

May/03

IMMIGRATION DIRECTORATES' INSTRUCTIONS

ANNEX CONTENTS

**CHAPTER 8
SECTION 1**

**ANNEX D
SPOUSES**

DOMICILE

- 1. INTRODUCTION**
 - 1.1. First Subheading
 - 1.2. Second Subheading

- 2. SECOND MAIN HEADING**

CHAPTER 8
SECTION 1

SPOUSES

DOMICILE**1. INTRODUCTION**

The concept of domicile arises most in immigration cases involving marriages which have taken place in countries which allow polygamy (all Muslim countries allow polygamy, with the exception of Tunisia and Turkey, as do some customary laws of African countries). This is because the recognition of any marriage which takes place overseas is governed by the following:

- is the marriage one which would be recognised in the country in which it took place?
- was the marriage properly executed so as to satisfy the requirements of the law of the country in which it took place?
- was there anything in the law of *either* party's **domicile** that would have restricted their freedom to enter the marriage?

Annex B (above) provides further guidance on the recognition of marriage and divorce

1.1. Polygamous marriages

Whether the marriage is regarded as monogamous or polygamous must initially be determined by **where** the marriage is celebrated. If the law of the country where the marriage takes place prohibits polygamy then all marriages celebrated in that country must be monogamous regardless of whether a party to such a marriage is permitted to practice polygamy in his country of **domicile**.

If the country in which the marriage is celebrated permits polygamy, any marriage contracted there by a person whose **domicile** permits him to enter into a polygamous union will be polygamous.

ANNEX C (above) provides further guidance on polygamous and potentially polygamous marriages.

1.2. Children of polygamous marriages

Domicile also has relevance in the context of the legitimacy of children of polygamous marriages. Paragraph 296 of HC 395 restricts the child of a polygamous union from qualifying for entry clearance, leave to enter or remain, or variation of leave, where his mother is party to a polygamous marriage and any application by her for admission or leave to remain for settlement or with a view to settlement would be refused.

See **CHAPTER 8 Children**.

1.3. Divorce

Domicile may also be relevant for the recognition of certain overseas divorces under United Kingdom family law.

Annex B (above) provides further guidance on the recognition of marriage and divorce.

2. WHAT IS MEANT BY DOMICILE

The test of domicile establishes in effect the territory by whose laws the rights of a person, and the rights of others in relation to that person, may be determined. Domicile is something more than mere residence or settlement and can generally be construed as the place which a person regards as his permanent home and with which he has the closest ties: it contains a dual element of actual residence in a place and an intention of remaining there permanently. Although a person may be without a home, the law will not allow him to be without a domicile. Every person has one, and only one domicile at any one time.

Generally a person can only have a domicile within a territory subject to a single system of law. This means that normally a person cannot, for example, be domiciled in the United Kingdom, but would be domiciled within England and Wales or in Scotland.

2.1. Important points to note

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 his **domicile of origin**,
- 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.

3. DOMICILE OF ORIGIN

A person's domicile of origin is not necessarily the country where he was born. Domicile is determined by law. A new born child's domicile depends on the domicile of the "appropriate" parent at the time of his birth. (See paragraph below).

The domicile of origin continues to operate until its owner either acquires a different domicile as a dependent person, or acquires a domicile of choice in his own right. When another domicile is acquired in either of these ways, it displaces the domicile of origin. However, the domicile of origin always revives if a person abandons one acquired domicile without acquiring another domicile.

4. DOMICILE OF CHILDREN

Before 1 January 1974 a **legitimate child's** domicile changed automatically with that of his **father** and an illegitimate child's domicile changed with that of his **mother**. Since 1 January 1974 a **legitimate child's** domicile will change automatically with that of his **father** until he is 16 or until he is married (if he marries under the age of 16), unless:

- his parents are alive but living apart, and either:
 - i) he has his home with his mother and no home with his father; or
 - ii) he had at any time his mother's domicile by virtue of the above, and has not since had a home with his father; or
- his mother is dead but at her death he had her domicile by virtue of the above and has not since had a home with his father.

On or after 1 January 1974 an **illegitimate child's** domicile will change automatically with that of his **mother** until he is 16 or until he is married (if he marries under the age of 16).

5. DOMICILE OF CHOICE

An individual capable of acquiring an independent domicile may acquire a domicile of choice instead of his domicile of origin. To do this he must reside in a place and form a clear and fixed intention of making his permanent home or indefinite residence there. This intention must be directed exclusively towards one country. A person who acquired a domicile of choice will revert automatically to his domicile of origin if he leaves the country in question with no intention of returning on a permanent basis.

5.1. Evidence required to establish a domicile of choice

There are two main elements to the acquisition of a domicile of choice. These are:

- residence; and
- intention.

In an *immigration* context the test is whether the person has made the alleged domicile of choice his *home* with the *intention* of establishing his family there and *ending* his days in that country, unless or until something happens to make him change his mind.

The *length of residence* is not of itself essential to the acquisition of a domicile of choice, provided the *intention* is there. For example, if a person clearly intends to live in another country permanently, his arrival there could satisfy the element of residence. Alternatively, a lengthy residence, while being an important factor, may not in itself prove that a domicile of choice has been acquired. It has been held by the courts that a domicile of choice cannot be acquired by illegal residence.

