

DOMICILE BILL

EXPLANATORY NOTE

IN its first report made in 1954 and published as Command Paper No. 9068, the Private International Law Committee of the United Kingdom recommended a number of substantial changes in the law of domicile. Bills have twice been introduced in the House of Lords to give effect to the report, and have been passed by that House, but some of the changes have provoked criticism and the Bills have not been enacted.

Among the changes provided for in the last U.K. Bill were a proposal to abolish the rule providing for the revival of the domicile of origin; a proposal to give a married woman the capacity to acquire a domicile different from that of her husband, and to make consequential provisions for the domicile of dependent children; and a proposal to give infants who are over the age of 16 the capacity to acquire a separate domicile. These proposals received general approval in the U.K., but the criticism of other aspects of the U.K. Bills prevented their enactment. This Bill gives effect to these proposals.

Clause 2 declares that the rules set out in the N.Z. Bill, so far as they are inconsistent with the rules of the common law for determining a person's domicile, shall take the place of those rules.

Clause 3 declares that the domicile of a married woman, wherever she was married, shall be determined as if she were unmarried and (if she is an infant) as if she were adult. The clause abolishes the existing rule which secures unity of domicile by providing that a married woman in all circumstances has the same domicile as her husband. In normal cases this would in fact be so, but in some cases the existing rule is absurd and causes hardship.

Clause 4 provides that the domicile of a minor who has attained the age of 16 years or sooner married shall be determined as if the minor were adult. The clause modifies in the cases specified the existing rule that a minor is utterly incapable of acquiring by his own act an independent domicile of choice.

Clause 5 provides that the domicile of a child shall be that of the person entitled to his custody. The common law gives the father the primary right to the custody of his children, but this can be disturbed by order of the Court under section 6 of the Infants Act 1908. See *re Thomson* 13 G.L.R. 420. The provision as drafted will give the same results as the existing law in the great majority of cases, but will safeguard special cases where the

existing position is unsatisfactory. In a case where a child has his home with one of his parents and not with the person entitled to his custody, the domicile of the child shall be that of the parent with whom he has his home. *Subclauses (4) and (5)* cover the special cases of children in the custody of the Superintendent of Child Welfare and other similar officials or authorities to whom the custody of children may be entrusted. *Subclause (6)* prevents the change of the domicile of an infant in certain cases where the home of the infant is not changed.

Clause 6 provides that a person's domicile in any country shall continue until he acquires a domicile in another country, but no longer; and that the abandonment of a domicile of choice shall not of itself terminate that domicile or revive the domicile of origin. The clause also provides that for the purpose of determining whether a person has acquired a fresh domicile as aforesaid, every domicile of that person shall be deemed to be a domicile of choice. These changes in the law are recommended by the U.K. Committee in its report. The existing rule as to the retention of the domicile of origin is criticised in Dacey's Conflict of Laws, 7th Ed., p. 113, and in Cheshire's Private International Law, 5th Ed., p. 183, on the ground that it may result in a person being domiciled in a country with which his connection is somewhat stale or tenuous and which indeed he may never even have visited.

Clause 7 makes it clear that nothing in the Bill shall affect the domicile of any person at any time before its commencement. It is declared that every person's domicile after the commencement of the Bill shall be determined as if the provisions of the Bill had previously been in force at all material dates. For the purposes of section 10 of the Divorce and Matrimonial Causes Act 1928 the domicile of every person shall be determined as if the Bill had come into force on 1 January 1959. The change last mentioned is designed to preserve the effect of section 12 (4) of the Divorce and Matrimonial Causes Act 1928, which section is being repealed.

Clause 8 provides for consequential amendments and repeals.

Hon. Mr Mason

DOMICILE

ANALYSIS

Title

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A BILL INTITULED

An Act to effect reforms in the law relating to domicile

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Domicile Act 1960.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-one.

10 **2. Rules for determining domicile**—The rules set out in this Act, so far as they are inconsistent with the rules of the common law for determining a person's domicile, shall take the place of those rules.

15 **3. Domicile of married woman**—The domicile of a married woman, wherever she was married, shall be determined as if she were unmarried and (if she is a minor) as if she were adult.

4. Acquisition of domicile by minor who is over sixteen or married—The domicile of a minor who has attained the age of sixteen years or sooner married shall be determined as if the minor were adult.

5. Domicile of other infants—(1) Subject to the following provisions of this section, the domicile of an infant who has not attained the age of sixteen years or sooner married shall be that of the person entitled to the custody of the infant. 5

(2) Subject to the following provisions of this section, if each of two or more persons not all domiciled in the same country is equally entitled to the custody of any such infant, the infant's domicile shall be in that country (being a country in which one of those persons is domiciled) with which the infant is most closely connected. 10

(3) Subject to the following provisions of this section, if any such infant has his home with one of his parents and not with the person entitled to his custody, whether or not that person is a parent, the domicile of the infant shall be that of the parent with whom he has his home. 15

(4) If the Superintendent of the Child Welfare Division of the Department of Education of New Zealand, or the holder of any similar office in any other country, is entitled by virtue of his office to the custody of any such infant, the domicile of the infant shall be in the country in which the office is held. 20

(5) If any other authority, not being a natural person, is entitled to the custody of any such infant, the domicile of the infant shall be in the country under whose law the authority is established. 25

(6) Where the domicile of any such infant is determined by the domicile of any person entitled to his custody and that person changes his domicile, or where a person who has not the same domicile as the infant becomes entitled (whether exclusively or not) to the custody of any such infant and the domicile of that person would (apart from this subsection) determine the domicile of the infant, the infant's domicile shall not change by reason of that event if the infant was previously domiciled in a country other than that in which that person has his domicile and the infant has his home in that other country. 30 35

6. Duration of domicile—(1) A person's domicile in any country shall continue until he acquires a fresh domicile in another country, but no longer; and a domicile of origin, once another domicile has been acquired, shall not at any time
5 revive.

(2) For the purpose of determining whether a person has acquired a fresh domicile as aforesaid, every domicile of that person shall be deemed to be a domicile of choice.

7. Transitional provisions—(1) Nothing in this Act shall
10 affect the domicile of any person at any time before its commencement; but every person's domicile after the commencement of this Act shall be determined as if this Act had previously been in force at all material dates.

(2) For the purposes of section 10 of the Divorce and
15 Matrimonial Causes Act 1928, the domicile of every person shall be determined as if this Act had come into force on the first day of January, nineteen hundred and fifty-nine.

8. Consequential amendments and repeals—(1) Section 10
20 of the Divorce and Matrimonial Causes Act 1928 is hereby amended by inserting, after the words "Any married person who", the words "or whose husband or wife".

(2) Section 12A of the Divorce and Matrimonial Causes Act 1928, as enacted by section 2 of the Divorce and Matrimonial Causes Amendment Act 1958, is hereby amended by
25 omitting from paragraph (b) of subsection (1) the words "or is deemed by the law of that country to be domiciled".

(3) The following enactments are hereby repealed:

(a) Section 12 of the Divorce and Matrimonial Causes Act 1928:

30 (b) Subsection (2) of section 9 of the Divorce and Matrimonial Causes Amendment Act 1953:

(c) Section 41 of the Administration Act 1952:

35 Provided that the repeal of the said section 41 shall not affect the distribution of the estate of any person who died before the commencement of this Act.