



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

PROCEEDINGS

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(HANSARD)

Douglas, Tuesday, 1st November 2011

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BUSINESS TRANSACTED

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Order of the Day

1. Parental responsibility for children – A Bill to make provision –
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The Council adjourned at 10.59 a.m.

Present:

The President of the Council (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Attorney General (Mr S M Harding),
Mr R P Braidwood, Mr D M W Butt, Mr D A Callister,
Mr E A Crowe, Mr A F Downie OBE, Mr E G Lowey and Mr J R Turner,
with Mr J King, Clerk of the Council.

Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members. The Lord Bishop will lead us in prayers.

The Lord Bishop: Well, there isn't a book, so we will rely on the Holy Spirit!

PRAYERS

The Lord Bishop

Order of the Day

LEAVE TO INTRODUCE

Parental responsibility for children

A Bill to make further provision

Leave to introduce granted

1. Mr Turner to move:

5 *That leave be given to introduce a Bill to make further provision about parental responsibility for children; and for connected purposes.*

The President: Hon. Members, we have but one Item of business before us this morning and that is a motion for leave to introduce a Bill.

10 I call on the Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I apologise for not being able to do this last week; however, the cancellation of the sailings left me somewhat stranded on the other side of the water, so I thank you for moving this to today's Order Paper.

15 I would like to ask Council this morning for leave to introduce a short Bill to right what I feel is a gross prejudice against unmarried fathers of children.

20 Over the past few years here in Council we have seen a raft of legislation designed to give people equal rights in society, from transgender, disability, same-sex couples, and also ensuring that women are given equal status to men. However, recently I have discovered that legislation exists that actually excludes men from having responsibility for their children unless they fit certain criteria.

25 When a man and woman who are married give birth to a child, both have what is called parental responsibility for the child. So what is parental responsibility? Hon. Members, I have passed out a copy of a handout from the UK government's website, the *directgov* website, which outlines what parental responsibility is. Although the law does not define it in detail, either there or here, there is a list which includes things that most of us would consider as obvious, being responsible for children, including providing a home, having contact and living with the child, discipline, schooling, healthcare and so forth – the things that parents do every day. So who has parental responsibility? As it says on the handout – and it is the same in the Isle of Man – the

30 mother automatically has parental responsibility for the child from birth and, as I stated, if a man and woman are married, then the father does, too.

Most of us do not need the Government to tell us how to be responsible for our children. It is my belief that state intervention in family life should only be there as a last resort and when it is most needed. It is important that the proposals I will be putting in the Bill, if I get leave to
35 introduce, do not get mixed up with the deeper issues concerning childcare and the ongoing welfare of children in need, and I must stress this. This is only a proposal to give unmarried parents the responsibility they have for their children.

So, the law as it exists in the Isle of Man: a married couple have a child – both parents have responsibility. If the same married couple divorce, the responsibility continues in force. A couple
40 who choose not to marry – which in a modern society may be for a variety of reasons – but start a family, only the mother has responsibility. The father has to actually draw up a formal agreement – forms are available from the courts – and lodge the agreement with the court – judicial intervention already.

The matters can become contentious. Should the couple split – sadly, this happens many times in life – there are cases where the parental responsibility can be deliberately withheld. Under the Act that we have, the father has to take action via the courts, by an application to the High Bailiff for a parental responsibility order. That has, obviously, associated costs, but not least causes upset and stress, and immediately puts the family into a courtroom environment.

I feel that this is quite a degrading and prejudicial way, simply because the man, the father, is
50 unmarried.

The proposed Bill will not have any provisions to do with residency or maintenance of a child, as this is a separate issue, and the provisions are there to provide for those circumstances.

I must point out to Hon. Members that I already have parental responsibility for my child, so this in no way affects me personally. However, it is from going through the process myself that I
55 have found out about the imbalance that is there. Where it became apparent to me was when it came for my four-year-old daughter to go to school, I found out that, in the eyes of the law, I actually had no... The school could not actually discuss my child with me, even though I was the father who had brought up the child for four years. Again, also, when it comes to consenting to medical treatment, I feel a lot of people will not understand that this is the case. I think, clearly, it
60 is an outdated provision which is not there in England, Wales, Scotland and Northern Ireland, and I will briefly come to the proposals of what the Bill will do in a little while.

