

Domicile

1. General guidance

1.1 The following matters are to some extent dependent on domicile:

- The validity of a marriage (see MARRIAGE)
- The annulment of a marriage (see MARRIAGE)
- Divorce (see DIVORCE)
- Legitimacy (see LEGITIMACY)
- Legitimation (see LEGITIMACY)

1.2 Important points to note about domicile are:

- It contains a dual element of actual residence in a place and the intention to remain there permanently
- In assessing a person's domicile all the relevant evidence must be taken into account
- Everybody has just one domicile at any one time
- A person's first domicile is the domicile of origin (this may be in a country to which the person has never been)
- A person can subsequently acquire a domicile of choice by moving from one country to another
- The onus of proof is on the person seeking to show that a change of domicile has taken place
- The change has to be shown with a high degree of clarity

2. What is meant by "domicile"?

2.1 The test of domicile establishes, in effect, the territory by whose laws the rights of persons, and the rights of others in relation to those persons, may be determined. Domicile is something more than mere residence or settlement and can generally be construed as the place which persons regard as their permanent home and with which they have the closest ties.

2.2 It contains a dual element of actual residence in a place and an intention of remaining there permanently. Although persons may be without a home, the law will not allow them to be without a domicile. Every person has one, and only one, domicile at any given time. (Furthermore, generally a person can only have a domicile within a territory subject to a single system of law. This means that generally a person cannot, for example, be domiciled in the United Kingdom but can be domiciled within England, Wales, Northern Ireland, or in Scotland).

3. Meaning of domicile of origin

3.1 The domicile of origin is that domicile attributed to every person at birth by operation of law. The new-born child's domicile depends on the domicile of the appropriate parent at the time of birth (see paragraph 4). The domicile of origin continues to operate until either:

- a different domicile is acquired as a dependent person through the act of the person upon whom the person is dependent (see paragraphs 4 and 5 below);
or

- the person acquires a domicile of choice in his or her own right (see paragraph 6 below)

3.2 When another domicile is acquired in either of these ways it displaces the domicile of origin, but the domicile of origin always revives if a person abandons the acquired domicile without acquiring another such domicile.

4. Domicile of children

4.1 Before the implementation of the Domicile and Matrimonial Proceedings Act 1973 on 1 January 1974, legitimate children's domicile changed automatically with that of their father during their minority; illegitimate children's domicile changed automatically with that of their mother.

4.2 On or after 1 January 1974, a legitimate child's domicile changes automatically with that of the father until the child is 16, or marries under 16, unless:

i. the parents are alive but living apart, and either:

- a. the child has a home with the mother and no home with the father; or
- b. the child had at any time had a domicile by virtue of a. and has not since had a home with the father, in which case the child's domicile is that of the mother; or

ii. the mother is dead, but at her death the child had her domicile by virtue of (i) above and has not since had a home with the father.

4.3 On or after 1 January 1974 an illegitimate child's domicile changes automatically with that of the mother until the child is 16, or marries under 16.

5. Domicile of women

5.1 At any time before the implementation of the Domicile and Matrimonial Proceedings Act 1973 on 1 January 1974, a woman acquired the domicile of her husband on marriage. So long as the marriage subsisted, her domicile changed with that of her husband and she could not acquire one independently of him.

5.2 Since 1 January 1974, a married woman's domicile, (instead of being the same as her husband's by virtue of marriage) has been ascertained by reference to the same factors as any other individual capable of having an independent domicile (see paragraphs 4 and 6).

5.3 In the case of a marriage subsisting immediately before 1 January 1974, the wife retains the domicile which she had immediately prior to that date unless and until her domicile changes as set out in 5.2 above. In deciding whether her domicile has changed by choice, the necessary facts to be taken into account concerning residence and intention (see paragraph 6 below) must exist on or after 1 January 1974.

6. Acquisition of domicile of choice

6.1 Persons capable of acquiring an independent domicile may acquire a domicile of choice instead of the domicile of origin. To do this they must reside in a place and form a clear and fixed intention of making their permanent home or indefinite

residence there. This intention must be directed exclusively towards one country. Persons who have acquired a domicile of choice revert automatically to their domicile of origin if they leave the place in question and have the intention of abandoning their permanent home or indefinite residence there. They will then retain the domicile of origin unless and until they acquire another domicile of choice.

7. The evidence required to establish a domicile of choice

7.1 As indicated in paragraph 1 above, there are 2 main elements to the acquisition of a domicile of choice: residence and intention. In the immigration context the test has been stated as whether the persons have made the alleged domicile of choice their home with the intention of establishing their family there and ending their days in that country (unless and until something happens to make them change their mind).

