

5. LEAVE TO INTRODUCE

**5.1. A Private Member's Bill to amend grounds for divorce,
dissolution of civil partnerships and judicial separation –
Leave to introduce granted**

The Hon Member for Garff (Mrs Caine) to move:

That leave be given to introduce a Private Member's Bill to amend the grounds for divorce, dissolution of civil partnerships and judicial separation; and for connected purposes.

The Deputy Speaker: Hon. Members, we therefore move on to Item 5 on the Order Paper, leave to introduce.

Leave is sought by the Hon. Member for Garff, Mrs Caine, to introduce a Private Member's Bill to amend the grounds for divorce, dissolution of civil partnerships and judicial separation, and for connected purposes.

Mrs Caine.

Mrs Caine: Thank you, Mr Deputy Speaker.

This area is perhaps more commonly known as 'no-fault' divorce legislation, but the title is deliberately wider to reflect what would be required in order to amend all current Isle of Man laws in this area.

Issues over the system of fault-based divorce – such as couples citing unreasonable behaviour, for instance – were highlighted to me during my time as Children's Champion, and in fact my intention to bring a Private Member's Bill was signalled in my report published in January.

In bringing this motion before this Hon. House today, I wish to acknowledge the research conducted by a working group of Isle of Man family law advocates headed by Mrs Hazel Smith, who discussed and investigated the subject for more than a year. They forwarded their findings to me during the summer and have suggested a no-fault divorce system based on the Swedish model that could be followed.

While I can appreciate improving social legislation in this area is not a Government priority, it is of significant importance for separating couples. According to the report of the Nuffield Foundation's detailed study on the subject of no-fault divorces published last year, they found 60% of divorces were fault based in England in 2015. It is likely to be a similar proportion in the Isle of Man, given our current law is based on the same legislation. In Scotland, where they have different procedures, the level of fault-based divorces was only 6%. The report recommends a complete change. It concludes, and I quote:

The study shows that we already have something tantamount to immediate unilateral divorce on demand but masked by an often painful, and sometimes destructive, legal ritual with no obvious benefits for the parties or the state. A clearer and more honest approach, that would also be fairer, more child-centred and cost effective, would be to reform the law to remove fault entirely.

My concern is the unnecessary conflict which our current laws bring into an already stressful situation for divorcing couples. This often fosters an adversarial relationship that can be especially damaging for any children caught in the crossfire.

Couples who want to settle matters amicably must wait two years if both parties agree, but five years if it is contested. That delay can put huge strain on individuals and on families. In some cases a couple might cite unreasonable behaviour or adultery in order simply to accomplish a quicker divorce. Fault can enable a divorce in weeks instead of years. Many prefer to rely upon one of the fault-based grounds in order to avoid the emotional and financial strain of waiting two years or longer.

The recent case in England of *Owens v Owens* demonstrated that when divorce is contested, unreasonable behaviour might not be considered unreasonable enough in the eyes of the law. The Supreme Court in England reluctantly dismissed the appeal, but it has prompted both a
40 Private Member's Bill in the adjacent isle from Baroness Butler-Sloss requiring the government there to review their current law on divorce and civil partnership dissolution and to consider a proposal for a system of no-fault divorce. There is, in addition, a consultation being led by the Ministry of Justice on reforming the English grounds for divorce to remove fault.

I do not feel we should wait to see if England manages to modernise its laws in this area
45 when it has failed to accomplish that previously over several decades.

Further discussions this summer lead me to believe that the Isle of Man could adopt legislation based on current laws in Sweden or New Zealand: new laws that would include protection for the vulnerable, a reconsideration period of months rather than years, and ensuring all matters relating to finances and any children have been resolved.

I feel it is time the Isle of Man brought in a modern system, reflecting that it is mainly an administrative rather than a judicial process leading to divorce. We should recognise the reality, allow couples to be honest when a relationship has irretrievably broken down, and not continue with a system based on exaggeration, if not untruths, one that fosters lengthy marital conflict and acrimony instead of a quick, clean break.

55 Whichever route we go down, whatever combination of measures is felt to be the best fit for the Island, it must be better than the current law. I respectfully urge Members to support the motion before us today in order that draft legislation can be prepared for the Isle of Man to modernise our laws for divorcing couples.

It would be my intention to consult the public on the principles underpinning the proposed
60 draft legislation before returning to this Hon. House with a Bill.

It is surely long overdue to enable people to divorce without blame. Mr Deputy Speaker, I beg to move.