There are cases through my research – certainly not in my own case, but through research – where once matters become contentious, the simple issue of parental responsibility has been withheld and used as levers in other matters. I believe this is wrong. This is not what parental
65 responsibility is and it should not be confused with those other matters, but there are numerous cases on the Island, through my research, where it has been withheld and used as a tool and a lever. The child should not be used in that matter.

So the proposals in the Bill, sadly, will not stop families falling apart – this is the reality of life – but it will remove one area of contention and that is to bring our law into line with all the parts
70 of the United Kingdom who, basically, if the parents of a child register the birth of the child, and the mother and father are named on the birth certificate, that the parental responsibility is automatic to both parents. This will bring us into line and will make the system fair and just, I believe.

I have not particularly canvassed for a seconder. I hope that I have made a case here this morning. I have had informal conversations with Members about what the proposals are. I hope
75 somebody will second the leave to introduce the Bill.

I have spoken briefly with the Chief Executive of Social Care and outlined what these intentions are. I have said to him that should I get leave to introduce, then once the draft Bill is produced, I will come and see them. On the surface he did not raise any concerns once I explained
80 what it was about.

I will formally move my leave to introduce and hope somebody will second.
Thank you, Madam President.

The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.
I will second and reserve my remarks and see how the debate develops.

The President: Hon. Member, Mr Braidwood.

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Mr Braidwood: Thank you, Madam President.

I have no problem with the provisions of the Bill. I would like to seek clarification from the hon. mover as to whether the Bill for which he is seeking leave to introduce has any financial consequences for Government income or spending. Section 10 of the Treasury Act 1985 requires prior concurrence of the Treasury for leave to introduce a Bill that seeks to authorise expenditure of public moneys or reduce the income of Government.

Madam President, while on first sight the subject of the Bill for which leave to introduce is sought does not look as if it will lead to increased expenditure or reduced income, I would be grateful for the Hon. Member's confirmation that there are no such implications and, as such, the motion does not fall within section 10 of the Treasury Act 1985. Were it to be the case that it did, I would emphasise that Treasury has previously taken the view that it would be inappropriate to stifle the democratic process by refusing to give leave to introduce, but in giving such leave it has reserved the right to vote against the Bill on financial grounds if it feels it necessary to do so.

The President: Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I am led to believe not only the experiences that the Hon. Member has indicated but, for some time now, there are a number of people who have fallen foul because of the way the legislation is drafted, both in the Isle of Man and I think in the UK. There are a few areas here. One case that springs to mind involves a young man called Stephen Holmes, where the courts in the UK determined that he could not have access to his children for whatever reason. That I understand is still rumbling on.

I would just like to ask the Hon. Member if he has actually had any dialogue with the Families Division in the courts. If he has not, it perhaps might be beneficial to go and see if they have any frustrations with the present legislation, or indeed there are other matters involving parental rights and a single father that could also be dealt with.

My understanding is, in Scotland, as long as the father... even if they are not married, if the father's name is on the birth certificate, he is automatically granted some form of right over the child. I think that is the exception. I think in the UK, the law is slightly different.

I think the Hon. Member is quite right. In this day and age where, sadly, there are a considerable number of people who develop a relationship, they do not necessarily get married, things, when people do part company, tend to get messy. At the present time, it seems to me that there is an opportunity here to visit this and actually come up with some form of legislation where there is fairness.

