

Children and Young Persons (Amendment) Bill 2012
First Reading approved

5. Mr Turner to move:

That the Children and Young Persons (Amendment) Bill 2012 be now read a first time.

The President: We move to Item 5, the Children and Young Persons (Amendment) Bill 2012. Mr Turner to move, please.

Mr Turner: Thank you, Madam President.

As Hon. Members will know, this is a Private Member's Bill, which I was grateful that Members of Council gave leave to introduce this. That was in November last year when leave was sought and over the past few months, I have been consulting with the key Government Departments that deal with this area, namely the Department of Social Care and the Courts' Family Welfare Service.

What this Bill seeks to do is to bring the Isle of Man into line with the provisions that are in neighbouring jurisdictions in the UK and particularly in Scotland and Northern Ireland, where the provisions are all broadly the same, they are just worded slightly differently and that is the parental responsibility of unmarried fathers.

Over the past few years in Council, we have seen a raft of legislation designed to give people equal rights in society and as I outlined in my case for leave to introduce, we have dealt with a whole host of subjects from disability, same-sex couples, ensuring that women are given equal status to men in employment and also in social legislation.

In the Isle of Man, there is actually a provision that excludes men from having responsibilities for their children, unless they fit certain criteria. This is a hangover really from way back, but of course, in society more and more people do choose not to marry for a variety of reasons, but choose to start a family. This is the same in other jurisdictions.

Parental responsibility, and I did give details as to what that enables, but it is the basic responsibility a parent has for their child and it is to do with matters such as healthcare, education and over the discipline and upbringing of the child.

A lot of those things are obvious. If a man and woman have a child and they are married, the marital status determines that both automatically hold the parental responsibility. What the Bill does is it alters the provisions, so that when a man and a woman have a child and go to the registry and register the birth and on the birth certificate the father and the mother are named, that is the process that will determine that both those individuals hold the parental responsibility for the child. Currently, even if that is the case, the man, if not married, does not have any responsibility for that child. In UK, in Scotland, Northern Ireland and Wales and also England, that provision has been changed and what this does is bring us into the same procedure.

There was some debate regarding the break-up of families and, of course, we have to look at it two ways, that the break-up of families can happen whether the couple are married or unmarried, but they still both may have children, so why should the break-up of an unmarried couple be treated any differently from the break-up of a married couple, when it comes to caring for the child? There is not really a link, in my view, they are both the parents and they both should take responsibility for the child.

I have to stress that is actually about *responsibilities* of the parents, not the *rights* of the parents. Members may be aware that, in the UK at the moment they are looking to change the law to give the child rights to have access to both their parents, as opposed to the other way around.

I did consult with, as I said, the Department of Education and Children, the Department of Social Care and the courts, and at a very early stage, on reading the *Hansard* from the first debate, two of those bodies came to me and said, 'We've been reading the *Hansard* and we're very interested in these provisions and support them.'

Indeed, the Department of Education recently, with this Bill coming forward today for First Reading, has sent me a copy of a submission they made to the Chief Secretary's Office. I only managed to get this this morning, so forgive me for not circulating it. If Members are happy – it is only a couple of lines – I will just read what that response was. They sent this to the Chief Secretary's Office, saying:

'As far as the DEC is concerned, we would welcome this Bill. We spend a lot of officer time dealing with issues over parental responsibility. This would reduce the number of queries we receive on a weekly basis from both schools and parents. We would support the Bill.'

Similarly, the Family Court Welfare Officer, on behalf of the Court Welfare Service, also said they are happy with the contents and are content for the Bill to go forward. So there is support from the people who are dealing with these problems day to day in seeing that the bigger issues that we all read about – the contentious issues of custody, of where a child resides – are all completely separate matters that there is a process for dealing with.

I do, as I have said, have some experience in this, in that I am a father of a child and I do not any longer live with the mother. My child, for example, resides with me for approximately half the week. Without the parental responsibility, I could not even consent to an anaesthetic, if the child is in my care. It is clearly a nonsensical situation to deal with and this is the sort of thing that people do not realise. When they go to register the birth on the birth certificate, they do not realise that actually, unless they were married, they do not have those provisions. So a number of years down the line, when relationships end, it is not actually known by a lot of people.

So that is the principle behind this Bill. This takes nothing away from the fact that there may be cases where there are absent fathers or fathers who at that stage are unknown. The key in this is that the consenting parents register the birth at the General Registry in accordance with the Registry's procedures and that determines the parental responsibility.

If I just briefly go through the layout of the Bill, the substantive change is in clause 3(4) and it essentially means that the father of a non-marital child has parental responsibility for the child if he is registered as the child's father under section 12(1) of the Civil Registration Act 1984, which the registration of father of non-marital child.

After the new section 3(2A) of the Children and Young Persons Act 2001 comes into operation if it is passed, for ease of reference 'marital child' has the meaning given in section 5 of the 2001 Act.

