

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

4.2. Mr Crookall to move:

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

The Speaker: We turn now to the Children and Young Persons (Amendment) Bill and I call on the mover, Mr Crookall.

Mr Crookall: Thank you, Mr Speaker.

This is a Private Member's Bill introduced into the Legislative Council by the Member of Council, Mr Turner. It is the Children and Young Persons (Amendment) Bill 2012 and deals with the specific issue of parental responsibility. The Bill has completed its passage through the other place and received unanimous support. The Bill has been a year in the process to ensure a wide opportunity for input from the relevant professionals. The Hon. Member of Council carried out consultation with the key Government Departments and agencies involved in this area of legislation, namely the Department of Education and Children, the Department of Social Care and the family welfare officers at the courts. All have given their backing and support to this short but important Amendment Bill.

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

Over the past few years, we have seen a raft of legislation designed to give people equal rights in society. We have dealt with a whole host of subjects on disability, same-sex couples, ensuring that women are given equal status to men in employment and a raft of other social legislation.

In the Isle of Man there remains a provision that excludes men from having legal parental responsibility for their children, unless they fit certain criteria. This is a hangover from way back, but of course, in society more and more people choose not to marry for a variety of reasons, but do choose to start a family. This is the same in other jurisdictions. Parental responsibility is the basic responsibility a parent has for their child and it is to do with matters such as healthcare, education and other discipline and general upbringing and wellbeing of the child. If a man and woman have a child and they are married, the marital status determines that both automatically hold the parental responsibility and that the man does not cease to hold such status if the couple divorce. What this Bill does is it alters the provisions so that when an unmarried man and a woman have a child and go to the registry and register the birth, the father and the mother are named in that registration. It is a process that will determine that both these individuals hold the parental responsibility for the child. Currently, Mr Speaker, even if both parents are named on the registration birth certificate, the man, if not married, does not have any legal parental responsibility for that child and can have no say in the child's life.

The only current options for the unmarried man would be to enter into a parental responsibility agreement with the mother and lodge it within the courts, or if the mother refuses, the father could apply to the courts – usually the High Bailiff's Court – to have the Court grant parental responsibility. This can be costly, upsetting, confrontational and of course is completely avoided if the man was married. In the UK – Scotland, Northern Ireland and Wales and also England – that provision has been changed and what this does is bring the Isle of Man into a similar procedure.

There was some debate regarding the break-up of families, of course, we have to look at it in two ways. A break-up of families can happen whether the couples are married or unmarried, but they still both have the 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 the caring of a child? There is not really a link, in my view, that they are both the parents and they both should take responsibility for the child.

I have to stress that this is actually about responsibilities of the parents and 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 parents, as opposed to the other way round. The author of the Bill did consult with the Department of Education and Children, the Department of Social Care and the courts and at a very early stage. The Department of Education stated:

'As far as the DEC is concerned, we would welcome this Bill. We spend a lot of officer time dealing with these 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 this Bill.'

Similarly, the Family Court Welfare on behalf of the Court Welfare Service said they are happy with the contents and are content for the Bill to go forward. Bigger issues that we all read about, the contentious issues of custody, of where a child resides, are all completely separate matters, but there is an existing process for dealing

with that. The process is overdue an overhaul, but it is important that the issue before us is dealt with in isolation as a stand-alone issue.

The key in this is that the consenting parents register the birth at the General Registry in accordance with the Registry procedure and that determines the parental responsibility.

If I briefly go through the layout of the Bill, the substantive change is in clause 3(4) and essentially means that the father of a non-marital child has a 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 is the registration of a father of a 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' had been given the meaning 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, when we have an amendments Act and there is also provision, which removes the Amendment Act, once the amendment has taken place, but the provisions obviously continue in operation. It is designed to keep the statute books tidy.

Just to clarify again Mr Speaker, this is a Private Member's Bill and not brought forward by the DEC. Mr Speaker, I hope Members will support this Bill and I beg to move the Bill be read for a second time.

The Speaker: I call the Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker and I am happy to rise to second the mover of the Bill, to second the Bill for Second Reading.

I have gone into this in some depth, together with the hon. mover a week ago, where we called upon the explanation from the Member of the Legislative Council who put the legislation together. I am fairly satisfied with the explanations that were given; it was a very useful meeting.

I would say, for simplicity, this merely brings a common-law relationship vis-à-vis a couple who are not lawfully married, but are recognised under common law in every other respect in terms of property rights, assets etc. It brings them into parity with a matrimonial couple, in other words, a couple lawfully and legally married. So it really is to correct an anomaly in law, which I was quite surprised at being allowed to survive as long as it has, so it is a relatively simple Bill and I would ask Hon. Members to give it their support.

The Speaker: Mr Karran, Hon. Member for Onchan.

Mr Karran: I believe that the Bill is a vehicle to help to iron out a few of the injustices that have taken place and I have no problems with the Bill as it stands. What I do feel is maybe the mover would be advised to try and take some of the information that the Fathers for Justice, if other amendments come to this Bill later on, to understand the rationale behind it.

I find it absolutely incredible that there are an absolute barrage of inconsistencies as far as the status of fathers who are not in a position of being in wedlock, with their mothers. (*Laughter and interjections*) I feel that we have the situation with the likes of contact orders not being enforced, where they are part of any maintenance orders, they should be part of this Bill in my opinion.

We will be looking at the possibility of moving some amendments, so that we do not have the ridiculous situation where the father can go to jail for the maintenance order, but he cannot enforce the contact orders, when we are talking that this Bill is to be promoted as far as parental responsibility. The absurdity is that we end up, which I had recently with a constituent, where the child had been adopted... was being forced to pay for maintenance for that child whilst it was being adopted, but there was no responsibility to inform that individual of the adoption allowing for the individual to spend tens of thousands of pounds on legal advice trying to get a contact order.

I think the Hon. Member in the other place, Mr Turner, has done us a good deal as far as highlighting some of the inconsistencies in the present law, but I feel that maybe this Bill could be broadened out, even allowing for the long title of the Bill being very limited in its flexibility.'

Yes, I would support the Bill, but I do feel that there may be opportunity to address some of the anomalies at the present time. Obviously, the attitude has changed from 30 years ago, where it was supposed to be it was the mother's prerogative, more than the father's prerogative, as far as the care of the child. I think it needs to be equally the prerogative of both, but I do feel these other issues might actually strengthen this piece of legislation in order that we will have justice, equal on the same basis, because at the present time, we find, if the mother is on Legal Aid, that the fathers have to say goodbye to their children having parental contact at the present time. I think that maybe this might be an opportunity for us to be able to look at this as a way forward.

The Speaker: I call on the mover to reply, Mr Crookall.

Mr Crookall: Mr Speaker, I thank the Hon. Member for Douglas East for seconding and also for her

support. It does help to bring into parity an anomaly.

I also thank the Hon. Member for Onchan, Mr Karran, for his comments and I would be more than happy to sit down and have a discussion with him and Mr Turner before, if you want to have a look at any amendments. But I take on board the Member's comments and I beg to move.

The Speaker: I put the motion that the Children and Young Persons (Amendment) Bill be read the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.