

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

5. Mr Turner to move:

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

The President: We move now to Item 5, the Children and Young Persons (Amendment) Bill 2012, and I call again on Mr Turner.

Mr Turner: Thank you, Madam President.

As Hon. Members will be aware, this is a Private Member's Bill, for which I was very grateful that Hon. Members granted leave to introduce, and we had the First Reading on 26th June. Like earlier, when Mr Braidwood gave a résumé because we have had the recess period, I will give a résumé of what the Bill is intended to do, and that is to amend the Children and Young Persons Act. It deals with the matter of parental responsibility and basically brings the Isle of Man into line with provisions in our neighbouring jurisdictions in the United Kingdom, particularly... They do differ slightly in different parts of the United Kingdom, but these provisions, which I aim to bring in through this amendment Bill, are very similar to those provisions in Scotland and Northern Ireland. There is just a difference in wording in the different jurisdictions.

Basically, what this does is it means that if two parents of a child, a father and mother, go to the Registry and register the birth of the child, the mother and father's names will be entered onto the birth certificate. It basically means that the father and the mother will hold parental responsibility for that child.

It is widely unknown that by doing that, at the moment, the case is that the father does not hold any responsibility for the child whatsoever unless the couple are married. The alternative is the couple could fill out a separate form granting the parental responsibility. So there is a clear hole in the law here that, if a married couple cease to become married, the father still retains parental responsibility; yet if a couple who are not married but live together for the rest of their lives as a couple and the father and mother of the child, the father still does not have parental responsibility.

So it is important that Hon. Members understand that this is not anything to do with maintenance, it is nothing to do with residency or any of those issues; this merely addresses an anomaly and brings us into line with the United Kingdom. I think it is a sensible provision which brings a bit of equality in.

The consultation that was carried out, as I said at previous Readings... The Department of Education is fully supportive of this provision, and indeed without any contact from me, I had representation from the court welfare people to say, 'We are very interested in this provision; it is long overdue.' So again, the court welfare people agree with this provision. They think it is sensible. The Social Care Department also support this amendment and continue to do so.

So I have set out the principles of what this short Bill does.

The short title is the first clause.

The commencement is the second clause, which basically gives the Department of Social Care the power to bring in the Bill on a day they shall appoint. They also can make transitional provisions, as necessary.

It has a third clause, which is about expiry, and this is a new method of tidying up the statute books, where once the amendment is done, the effect continues in operation but the Bill itself expires. It is the new way of doing it.

The fourth clause is the actual amendment itself to the parent Act.

Then there is a fifth clause, which has some consequential amendments to a couple of other pieces of legislation – namely the Civil Evidence Act and the Civil Registration Act – and clarifies.

So with that, Madam President, I hope that has explained the background to the Bill. I look forward to Members' comments, and I beg to move that the Bill be read a second time.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: Yes. I have pleasure in seconding. The more I have been reading this Bill over – it is a short Bill – and listening to the arguments, especially today, I can see no logical argument against supporting it, and it may very well, coming back to the last Bill, have consequences, unintentional, but they are all positive. I believe that this is right for the child, right for the parents, and it adds responsibility. I would urge the Council to support it.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Following on from the comments of the Hon. Member of Council, Mr Lowey, I am supportive as well. I do believe that a child should have two parents, and as the mover of the Bill has said, if a married couple divorce, the father still has parental responsibility and there should be no difference. The child is no different if people are married or not married. It is the welfare of the child, and I do honestly believe that the father has parental responsibility for a child, if he so wishes, and I do believe that every father should have responsibility for his own offspring.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I would just like to speak in support of the Bill that is before us. How this has occurred, I am not sure. I do not think our legislation was ever intended to take rights away from a father, but this goes a long way to redress the situation, and I think, out of fairness, neither parent should be disadvantaged as far as the child goes. I think this amendment to the Children and Young Persons Act will actually produce the right result and should be supported.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I too will support this amending Bill. I think there is plenty of evidence in the Social Care Department of the conflicts between parents over the upbringing of the children, about access and other responsibilities, exacerbated by the fact that sometimes the parent, or the father usually, has not any say in the education or the medication or whatever of the child. It just adds to the problems that they did have.

