



AN BILLE UM ATHCHÓIRIÚ DLÍTHE MÍRÉIREACHA, 1985
CONFLICT OF LAWS REFORM BILL, 1985

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

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ACT REFERRED TO

Age of Majority Act, 1985

1985, No. 2



AN BILLE UM ATHCHÓIRIÚ DLÍTHE MÍRÉIREACHA, 1985
CONFLICT OF LAWS REFORM BILL, 1985

BILL

entitled

AN ACT TO REFORM THE LAW BY SUBSTITUTING “HABIT- 5
UAL RESIDENCE” FOR “DOMICILE” AS A CONNECT-
ING FACTOR FOR THE PURPOSE OF THE CONFLICT
OF LAWS AND TO MAKE OTHER PROVISIONS CON-
NECTED WITH AND NECESSITATED BY THE FOREGO- 10
ING.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Citation.

1.—This Act may be cited as the Conflict of Laws Reform Act, 1985.

Interpretation.

2.—In this Act, “the Act of 1985” means the Age of Majority Act, 1985. 15

Definition.

3.—In this Act, save where the context otherwise requires:—

“foreign decree” means a decree for the dissolution of a marriage or annulment of a marriage or for a legal separation obtained outside the jurisdiction of the Government and Parliament established by the Constitution. 20

Habitual residence substituted for domicile.

4.—Where prior to the commencement of this Act, the relationship between a person and the law of a state or part of a state was determined by the domicile of that person it shall at any time after the commencement of this Act be determined by his habitual residence so that the connecting factor or point of contact between that person 25 and a particular system of law will be his habitual residence instead of his domicile.

Criteria for ascertainment of habitual residence.

5.—(1) The habitual residence of a person shall be ascertained having regard to the primary location of his personal, family, social and economic interests. 30

(2) In ascertaining the habitual residence of a person pursuant to subsection (1) of this section, account shall be taken of the duration of interests therein specified and the intentions of the person relative thereto.

- (3) The habitual residence of any married person shall not be determined by that of the spouse of that person but the habitual residence of the spouse of a married person may be taken into account in ascertaining the habitual residence of that person.
- 5 (4) It shall be presumed until the contrary is shown that at any time when spouses are residing together they have the same habitual residence.
- 6.—(1) This section applies to any person who has not attained full age in accordance with the provisions of the Act of 1985 and who has
10 not been married. Habitual residence of minors.
- (2) It shall be presumed until the contrary is shown that a person to whom this section applies has his habitual residence with his parents (or, if both his parents are not alive, his surviving parent) unless his parents are living apart and in which case he shall be presumed until
15 the contrary is shown to have his habitual residence with the parent with whom he has his home.
- (3) In the application of this section to minors who have been adopted, references to "parent" or "parents" shall be construed as references to the adoptive parent or parents.
- 20 (4) In the application of this section to minors neither of whose parents are alive, references to "parent" or "parents" in *subsections* (2) or (3) of this section shall be construed as references to any person or persons in *loco parentis* to such minors.
- 7.—For the purposes of this Act every person is deemed to have a
25 habitual residence in one state or territorial unit of one state and no person shall be regarded as having his habitual residence in more than one state or territorial unit of one state. Possession of habitual residence and limitation to one state.
- 8.—Where but for the provisions of this section a person would be regarded as having abandoned his habitual residence in a state or
30 territorial unit of a state, for the purposes of this Act he shall be deemed to retain that habitual residence until such time as he shall acquire a habitual residence in another state or territorial unit of another state. Retention of habitual residence.
- 9.—At any time after the commencement of this Act, the capacity
35 of a testator to execute or confirm a will or other testamentary disposition shall be determined in accordance with the law of his habitual residence at the time of the execution or confirmation of the will or other testamentary disposition in question. Testamentary capacity.
- 10.—Where under the law of the state of origin of any foreign
40 decree, domicile is the test of jurisdiction in such proceedings, the term "habitual residence" as used in this Act shall for the purposes of recognition of any decree granted in such proceedings be deemed to include domicile as the term is used in that state save for the doctrine of the dependent domicile of a wife. Construction of foreign laws based on domicile.
- 45 11.—(1) The validity of a foreign decree where one or both of the spouses was at the material time an Irish citizen and the spouses last habitually resided together in the State will only be recognised after the commencement of this Act if:— Recognition of foreign decrees involving Irish citizens.

- (a) both spouses were at the material time habitually resident in the state in which the decree was granted, or
- (b) one of the spouses was at the material time habitually resident in the country in which the decree was granted and:—
 - (i) the other spouse submitted to jurisdiction of the court or tribunal which granted the decree and 5
 - (ii) the decree was not obtained for the purpose of evading the laws in force at the material time in the state of the habitual residence of the spouse referred to in subparagraph (i) of this paragraph. 10

(2) The onus of establishing that *paragraph (a) of subsection (1)* of this section applies in any case shall rest on the party seeking recognition of the validity of the decree in question.