To prove a change of domicile a person must demonstrate that he intends to remain in a place *permanently or for an unlimited time*.

It is necessary to take into account all the evidence available. Declarations of intention to remain permanently or to retire in a place are important, but the context in which they were made should also be considered to see whether the person's conduct and actions are consistent with his declared expression. The following relevant factors should be taken in account when assessing a person's intentions:

Nationality:

nationality and domicile are 2 different concepts; a person may change his domicile without changing his nationality and vice versa. The acquisition of a new nationality may be a relevant, though not conclusive, factor in determining a person's domicile, depending upon the reasons for the change. It will be a more important factor if the person has given up his former nationality;

Statutory declarations:

a declaration made by an applicant for naturalisation that he intends to retire or reside permanently in the United Kingdom;

Length of residence:

this can never be conclusive by itself, the *number* and *duration* of any visits to his country of origin should also be taken into account;

Possession of property:

the possession of a house or land is relevant. Account should be taken of when, how and why it was acquired. The purchase of a burial ground is also a good indication of intention;

Employment:

the nature and length of the person's employment in this country;

Exercise of political rights:

is the person registered as an elector, and for how long?

□ **Residence of spouse(s) and family:**

although a person may have lived here for a number of years, if he has at the same time maintained a family in his country of origin, it will be more difficult to establish that he has abandoned his domicile of origin. Does he plan to bring other family members to the United Kingdom? Have other relatives settled here, or have other family members returned home after coming to the United Kingdom? If so why did they do so?

□ **Children's education:**

if a person intends to educate his children here, it may indicate the acquisition of a domicile here; but if, after a number of years residence here, he sends his children to his country of origin to be educated, this might indicate that he has not abandoned his domicile of origin.

It is important to remember when assessing a person's domicile at a particular point in time that it is his intentions **at that point in time** which are relevant, for example, **on the day** of his polygamous marriage. The fact that a person has stated that he now intends to retire and spend the rest of his days here would be of little relevance when assessing where he was domiciled when he married, say, 10 years ago.

6. DOMICILE OF WOMEN

Since 1 January 1974 a married woman's domicile is that of origin or choice, following the criteria set out above. Women married before 1 January 1974 would have automatically taken their husband's domicile. A woman who was married before 1 January 1974 should be considered to have the same domicile as her husband, unless her domicile has changed as set out in paragraph 4 above.

7. STANDARD OF PROOF

In matters of domicile the **onus of proof** is on the **party asserting that a change of domicile has taken place**. Therefore, if the Secretary of State considers that a polygamous marriage which took place abroad is invalid in the United Kingdom because in his view at the time the marriage one party had acquired a domicile of choice here, the **onus of proof would be on the Secretary of State**.

The degree of proof required to establish that a domicile of origin has been replaced in favour of a domicile of choice is high. Unless it can be demonstrated clearly that a new domicile has been acquired, the domicile of origin will continue. This means 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 all that is needed to show that there has been no change of domicile. However, where the alleged change is from one domicile of **choice** to another, although it has been held, normally in civil disputes, that it should usually be based on the balance of probabilities, **the onus of proof is still upon the person asserting that the domicile has changed**.

8. FURTHER ENQUIRIES

There may be sufficient evidence on file for a conclusion to be drawn about a person's domicile. However, in the majority of cases it will be necessary to make further enquiries. The domicile questionnaire attached should be used when making further enquiries. An interview is probably the most effective way of establishing domicile. The domicile questionnaire can be a helpful guide to the questions that should be asked at an interview, although it may of course be modified to suit the circumstances of the individual concerned. An interview will enable doubtful points to be explored and unsatisfactory answers can be probed in more depth. The domicile questionnaire has important evidential value, and therefore it should be completed by the interviewing officer with care. It is important that the person is aware that the questions being asked, are to establish his domicile at a ***particular date and that the questionnaire is signed and dated.***

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 came to the United Kingdom before you were 16 years old, please answer questions 5 & 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 the date and place of your first marriage	
	(b) Please name your second wife and give the date and place of your second marriage	
	(c) Please name your third wife and give the 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 or purchased	
	(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 dependents) lived since you	

	first came 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]	(If appropriate) Why are you applying to bring your wife/children to the United Kingdom?	
[20]	(If appropriate) How long do you intend to keep your family in the United Kingdom?	
[21]	(a) What are your intentions regarding your future place of residence? Please explain why	
	(b) In which country, state or province do you intend to spend your retirement? Please explain why	
	(c) Where is it your intention to end your days and be buried? Please explain why	
	(d) Are there any circumstances in which your intentions might change or in which you might decide to live elsewhere?	
[22]	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

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 on?	
[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	

	dependents) usually live?	
[7]	(a) (If appropriate) 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 intentions have changed or would you have decided to live elsewhere?	

DECLARATION

I confirm that the answers I have given have been put to me/repeated to me in English/ by an official interpreter and the answers I have given are correct. I confirm that I have understood the questions and that the answers I have given are 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.....