of existing statutory powers of the courts to make maintenance orders in respect of children up to 21 years of age. The Commission, having proposed a provision to this effect in its Working Paper on the subject (No. 2 - 1977) had concluded in its final Report that it would not be desirable to impose continuing maintenance obligations on parents of children (other than those who are mentally or physically disabled) who had reached the age of majority even if they were receiving full time education.

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

41. The Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters was submitted to the Taoiseach on 7 November 1983. On 6 November 1984 he informed the Dáil that the general scheme of a Bill arising from matters in the Report was in course of preparation.

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

42. The Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws was submitted to the Taoiseach on 14 December 1983. He told the Dáil on 6 November 1984 that the recommendations of the Report were being examined with a view to the introduction of legislation.

(8) Report on Divorce a Mensa et Thoro and Related Matters  
(LRC 8 - 1983)

43. The Report on Divorce a Mensa et Thoro and Related Matters was submitted to the Taoiseach on 16 December 1983. He told the Dáil on 6 November 1984 that the general scheme of a Bill in relation to the recommendations in it was in the course of preparation.

(9) Report on Nullity of Marriage (LRC 9 - 1984)

44. The Report on Nullity of Marriage was, as noted in Part II, submitted to the Attorney General on 30 July 1984. The Taoiseach informed the Dáil on 6 November 1984 that its recommendations would be considered as soon as possible.

**PART V****GENERAL****Staff**

45. The Law Reform Commission Act 1975 section 4(3) provides that where in the performance of its functions it considered it appropriate to do so, the Commission might include draft Bills in its proposals for law reform. When introducing the Bill, the then Attorney General, Mr Declan Costello S.C., T.D. said that delays between the presentation of a Report and its implementation could be considerably reduced if the Report contained a draft Bill incorporating its recommendations. The first five Reports issued by the Commission included draft Bills giving effect to their recommendations. The Commission was fortunate in securing the services of a member of the Irish Bar who was a skilled draftsman of considerable experience. Unfortunately since then the Commission has been unable to obtain sanction from the relevant authorities to employ a draftsman of its own and it has not been possible to include draft Bills in its Reports.

**International meetings**

46. On the nomination of the Minister for Justice, Mr Charles Lysaght, Research Counsellor to the Commission, represented Ireland at the Fifteenth Session of the Hague Conference on Private International Law held at the Hague in October 1984. This session adopted a Convention on the Law Applicable to Trusts and their Recognition. It provides for the international validity and recognition of trusts.

Under its provisions, where the law chosen by the settlor or, failing such choice, the law with which the trust is most closely connected is that of a Contracting State which recognises trusts, the other Contracting States undertake to recognise that trust. The recognition of trusts in civil law jurisdictions will be of some advantage to common law jurisdictions such as Ireland. The draft Convention submitted to the Hague Conference and substantially adopted by it had been drawn up by a Special Commission of which the late Mr Roger Hayes was a member. Public tributes were paid to him at the Fifteenth Session in October.

#### Examination of Other Legal Systems

47. In preparing its publications the Commission examines the laws of other countries. The Commission is grateful for the continuing assistance in this research provided by foreign embassies and the authorities in foreign countries. The Commission is also in correspondence with bodies concerned with law reform in other jurisdictions.

#### Assistance from Departments of State

48. 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 lawyers from 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. The Commission is also grateful for the generous tribute the Minister for Justice paid to its work when moving the Age of Majority Bill 1984.

Observations on Working Papers

49. 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 members of the Oireachtas, law teachers and bodies representing the various branches of the legal profession have not contributed observations in view of their oft-stated interest in law reform. The Commission takes this opportunity to renew its appeal once again in relation to the Working Paper on the Rule Against Hearsay, published in 1980, and the Working Paper on the Recognition of Foreign Divorces and Legal Separations, published in 1984. 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.