7.2 Brevity of residence is not of itself a bar to the acquisition of a domicile of choice if the necessary intention exists. For example, if a person clearly intends to live in another country permanently, the arrival in that country could satisfy the element of residence. On the other hand, a very lengthy residence, while being an important factor to take into account when assessing a person's domicile, may not in itself prove that a domicile of choice has been acquired. The courts have held that a domicile of choice cannot be acquired by illegal residence. The fact that a person is in the UK on a time restriction does not necessarily mean that a domicile of choice here cannot be acquired. However, that fact would be a factor in determining whether or not the person had formed a genuine intention of remaining here permanently. Unless it can be shown that the person had reason to expect - as well as just hope - that he or she would remain in the UK, it would be difficult to establish that the person had acquired a change of domicile.

7.3 To show a change of domicile it is essential to establish an intention of remaining in the place permanently or for an unlimited time. Every event in a person's life may be relevant. It is therefore necessary to take full account of all the evidence which can reasonably be gathered. Declarations of intention to remain permanently or to retire in a place are certainly important but the context in which they are made should be considered to see whether the person's conduct and action is consistent with the declared expression. The completion of a domicile questionnaire can often be helpful (see paragraph 9 below).

7.4 Below are examples of relevant factors to consider in assessing a person's intentions at a particular time, but these are only examples and any other relevant factors must also be taken into account.

- Nationality: (Nationality and domicile are 2 different concepts; a person's domicile may change without a change of nationality or vice versa). The acquisition of a new nationality can be a relevant, though not conclusive, factor in determining a person's domicile depending upon the reasons for the change. (It is a still more potent factor when the person gives up a former nationality).
- Statutory declarations: Declarations made by applicants for naturalisation that they intend to retire or reside permanently in the United Kingdom should be considered when assessing domicile.
- Length of residence: This can never be conclusive by itself but it can be indicative, especially where the person makes few or no visits to the country

of origin. On the other hand, frequent long visits suggest retention of the domicile of origin.

- Possession of property: The possession of a house or land is relevant and account should be taken of when, how and why it was acquired. The purchase of burial grounds, in particular, is a good indication of intention.
- The nature and length of the person's employment in this country.
- Exercise of political rights: Is the person registered as an elector, where and for how long?
- Residence of spouse(s) and family: If, despite having lived mostly here for many years, the person has at the same time maintained a family in the country of origin it will be more difficult to establish that the person has abandoned the domicile of origin there. Are there plans to bring over other family members? Have other relatives settled here? If they returned overseas, why did they do so?
- Children's education: If the person had or intends to have his or her children educated here, this may indicate the acquisition of a domicile here. But if, after many years residence here, the children are sent to the country of origin to be educated, this might imply that the domicile of origin has not been abandoned.

7.5 It is important to remember that when assessing a person's domicile at a particular point in time (e.g. on the day of an actual or potentially polygamous marriage), it is the person's intentions at that point in time which are relevant. The fact that persons state that they intend to retire and spend the rest of their days here is of very little evidential value in assessing where they were domiciled when they married, say, 10 years ago.

8. Standard and burden of proof

8.1 In matters of domicile the onus of proof is on the party asserting that a change in domicile has taken place. Thus, for example, if the Secretary of State considers that an actual or potentially polygamous marriage which took place abroad is invalid in the United Kingdom because in his view at the time of the marriage one party had acquired a domicile of choice here, there must be sufficient evidence to prove the case.

8.2 Because of the tenacity of the domicile of origin, the degree of proof required to establish that a domicile of origin has been displaced in favour of a domicile of choice is high. It has been held that "unless you are able to show with perfect clearness and satisfaction, that a new domicile has been acquired, the domicile of origin continues" (Bell -v- Kennedy LR 1 Se & W App 310). In practice this can mean that, while a range of evidence will normally be needed to show that a change of domicile has occurred, a single piece of evidence may be enough to show that there has been no change of domicile (e.g. a statement by the person concerned that there was no intention of making the place in question his or her permanent home).

8.3 On the other hand, the standard of proof required in cases where what is alleged is a change from one domicile of choice to another has been held to be the one

usually used in civil disputes (i.e. a balance of probabilities). However, the onus of proof is still upon the person asserting that the domicile has changed.

9. Enquiries to establish domicile

9.1 If any of the matters in 1.1.a.-e. have been previously decided or accepted by an Entry Clearance Officer, Immigration Officer, Home Office or dependent territories official, or any tribunal or court in the United Kingdom or the dependent territories, there is no need to make further enquiries unless there is cause to doubt the previously accepted position.

9.2 In cases where the matters in 1.1 have not been accepted, or where we doubt the previously accepted position, there may be sufficient evidence on file for a conclusion to be drawn about a person's domicile. However in some cases it will be necessary to make further enquiries.

9.3 An interview is the most effective way of establishing a domicile in conjunction with the use of a domicile questionnaire. Experience has shown that asking persons to complete a questionnaire themselves is less effective than noting down answers to questions put to them during an interview. The interview enables doubtful points to be explored and unsatisfactory answers to be probed in more depth.

