

立法會
Legislative Council

LC Paper No. LS36/06-07

**Paper for the House Committee Meeting
on 23 February 2007**

**Legal Service Division Report on
Domicile Bill**

I. SUMMARY

- 1. Object of the Bill** To reform the rules for determining the domicile of individuals on the basis of the recommendations of the April 2005 report of the Law Reform Committee (LRC).
- 2. Comments** The LRC report has concluded that domicile is a complex and confusing area of the common law. It made some recommendations for legislative improvement that would affect, in two major proposals, the domicile of a married woman (which would no longer depend on that of her husband) and of a child (which would no longer be directly tied to that of the parents). The Bill, in implementing those recommendations, provides that

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 - (a) it shall apply instead of the common law rules on domicile in case of inconsistency and some of the latter rules are abolished outright; and
 - (b) the domicile of an individual before the commencement of the Bill shall be determined according to the old regime.
- 3. Public Consultation** LRC conducted a full public consultation on provisional recommendations in 2004. In May 2006, the Department of Justice consulted the two legal professional bodies and legal academics of the universities and other parties on a draft bill.
- 4. Consultation with LegCo Panel** In April 2004, the Panel on Administration of Justice and Legal Services was briefed on a LRC Subcommittee consultation paper. Following the April 2005 report of LRC, a consultation paper on a Domicile Bill 2006 was circulated in May 2006 to the Panel. At its meeting on 27 November 2006, it was briefed on the Domicile Bill 2007.
- 5. Conclusion** Members may wish to consider whether a Bills Committee is called for in view of the impact on a person's status brought about by the proposed changes in the rules for determining domicile.

II. REPORT

Object of the Bill

To reform the rules for determining the domicile of individuals on the basis of the recommendations of the report "Rules for Determining Domicile" published by the Law Reform Commission (LRC) in April 2005.

LegCo Brief Reference

2. LP 5019/9C IV issued by Department of Justice on 24 January 2007.

Date of First Reading

3. 7 February 2007.

Comment

4. Domicile, as a legal concept, means the place or country which is considered by law to be a person's permanent home. There are elaborate rules of the common law to determine the domicile of a person. His domicile will in turn determine which system of law governs his legal status or capacity. For instance, the legal capacity to marry is governed by the law of each party's antenuptial domicile. (Please see paragraph 32 of the LegCo Brief for more examples of how one's domicile affects one's civil status and certain aspects of the administration of one's property).

5. The LRC report in April 2005 concluded that domicile is a complex and confusing area of the common law. It made a number of recommendations for legislative improvement (a summary of which is at Annex B of the LegCo Brief). It considers that the recommendations would not change the domicile of many people and would be more attuned to modern realities or conditions.

6. The Bill will reform the existing common law rules for determining domicile by implementing LRC's recommendations. The major proposals are -

- (a) a married woman's domicile will no longer depend on that of her husband;
- (b) the domicile of a child will no longer be directly tied to the parents' domicile; and
- (c) the concept of domicile of origin will be abolished.

7. In implementing the reform, the Bill proposes that -

- (a) it shall apply instead of the common law rules for determining domicile in case of inconsistency and that some of the latter rules be abolished outright;

- (b) the domicile of an individual before the commencement of the Bill be determined according to the old regime.

8. For the distinction of the concept of domicile from the concept of nationality, right of abode or citizenship, Members may refer to paragraph 6 of the LegCo Brief.

Public Consultation

9. LRC conducted a full public consultation on provisional recommendations in 2004. In May 2006, the Department of Justice consulted the two legal professional bodies and legal academics of the universities and other parties on a draft bill. Paragraphs 28 and 29 of the LegCo Brief contain further details of the public consultation.

Consultation with LegCo Panel

10. In April 2004, the Panel on Administration of Justice and Legal Services was briefed on the Consultation Paper "Rules for Determining Domicile" published by a subcommittee of LRC. In April 2005, LRC published its Report "Rules for Determining Domicile", which was circulated to all Members for reference.

11. In May 2006, a "Consultation Paper on the Domicile Bill 2006" was circulated to the Panel. Subsequently, at its meeting on 27 November 2006, it was briefed on the Domicile Bill 2007. Members did not raise any queries on the Bill.

12. Subsequent to the meeting, the Panel received a copy of the Bar Association's submission on the draft 2006 bill. The submission was circulated to all Members for information vide LC Paper No. CB(2)843/06-07 on 10 January 2007.

Conclusion

13. Members may wish to consider whether a Bills Committee is called for in view of the impact of the Bill on a person's status brought about by the proposed changes in the rules for determining domicile.

14. The scrutiny of the legal and drafting aspects of the Bill will take some more time to complete.

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