

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Domicile (Reform) Bill

Paper No: 254/11

Date: 16 November 2011

Report of: Attorney General

1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for draft legislation that would reform the law of domicile for married women by abolishing a rule of law that discriminates against them.

2.0 Recommendations

2.1 Executive Council is recommended to approve the publication in *Gazette* of the Domicile (Reform) Bill. A draft of that Bill is attached to this paper.

2.2 Executive Council is also recommended to approve the presentation of the Domicile (Reform) Bill to Legislative Assembly in December 2011.

3.0 Summary of Financial Implications

None

4.0 Background

Domicile

4.1 Domicile is a legal concept which used in common law systems to determine which law applies to an individual for various purposes.

4.2 Domicile is separate from nationality and immigration status: it is possible for someone to be domiciled here without having FI Status; on the other hand, it is also possible for someone with FI Status to be domiciled somewhere else.

Domicile of married women

4.3 In the Falkland Islands, it is still a rule of law that married women are not capable of having domiciles of their own but automatically have the same

domicile as their husbands – this is a domicile of dependency rather than a domicile of choice.

4.4 That rule of law is clearly discriminatory and, indeed, it was abolished in the UK in 1974. However, the Domicile and Matrimonial Proceedings Act 1973 (which achieved that but which also dealt with other matters) was disapplied here.

4.5 Although domicile is normally only used for private law purposes (such as family law and succession), the issue came to light recently because domicile used to be one of the factors used under the previous version of the Constitution to determine whether spouses of FI Status holders themselves had FI Status. The position of those who lost Status solely because of the discriminatory quirk in the law of domicile has been addressed by specific provision in the Falkland Islands Status Ordinance.

4.6 However, the issue, having been identified, needs to be addressed. Whether the disapplication of the domicile provisions in the 1973 Act (as well as its other provisions) was intentional or simply an oversight is not clear, but the position cannot be justified in the modern context.

4.7 The Domicile (Reform) Bill would abolish the rule of law that married women cannot have their own domicile.

4.8 For simplicity, the abolition would not apply retrospectively, so married women would initially keep the domiciles they have when the Ordinance comes into force. However, after that, their domiciles would be determined in exactly the same way as anyone else. Women who marry after the Ordinance comes into force would not automatically acquire their husbands' domiciles at all.

Domicile of children

4.9 The 1973 Act also contained provisions relating to the domicile of children: dealing with the age at which children become capable of acquiring domiciles in their own right; and also dealing with the domiciles of children whose parents are living apart.

4.10 Those provisions were considered during work on the Domicile (Reform) Bill. However, it is considered that they should be left over for now and considered further in the context of amendments to legislation required to deal with parental responsibility.

5.0 Financial Implications

None

6.0 Legal Implications

The legal implications of this paper are set out in sections 4.

7.0 Human Resources Implications

None

Domicile (Reform) Bill 2011

(No: of 2011)

(*assented to:* 2011)

(*commencement: on publication*)

(*published:* 2011)

A BILL

for

AN ORDINANCE

To reform the law of domicile for married women.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Domicile (Reform) Ordinance 2011.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Abolition of dependent domicile for married women

The rule of law that a married woman automatically has the same domicile as her husband no longer applies.

4. Transitional provision for women married when Ordinance comes into force

(1) This section applies to women who are married when this Ordinance comes into force.

(2) A woman to whom this section applies is initially to be treated as retaining her husband's domicile (as a domicile of choice, if it is not also her domicile of origin).

(3) Subsection (2) no longer applies to a woman if —

(a) she subsequently acquires a new domicile of choice; or

(b) her domicile of origin subsequently revives.

(4) Whether a woman to whom this section applies has acquired a new domicile of choice (or if her domicile of origin has revived) is to be ascertained by reference to the same factors as apply to anyone else who is capable of having an independent domicile.

(5) Once subsection (2) no longer applies to a woman, her domicile continues to be ascertained by reference to those factors.

5. Domicile of women marrying after Ordinance comes into force

(1) Subsection (2) applies to women who marry after this Ordinance comes into force.

(2) The domicile of a woman to whom this subsection applies is to be ascertained at all times by reference to the same factors as apply to anyone else who is capable of having an independent domicile.

OBJECTS AND REASONS

This Bill would reform the law of domicile for married women.

At present, it is still a rule of law that a married woman is incapable of having an independent domicile in her own right and she automatically has the same domicile as her husband.

Clause 3 would abolish that rule of law.

Clause 4 makes transitional provision for women who are married when the Ordinance comes into force. They would initially retain the husbands' domiciles but would become capable of having domiciles of their own in the future.

Under *clause 5*, women marrying after the Ordinance comes into force would always remain capable of having their own domiciles.