(3) In any case in which recognition is sought of the validity of a decree to which this section applies, it shall be presumed until the contrary is shown that the decree was not obtained for the purpose of evading the laws of the state of habitual residence of either spouse but the onus of establishing that *paragraph (b) of subsection (1)* of this section otherwise applies in any case shall rest on the party seeking recognition of the validity of the decree in question. 15 20

(4) For the purposes of *paragraph (b) of subsection (1)* of this section, the entering of an appearance to proceedings for the sole purpose of contesting the jurisdiction of the court or tribunal before which the proceedings were taken shall not be construed as constituting submission to the jurisdiction of the court or tribunal in question but it shall be presumed until the contrary is shown that an appearance to proceedings was not entered solely for the purpose of contesting jurisdiction. 25

(5) For the purpose of this section "state" shall be construed to include a territorial unit of a state and "the material time" in relation to any decree shall be construed to mean the time of the institution of proceedings for that decree in the state in which it was granted. 30

Recognition of
other foreign
decrees.

12.—(1) In any case in which the validity of a foreign decree to which *section 11* does not apply is sought to be recognised, such a decree will only be recognised if:— 35

- (a) both spouses were at the material time habitually resident in the state in which the decree was granted, or
- (b) the respondent had at the material time his habitual residence in the state in which the decree was granted, or
- (c) the petitioner had at the material time his habitual residence in the state in which the decree was granted and:— 40
 - (i) that habitual residence had continued for not less than one year immediately prior to the material time, or
 - (ii) the spouses last habitually resided together in that state; or 45
- (d) both spouses were at the material time nationals of the state in which the decree was granted; or

(e) the petitioner was at the material time a national of the state in which the decree was granted and:—

(i) the petitioner had his habitual residence in that state at the material time, or

5 (ii) he had habitually resided in that state for a continuous period of at least one year falling at least in part within the two year period immediately preceding the material time; or

10 (f) the petitioner was at the material time a national of the state in which the decree was granted, and:—

(i) the petitioner was present in that state at the material time, and

15 (ii) the spouses last habitually resided together in a state the law of which did not at the material time provide for the granting of a decree of the type granted.

(2) For the purposes of this section, "state" shall be construed to include a territorial unit of a state and "the material time" in relation to any decree shall be construed to mean the time of the institution of proceedings for that decree in the state in which it was granted.

20 13.—In any proceedings in which recognition of the validity of a foreign decree is sought pursuant to *section 11* or *section 12* of this Act, the court shall refuse recognition of the validity of the decree in question if it is satisfied that adequate steps were not taken to give notice of the proceedings to the respondent spouse or if that spouse
25 was not afforded a sufficient opportunity to present his case.

Certain grounds for refusal of recognition of foreign decrees.

14.—(1) Subject to *subsection (2)* of this section, the validity of a foreign decree shall not be recognised if in the opinion of the court the effect of the decree is incompatible with a previous decision determining the matrimonial status of the spouses which

Foreign decrees and incompatible previous decisions.

30 (a) was rendered in the State, or

(b) was previously recognised in a decision rendered in the State,
or

(c) fulfilled the conditions for recognition in the State.

35 (2) Notwithstanding the provisions of *subsection (1)* of this section, a court may recognise the validity of a decree to which *paragraph (c)* of that subsection applies if it is satisfied that such recognition is required in the interests of justice.

15.—(1) In any case where—

(a) recognition of the validity of a foreign decree is sought, and

Findings by court which granted foreign decrees.

40 (b) the respondent in the proceedings in which the decree was granted submitted to the jurisdiction of the court or tribunal which granted it, findings by that court or tribunal concerning the domicile or habitual residence of the spouses shall subject to the provisions of *section 11 (1) (b)*
45 (ii) of this Act, be binding for the purposes of this Act on the court from which recognition of the validity of the decree in question is sought.

(2) For the purposes of *paragraph (b) of subsection (1)* of this section, the entering of an appearance to proceedings for the sole purpose of contesting the jurisdiction of the court or tribunal before which the proceedings were taken shall not be construed as constituting submission to the jurisdiction of the court or tribunal in question but it shall be presumed until the contrary is shown that an appearance to proceedings was not entered solely for the purpose of contesting jurisdiction. 5

(3) In any case where—

(a) recognition of the validity of a foreign decree is sought, and 10

(b) the respondent in the proceedings in which the decree was granted did not submit to the jurisdiction of the court or tribunal which granted it,

the court may, if it is satisfied that the interests of justice so require and subject to the provisions of *section 11 (1) (b) (ii)* of this Act, 15 accept as proved any or all of the findings or inferences (whether of law or of fact) found by the court or tribunal which granted the decree.

Protection of
spouses' rights.

16.—Any foreign decree the validity of which is not recognised in the State shall not prejudice any right which a spouse may have to inherit or to maintenance from the other spouse or to other financial assistance including assistance by the State.

Commencement.

17.—This Act shall come into operation on the 1st day of March, 1986.

presumed until the contrary is shown that an ad

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht d'athchóiriú an dlí trí "gnáthchónaí" a chur in ionad "sainchónaí" mar mhír cheangail chun críche dlíthe míréireacha agus do dhéanamh socruithe eile a bhaineann leis an méid sin roimhe seo agus atá riachtanach mar gheall air.

*An Teachta Cathal Ó hEochaidh a thíolaic,
3 Nollaig, 1985*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais,
Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath
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(as initiated)

entitled

An Act to reform the law by substituting "habitual residence" for "domicile" as a connecting factor for the purpose of the conflict of laws and to make other provisions connected with and necessitated by the foregoing.

*Presented by Deputy Charles J. Haughey,
3rd December, 1985*

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