The amendments in clause 3(2) and (3) and clause 4 are minor amendments to tidy up the existing wording and what we are seeing now is a change where there is also... when they have amendment Acts, there is also a clause which removes that Act once the amendment has taken place, but the provisions continue in operation. I do not know whether I have quite explained that clearly, but it seems to be a new way of keeping the statute books tidy.

I will move the First Reading and look forward to Members comments and hope I can answer any questions. So with that, Madam President, I beg to move.

Mr Lowey: I beg to second and reserve my remarks.

The President: Mr Downie.

Mr Downie: Madam President, we are talking about a very sensitive issue here and as far as I am concerned, during my time as a Member of the House of Keys I had to deal with similar circumstances when there has been a breakdown in the relationship, often acrimonious, these things tend to be. Then we found that the mother has denied access to the common-law father and so on. This has led to disputes, which have finished up in the courts and, could I say again, all funded by Legal Aid. So, there is obviously a problem there.

I think when you look at the bigger picture here, the UK and Scotland looked at this situation some time ago and realised that they had to introduce a much more level playing field and for one party to deny access to the other, I think, has been completely wrong. I know the mover's personal circumstances, I know that this is a matter that has caused him a significant amount of problem, but that is by the by. He has had the courage of his convictions to move the Bill, because he knows first hand the problems that people have to put up with. I am a great advocate of marriage and stable relationships, but sadly not all people are like that, but at the end of the day, I do not think the present situation is fair on the children either, because the children finish up in a situation where they are torn between the two parents and as I say, if things have been acrimonious during the split, things go downhill from there.

I support the Bill and I think that, if nothing else, it will set out a fairer system and one where people will be able to understand. Lots of fathers want to step up to the plate and be responsible for their children and look after the child at times and if they have time with the father and something happens and perhaps the mother is away on holiday, they need to be able to make decisions about what is going on with the child. At the present time, that is being denied to them.

Finally, I would like to say that, occasionally, as I have experienced, you do get a bad mother and you get a situation where there has been a fall out, the mother turns to drink, the child is left with the mother and then things deteriorate even further. Then the authorities have to step in and really, if you actually looked at the letter of the law, the father really has no rights in this matter and there are often times when the father and the father's parents are probably the best people to bring that child up. As the law stands at the moment, the responsibility is left far too much with the mother, I think.

As the old saying goes – and we have been into old sayings today – it takes two to make a tango, (*Laughter*) so I think there has to be some equality here (*Interjection by Mr Braidwood*) and I think the Bill is worth supporting.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I think this amendment, which I support, is a product of the way that we have legislated about committed and intentionally lifelong relationships. The problem is that we have, over the last 20 or 30 years, in most of the countries, for instance, in Western Europe and the States, sought to normalise – that is to make the norm, not normalise in the wrong sense of the term, but to make the norm – things which we have always understood to be exceptions.

There is a lot of truth in another little expression – exceptions prove the rule – in that the fact that exceptions are exceptions proves the importance, proves the strength of the rule to which they are exceptions. The result of that is that exceptional cases produce poor laws, and the more that we legislate based on, ‘Well, we must legislate on this to cater for this exception,’ then we get ourselves deeper and deeper into these problems, and we have gone so far along this over the last 20 or 30 years that amendments like this have become necessary, and they are necessary.

I will support the reading of the amendment; however, I just want to correct one little thing that the proposer said. He was talking about the length of relationships and he said, ‘*when* relationships end’. Please, that is another exception. It is *if* relationships end, not *when*.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

The First Reading has my support. I would just like to comment that I think this sensitive subject has been well articulated by my hon. colleague, Mr Turner, and, as I say, it has my support.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I will support this Bill as well, and I know it has the support of social workers and professionals in the field and the people that the mover mentioned.

Most relationships, whether they are married or not, do end in some form of acrimony. The acrimony can be serious or mild, but there usually is acrimony. Quite often the children of that relationship are used as the tools to further the argument of either side of the partners who have broken up, and unfortunately that is the case. I have come across many experiences of it in my time of how children are being used.

I think it is important to state that this is not about access to children, and I think Mr Downie mentioned that. It is not about access at all. It is about the responsibility of both parents to actually have a say in how the child is treated medically or in schooling or whatever, and it does seem wrong that a father, who may be caring for the child quite regularly and may have lots of contact by permission and with consent by the courts, cannot make key decisions about the child’s life and upbringing. This brings us in line with most of the UK in the way they deal with this and I think it is long overdue. I think that anything that makes the acrimony between partners easier is worth progressing because this is one of the irritants that often occurs between partners and if this was removed it would make matters run more smoothly for lots of people.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: Can I just say that I support the Bill because it accepts parents may not be joined in a legal union, but if they register a child, mother and father on the birth certificate, then I do think that the father has rights, but he also has responsibilities.

My biggest objection is really... I use a case, and it is very close to home, and I am not going to say how or why, but this is where a child was brought into the world and the father did not accept responsibility. When it was registered, the father’s name was not put on the certificate. But then the father, later on, opts in and opts out when it suits. The father is usually supported by authority – in this particular case, the DHSS, which added an almighty... and this particular mother had to go to court – not on Legal Aid, I may add, because she was working. The father was unemployed: he got Legal Aid, his rights were presented. He did not turn up in court time after time after time – adjourned, adjourned, adjourned – adding cost to the particular one.