I do know the Court Welfare Division also feel this has been a problem as well. This takes away one of the elements which has caused conflicts between parents, and the more that can be done the better, and this will assist in that.

The President: Mr Turner to reply.

Mr Crowe: Could I make a comment, Madam President?

The President: Sorry, Mr Crowe.

Mr Crowe: I am in support of this, but can I just ask for a slight bit of clarification? If a married couple, they both have responsibility. If the couple are not married and they have children, in future, if they both register the birth, they will both have parental responsibility. If, however, the mother registers the birth on her own, do we get into the situation in the UK where the father would need a parental responsibility agreement with the mother or a parental responsibility order made by a court? Have we gone far enough? Is there a gap if the mother registers the birth on her own and the father wishes to be registered?

I think there is power in the UK, Scotland and Northern Ireland to reregister the birth with the father's name, and that would then give the right in this Bill. So I am just wondering, have all the various options been covered?

That was the only point I would make.

The President: Mr Turner.

Mr Turner: Thank you, Madam President.

I will pick up Mr Crowe's point first, and he is absolutely right, in that the Bill does not go that far. The thinking was that where, certainly in discussions, there have been problems, is when you have absent fathers who do not take part in their responsibility. It was felt that maybe then they should be subject to going through the procedure of either having to apply to the court or through agreement, because there will be cases where a mother has a child, is caring for that child, the father is completely absent, not paying his way etc, so if we were to go too far with this, we would end up granting all sorts of rights to someone who is not playing an active role in the child's life. The whole idea of this is responsibility for the child, not rights, and that is where I think the law, this way, is a step closer to where we want to be, in terms of where the law needs to go.

I think anything further than that, it would be right for the Department to look at a wholesale review on how the maintenance structure works, the access, the residency, and that is a completely different issue, which should rightfully be dealt with through legislation brought through by the Department. What this does is this brings us more into line with the fact that when you register as a couple – which is happening more than the cases that the

Hon. Mr Crowe was mentioning – couples are registering and then finding that the father does not have the parental responsibility.

He is absolutely right, this does not go that far, and it was never intended to do. It was my view, as the person bringing in this Bill, that really those sort of changes are major changes and that should really be driven by legislation from the Department. This, I feel, will aid a number of Departments and solve a number of issues that currently exist quite frequently, but the issues that the Hon. Member, Mr Crowe, is talking about I think are usually deep rooted in other problems that need to go through the other procedure.

I thank Mr Butt for his support. He is absolutely right, conflicts can happen. Parental responsibility is about important decisions regarding the child. Medication was one he mentioned, and it may be that the child requires important medical intervention – it is right that both parents have a say in that. Education is another important ... and I suppose in other areas it could involve religion. So it is important that both parents have involvement in that. It does not actually take away anything from access. It may be that a mother is granted – or a father, indeed – access by a court to have full custody over the child, but with parental responsibility, the father or the mother, depending on who has not got the full custody, still would have involvement in the education and the health etc. So it is very important that these provisions are there.

As I said, it takes nothing away from access and it will not solve conflicts. There will always, sadly, be conflicts but this will go some way.

I thank Mr Downie as well for his support. The original Act came about from the days of when they wanted to change the wording from ‘illegitimate child’ to ‘non-marital child’. That was part of the driver from those days when there was an appalling (A Member: Stigma.) labelling of children as illegitimate, and it is right that that was changed many years ago.

As Mr Braidwood said, the welfare of the child is very important and both parents should have a say in those matters.

I beg to move the Second Reading of the Bill.

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

Children and Young Persons (Amendment) Bill 2012 **Clauses considered**

The President: Clauses. Perhaps we could take clauses 1, 2 and 3 together.