Quite often when people break up there is some bitterness between the two parties and, as the hon. mover has said, sometimes an opportunity is taken to use that child, or the custody of the child, or access to the child as some sort of a lever, and I do not personally think that that is right. So I will be giving my support today for leave to introduce.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I am certainly happy to support a Private Member's Bill coming forward in the Council. I would like to ask the Member intending to move this if, looking at the parental rights and responsibilities from the UK government website that he has provided for us, he is considering that he will include in the Bill the element which applies in Scotland – that is to say, if I can quote it:

'A father has parental responsibility if he is married to the mother when the child is conceived, or at any time after that date. An unmarried father has parental responsibility if he is named on the child's birth certificate... Alternatively, unmarried fathers can also be named following a re-registration of the birth.'

– whether he intends to include that in the Bill that he brings forward, which to me makes eminent common sense.

The business of break-ups with families in this situation, as Mr Downie has said, is very frequently a bitter event that happens afterwards and it does not matter whether they are a married couple or an unmarried couple – it still can go severely wrong.

As far as the move to bring this forward is concerned, I am quite happy to support it. I would support it with much greater enthusiasm if it was for the election of this Council, but nevertheless I will support it, Madam President.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.

155 I, too, am happy to support the motion. I think it is a very complex area and you only have to look at the document that has been circulated to see the nuances between England, Wales, Scotland and Northern Ireland, to realise how complicated it is, even though the principle is relatively simple. Therefore, I hope that the mover will do a very great deal of research, particularly into why they have taken the line they have in Scotland.

160 Every vicar knows the experience of having a conversation with a young mother who comes into his study and explains that she wants her child 'done', and the vicar asks for her name and for the father's name, and then she replies, 'Oh, but the child doesn't have a father.' Well, unfortunately, all children do have fathers, whether they are acknowledged or not, and it reveals a serious problem that we have in society, which is ignoring that sex is about relationships and responsibilities.

165 The principle here does seem to be very important, that what the mover is proposing is a matter which concerns the importance of rights and responsibilities in parenthood, and I think there is nothing that we could do which is more important than emphasising both those aspects of parenthood. Therefore, I am very happy to support the principle of the Bill.

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The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

175 I think it is important to reiterate, as the mover did, that this Bill is not about having access to children or custody of children or care of children. It is purely about responsibility to be the parent of the child and I hope he can confirm that it is what it is.

Again, as he said, it does create one less area of conflict when families do break up and I think that is important, because in the end the child is the person who suffers when conflict goes further than it should do, because of the lack of a process like this.

180 I will just ask a question about the intention of the Bill. Is the intention to go the Scottish way that, therefore, in the Isle of Man, if the father is on the birth certificate, he has the rights automatically? If that is the case, that seems a very simple solution to this, but if so, is there any way in which the Bill will encompass the circumstance where the mother refuses to allow the father to have his name on the birth certificate? Is there any way in the Bill where that can be got around, because if that is the sole criterion for having parental responsibility, if the mother denies access to registering the child in the father's name, through father's name, that would stymie the intention of this Bill. So I would like some clarification on that, please.

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The President: The Hon. Member, Mr Lowey.

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Mr Lowey: I support the mover's right to try and resolve a problem as perceived and explained to us this morning on social legislation.

195 I am always a little suspicious that, by resolving this specific point that he raises about responsibility for the father to be acknowledged, that that will resolve the problems. I suspect... my evidence, really, is they do not just come into vicars' studies, they come into my front room and sit and talk. My last experience was one that cost a family a large sum of money, because the authorities insisted that the father be named, although the mother did not want him named. They went to court, the Family Court, and because the father acted responsibly and did not turn up, his rights were reinforced by the court and delayed for another sitting which cost another £1,000 to the lady involved and there was a grant made by the court to the lady, all on the say so of the authorities. Then they took no action at all to implement the court, but it cost the lady £2,000 to comply with the law. The irresponsible father, the man that was at the heart of it, did not get it.

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The point I am making really is – and I know the mover has said this Bill is not regarding that, I appreciate that, but I illustrate the point, because I do believe that if you resolve this, you are just creating problems further down the road, because people will still act irresponsibly. The illustration that they 'use' children, regrettably, is still rife in society and I think it will still be rife even if we correct this, but I do agree that, when people want to act responsibly, we should encourage that at all levels.