My point being, of course, that is an odd case and should not really come back down to the principles, but if a parent has a legal sound birth certificate, is on that birth certificate, is taking his share, I think there is nothing wrong at all, as the mover of the Bill says, in taking up those responsibilities which he has freely entered into, freely done.

I tend to agree with the Bishop on this one: the more exceptions you make... and it does... and I have illustrated a case in point where the other side got the advantage and authority seems to be penalising the person who has accepted responsibility. What we must not do... and I am glad the former Champion... I hope he is still the Champion of Children. When children get used as weapons, that cannot be right, should not be right. I

believe the mover is quite clear. He is wanting a legal requirement for that person to continue the care, love and the well-being of their son or daughter, and I think that must be supported.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, I think we are following a well-trodden path here. England and Wales put this legislation into effect on 1st December 2003, which followed Northern Ireland on 15th April 2002 and Scotland was 4th May 2006, so we are not reinventing the wheel, we are going down a path where it concerns a registration of a birth by both parents and that is the whole key to this, both parents have rights then and responsibilities, but I would emphasise it is the responsibilities.

I do not think a father with the rights – but more importantly it is the responsibility to provide, to protect, to encourage the children to have that responsibility – they cannot just dip in and dip out of a relationship and be there at a nice time, but they have to financially help as well, so I think it is the responsibilities I would concentrate as the important part of this.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

Very briefly, when I was growing up in the 1940s and 1950s, people going and living together was practically unheard of. We have heard some proverbs this morning: there was an expression about people living together in those days that I cannot – (*Laughter and interjections*) The trouble is, of course, the breakdown of marriage as an institution and it is one of the great tragedies of the past century and this century as well. Also family life is quite different now from what it used to be when I was growing up and I am sure some Members here... And human relationships are different as well and not for the better, like so many things in life now.

I think if this does *something* to help *some* people, it is *definitely* worth supporting, Madam President.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President. I will make it a full house. (**The President:** Indeed.) Following on from what Mr Callister has said, I think we have to look at this legislation, mainly for the benefit of the children and the right of the father. This is again for non-marital relationships where the father is registered and I think it is essential, it should be supported and I do honestly believe that it is the children and it is the benefit of the children which should be paramount.

The President: Mover to reply, please.

Mr Turner: Thank you, Madam President, and I am certainly heartened by the comments of colleagues this morning.

Some very good points have come up and I think it is important that we do focus on exactly what this amendment is there to do. It is not retrospective and I know when there was a bit of publicity surrounding this, I did have contact from people who had ongoing cases. Sadly, it cannot be retrospective. It will be from once it is fully through the system going forward. However, I do believe it will make great progress.

I want to pick up a couple of the points because Mr Lowey mentioned the issue of fathers and indeed, in some cases mothers, opting in and out of responsibility. That unfortunately is a sad problem which happens the world over, but of course that could equally be the case with a married man who is the father opting in and out of responsibility. The difference is that the married man automatically has this responsibility. So it is not going to address the irresponsible in society and be some magic wand to deal with those situations – they, sadly, will continue.

The Lord Bishop said I used a phrase ‘*when* relationships’. I am of course talking about historical ‘*when* a relationship breaks down, this is what happens.’ I am by no means assuming. (*Interjection*) Yes, I think I will move on. (*Laughter*)

I think they are all very fair points and I think what this will do is this will actually remove a source of contention in a process. There will always, I think, be the ongoing arguments of residency, of how much of the week a child will spend with the mother or the father, but those are separate issues which are covered under separate provisions. What we have seen, through my research, is the first thing that happens is the barrier goes up because the father has not got parental responsibility. There is a whole legal process to get that, and it would be very rare for a court to refuse that, unless there were some resounding circumstances. So it is a part of the process that really does not need to happen now, it does not need to be contentious, and as has been said by other Members, the rest of the United Kingdom has resolved this. Again, I reiterate, the couple will register the

birth, and that, in effect, is the consent of both parents to say, 'Yes, we are taking responsibility for that child.' It sometimes gets mixed up with 'it is the parents' rights' and all the rest of it. It is the right of the child to have access to both their parents, but it is also, on a human element, the parent, if they want to be involved fully, should be, and again it should be also frowned upon that a child is not something you can opt in and out of. The responsibility is there until they get to an age where they make their own way in the world, and even then parents, of course, still have that responsibility. Even my grandmother asks me occasionally do I need a bit of ironing doing, which I am most grateful for!

Mr Lowey: Give me her name, will you? *(Laughter)*

Mr Turner: So it is an issue. It a sad state of modern life, unfortunately, that we do need these provisions, but I think it is needed and I thank Members for their support.

So, with that, I beg to move the First Reading.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of our public business. Council will adjourn from its public sitting to the midsummer sitting of Tynwald Court on 5th July and we will now sit in private.