Mr Turner: Thank you, Madam President.

Clause 1 is the short title of the Bill, the Children and Young Persons (Amendment) Act 2012.

Clause 2 is the commencement. It gives the Department of Social Care the ability to bring into operation on days it may appoint and, under subsection (2), an order under subsection (1) may make the transitional and saving provisions as the Department considers necessary.

Clause 3 is the expiry clause, which basically means that the Act will expire to keep the statute books in good order, but the provisions in this will continue after the expiry.

I beg to move clauses 1, 2 and 3 stand part of the Bill.

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

The President: The motion is that clauses 1, 2 and 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 4 and 5.

Mr Turner: Thank you, Madam President.

The substantive change in clause 4 is the amendment of the Children and Young Persons Act 2001. It essentially means 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 (registration of the father of a non-marital child) after the new section 3(2A) of the Children and Young Persons Act 2001 comes into operation.

Clause 5 deals with the consequential amendments of the Civil Evidence Act 1973 and the Civil Registration Act 1984 – for ‘child who is not a marital’ wherever occurring, substituting ‘non-marital’.

I beg to move clauses 4 and 5 stand part of the Bill.

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

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you.

I have a couple of queries, really. I am not detracting from the Bill in any way. I wonder, could the mover give some information about advice he has received: (2B) basically says it cannot be retrospective, so anybody who is currently on the birth certificate in a non-marital situation will not suddenly gain parental responsibility. I wonder, was there any advice about that, whether the clause could have just said any person or any father *will* have parental responsibility; why that was not able to be included.

The second point, on which I am not sure if I am right here, is it mentions the father of a non-marital child. Could it be that it would be the mother who would have no right, or is she automatically given responsibility because of the fact that she is a mother? (**Mr Braidwood:** Automatically.) I think that is the case. Could he confirm that?

The President: Hon. Member, Mr Crowe.

Mr Crowe: Yes, my notes on this say a mother automatically has parental responsibility for a child from birth. (**Several Members:** Yes.) So, just to answer Mr Butt's query... But I think the question of retrospectivity, if that is a word, I think in the UK, it was solved by having a parental responsibility agreement, where the father and the mother enter into a formal agreement. So I think we have not gone that extra step that would be necessary for such a thing. So I think there is no retrospectivity in this, is there, hon. mover?

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you.

I just wondered if the non-retrospective element had something to do with Human Rights compatibility. I think that was the case, was it not?

The President: Mr Butt.

Mr Butt: Yes. Again, a similar query regarding the agreements that can be reached. I think we can have them here now. Can he confirm that? It is just often that, if they are in conflict, if the mother does not agree, they cannot actually have an agreement. I think that is how it operates here, which is why this legislation is so important.

The President: Mover to reply, please.

Mr Turner: Thank you, Madam President.

To answer the points, yes, there can be an agreement. It is a simple form, which you can obtain from the Registry. The mother's name is entered, the father's name is entered, the child's name and date of birth are entered, both parties sign and there is a witness. So that is in place at the moment and is part of the current Act, where they can enter into an agreement.

For fathers who may not be on the birth certificate, they can still enter. They could also go and re-register, of course. This gives the ability to go and re-register the child.

It is not retrospective. I think it will be something to do with Human Rights. I know the fact that it is not retrospective has been disappointing to some people who contacted me when I was doing my public consultation in this, but of course whilst it undoubtedly suits people in certain circumstances, making retrospective law really can be rather unsavoury and goes against the grain. Making things retrospective, unless it is genuine errors and things, I think you have got to be very careful when doing that, and of course retrospective could open an awful lot of issues that are now resolved.

So I think that was certainly the reason and the advice, and there could be a question, of course, as to whether it is compatible with people's Human Rights. So I think it is right that it is dealing with matters going forward.

With that, I beg to move.

The President: The motion is that clauses 4 and 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
That concludes our public deliberations, Hon. Members. The Council will adjourn to 30th October. We will now sit in private.