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The way it has been presented this morning, I would have no difficulty with supporting, but I would just hoist a storm cone and say I do not think it will resolve all the problems that have been illustrated.

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The President: Mover to reply, please.

215 **Mr Crowe:** Madam President –

The President: Oh, I am sorry, Mr Crowe.

Mr Crowe: I tried to catch your eye, Madam President.

220 Yes, I think most of what has been said is fine and I am happy to support the move to introduce.

The query I would just have is what consultation will be embarked upon, because with all legislation now there is a statutory consultation process. Will it fall into that normal process of consultation?

225 Thank you, Madam President.

The President: Now, Mr Turner.

Mr Turner: Thank you.

230 If I can thank all Members for their support this morning.

First of all, with Mr Crowe, I take the point of consultation and obviously it is important we get views. I have already stated that, if I get leave this morning, I will be going to the Department of Social Care. I very much want them on board with this, if we are to take it forward.

235 Consultation is very interesting because, let us not forget here, this is not just about people who split up; there are unmarried couples together, who are very happy, where the father still has not got the parental responsibility, unless he goes through that process. So this is not just about families who are falling apart. I think we have got to be very careful we do not say, ‘Well, we are going to have to go through a load of consultation and we are going to have problems down the road’, because what we are basically saying, then, is that all unmarried fathers are going to be treated differently and are potentially the problem, whereas married fathers are perfectly capable of all the bad things in society. So I think it is important we do not label unmarried fathers as a problem here.

240 I take the point from Mr Braidwood, I do apologise for not going to see Treasury, but from my research, there will be minimal, if any, cost associated with this, because it is merely a status granted on registering the birth. But I think it would be a very sad state, even if it did cost money, that unmarried fathers suffer the veto of Treasury, and I hope that will not happen. I hope, as I said, there will be little or no cost associated with this legislation.

250 I think this is about fair treatment. Mr Lowey spoke about problems that families have, conflict: again, there is nothing to stop that conflict happening when people are married. The fact is, because a man has not put the ring on the finger means he has not got that status, and this is all that it is about. You are absolutely right, conflict will always be there. It is a sad circumstance of life. This will not stop conflict in the future; it is about responsibility, not rights.

255 As my hon. colleague, Mr Butt, said, the whole details of access, where a child lives in the event of a family breaking apart, are for another day, for another process, and inevitably are a contentious subject but, regardless of where children reside or who cares for them, there are the important issues of schooling, medical treatment, and without parental responsibility, you cannot consent to any of that. I do not feel that the unmarried father should be any worse off than the married father. As I said before, this also affects people who are in happy relationships, but the father still does not have that responsibility.

260 The Lord Bishop brings up a point of mothers going to ask for the child to be baptised. It is a case, of course, where the child is born and the father is unknown or not around. Again, this will not prevent that from happening. That will continue and every case, of course, is different. Every family scenario is different. What this does is, this at least bridges that one little gap and brings things into line.

265 Mr Callister asked quite which parts of the UK this would follow. Scotland is the area I have been studying closely. It is quite a simple situation with regard to if you are married and the child is conceived, or after that date you have got parental responsibility and if you are named on the birth certificate, that was the direction I intended to go. It will certainly not solve the other issues that are put forward.

270 Mr Downie is right. There are a lot of cases where bitterness is brought in. I was fortunate in my own situation that access to the child was never a problem. We work it between ourselves as to who has our daughter on which days, depending on what is happening – could be things on at

school – but, sadly, that is not the case in a lot of instances where, inevitably, it ends up in court and that, I am afraid, is something that this Bill will not prevent.

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So I hope I have answered all the points that were brought forward.

I look forward to Council's support and I will undertake to carry out that consultation and also bring Treasury into the loop going forward.

I beg to move, Madam President.

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The President: The motion is as printed on the Order Paper.

Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes our business for this morning, Hon. Members. We will adjourn till next Tuesday, if there is any business – we will see whether there is.

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The Council adjourned at 10.59 a.m.