9.4 The attached Annex is a domicile questionnaire showing the types of questions which need to be asked in cases of polygamous or potentially polygamous marriage. Section A and section B, C or D should be completed as appropriate. It may be modified to suit the matter about which enquiries are being made (e.g. the validity of a divorce). It is important that the person is aware that the questions are being asked to establish the domicile at a particular date and that the questionnaire is signed and dated.

9.5 Where it is not possible to arrange an interview a domicile questionnaire - suitably modified as necessary - should be sent on the authority of a senior caseworker. In cases received from posts overseas an assessment of domicile may already have been made by FCO.

10. Staff should try to resolve cases on the basis of this guidance, but it is recognised that they may wish to refer difficult cases to INPD(L) where clarification is needed. Each case referred for advice should include on the minute sheet a clear account of the views taken by the caseworker and the point on which advice is sought.

Annex A – Domicile questionnaire

(To be used in cases of polygamous or potentially polygamous marriages)

Section A

1. (a) In which country, state or province was your father born?
(b) Please give his date of birth
2. (a) In which country, state or province was your mother born?
(b) Please give her date of birth?
3. (a) In which country, state or province were you born?
(b) Please give your date of birth

- (c) Please give an explanation if your birthplace is different from that of your father
4. In which country, state or province was your father resident at the time of your birth?
5. List each country, state or province in which you have lived since birth. Show the period of time (with dates) spent in each place and the reason for living there
6. List all visits back to your country of origin with dates and the reason for each visit
7. If you went to the United Kingdom before you were 16 years old, please answer questions 5 and 6 in respect of your father as well as yourself
8. Give details of your marriage(s) and/or divorce(s) as follows:
- (a) Please name your first wife and give date and place of your first marriage
 - (b) Please name your second wife and give date and place of your second marriage
 - (c) Please name your third wife and give date and place of your third marriage
 - (d) If you have divorced any of your wives please state the name of the wife and the date of the divorce
 - (e) If any of your wives have died please state the name of the wife and the date of her death
9. Of which country or countries are you or have you been a citizen?
10. (a) In what circumstances (eg by birth, descent, registration or naturalisation) did you acquire that citizenship, and when?
(b) If you obtained any citizenship by registration or naturalisation, why did you decide to do so?
11. (a) Of which countries do you still hold a valid passport?
(b) If you have previously surrendered passports of any other countries, why and when did you decide to do so?
12. (a) Do you own any land or houses?
(b) If so, in which countries, states or provinces?
(c) Please give the dates on which any such property was acquired
(d) Is the land or property in your own name or is it owned jointly by your family?
(e) By how many persons is the land owned and who are the joint owners?
13. What is your occupation, business or profession and where is it carried out?
14. (a) In which countries, states or provinces do you hold a bank account (give date opened) or other assets?
(b) Where is your main bank account?
15. In which countries have you been registered as an elector and for what periods? Please give dates
16. Where do you usually live?
17. Where have your close family (that is all your wives, all your children, and any other dependants) lived since you first went to the UK?
18. (a) Where are/were your children educated and for what periods?

(b) If your children are not yet of school age, where is it your intention to educate them?

19. What are your intentions regarding your future place of residence? Please explain why

(a) In which country, state or province do you intend to spend your retirement?

Please explain why

(b) Where is it your intention to end your days and be buried?

Please explain why

(c) Are there any circumstances in which your intention might change or in which you might decide to live elsewhere?

20. Are there other facts which show your attachment at the present time to any particular country, for example, the residence of relatives, (please state names and relationship to you)?

Section B/C/D

Please answer the following questions as appropriate to the date of your FIRST/SECOND/THIRD marriage to (name) on (date)

1. Of which country or countries were you at that time a citizen?

2. (a) At that time did you own any land or houses?

(b) If so, in which countries, states or provinces?

(c) Please give the dates on which any such property was acquired or purchased

(d) Was the land or property in your own name or was it owned jointly by your family?

(e) By how many persons was the land owned and who were the joint owners?

3. What was your occupation, business or profession at that time and where was it carried out?

4. (a) In which countries, states or provinces did you at that time hold a bank account or other assets?

(b) Where was your main bank account?

5. Where did you usually live at that time?

6. At that time where did your close family (that is, your wife or wives, children and other dependants) usually live?

7. (If appropriate)

(a) If none of your family were living in the United Kingdom at that time, had you any intention then of applying to bring them here?

(b) If so, why did you not apply to bring them here then?

8. At that time what was your intention regarding your future place of residence?

Please explain why

9. Were there any other facts to show your attachment at that time to a particular country, for example, the residence of relatives there (please state names and relationship to you)

In particular:

(a) Where was it your intention to retire?

Please explain why

(b) At that time where did you wish to end your days and be buried?

Please explain why

(c) Under what circumstances at that time would your intention have changed or would you have decided to live elsewhere?

Declaration

I confirm that the answers I have given are correct. I confirm that I have understood the questions and that the answers I have given are as stated above. I understand that the purpose of this questionnaire is to help to establish my domicile at one or more relevant times.

Signed.....

Dated.....

Witnessed.....

Archived