The Deputy Speaker: I call on the Hon. Member for Ramsey, Dr Allinson.

65 **Dr Allinson:** Thank you, Mr Deputy Speaker.
I beg to second and reserve my remarks.

The Deputy Speaker: I call on the Member for Douglas South, Mrs Beecroft.

70 **Mrs Beecroft:** Thank you, Mr Deputy Speaker.

I will be brief, but I most certainly wish the Member well with this Bill. I look forward to seeing it come forward. I think it is well overdue and I am delighted to see her bringing it forward; it is a very forward step.

75 Thank you.

The Deputy Speaker: Hon. Member for Douglas Central, Mr Thomas.

Mr Thomas: Thank you very much, Mr Deputy Speaker.

80 I congratulate the Hon. Member for raising a very important issue and for putting it before this House for leave to introduce a Bill. But as Chair of the Council of Ministers' Legislation Committee – although this is a personal statement – in that context I just wanted Hon. Members to be aware that although the Government priorities for social policy legislation were referenced in the Hon. Member's remarks, we have to remember that we do have a great deal of social
85 policy legislation that needs attention in the Isle of Man.

One thing that we learnt with the termination of pregnancy, abortion Bill, which will be an Act soon, is that that does take up lots of time for officers in places, so we absolutely have to be certain that we are using the limited resources, the finite resources that we have, to deal with

90 the right priorities in the right sequence. For instance, the Department of Home Affairs has sexual offences and things around obscene publications, which is a very important piece of legislation. It also has action around domestic violence, which is a very important piece of social legislation. In Health and Social Care we have had to put back priorities that have been there for years around adoption, around capacity, around corporate parenting and other changes to the children and the young services legislation. In the Department of Health we are still looking for the scheme to bring into place the Health and Social Care Act. In Treasury we are looking at pensions legislation. We are looking at helping people, real people with real lives, to do with making sure that they get the best out of the Coroners system and are able to reclaim money owed to them efficiently and effectively. In housing we are beginning a process with the Land Registration Bill to make things better in society for people who are in substandard legislation. In 100 DEFA we have got environmental health legislation which relates to that very strongly.

The point I am making is I really do hope that the Hon. Member bringing this Private Member's Bill will take the time to make sure that there is social consensus about exactly what needs to be drafted and there is a consensus inside this House and upstairs about exactly what needs to be drafted, because we really do have precious resources which we can apply when we do consultations, when we do drafting and all those things that take up officer time, and we really do need to make sure that we have got exactly the right intentions for this Bill so that we minimise the extra pressure put on the social policy drafters, who are already very busy. 105

The other point is it seems from the request for leave to introduce that this is very tightly constrained around a particular aspect of divorce, but on the Government list for legislation in coming years we do have a great number of Bills to do with aspects of divorce. We have got how it is organised in the courts system, we have got law relating to the property and we have got dealing with dissolutions and about how financial claims arise from it, we have got contact and we have got so much more. I would also want an assurance from the Hon. Member bringing this Bill that what she is actually looking for is a very specific limited aspect of divorce and it is not going into all those other wider issues that will take a great deal of time from the drafting and will have to be put into priority by all of us in the Hon. Court, this House particularly, when we come to use the finite and limited resources we have in terms of legislation. 115

The Deputy Speaker: I call on the Hon. Member Middle, Mr Shimmins. 120

Mrs Beecroft: Deputy Speaker, if I may – sorry – could I have a point of clarification before we move on, please?

The Deputy Speaker: By all means. 125

Mrs Beecroft: My understanding was that, when it came to resource, obviously the Council of Ministers and all the departmental legislation that was coming through was separate to ... there was a separate section for a Private Member's Bill so that it did not interfere with Government business. I am just wondering if you could clarify if that is still the case, because I am just very concerned that we are being expected not to bring Private Members' Bills forward because of the Government resource that is necessary. I would just like confirmation that that is still available to private Members as a separate resource. 130

The Deputy Speaker: Thank you, Mrs Beecroft. 135

It is a given that there is space and time set aside for Private Members' Bills. I hope that answers that point.

Mrs Beecroft: Thank you.

The Deputy Speaker: Can I call on the Member for Middle, Mr Shimmins. 140

Mr Shimmins: Thank you, Mr Deputy Speaker.

I would commend the Hon. Member for Garff for bringing forward this request. I admire her desire to modernise our divorce legislation and that will minimise the harm that the outdated approach that we have at the moment is causing to people and to families here on the Island.

145 I would urge her: please do not be deflected by the very long to-do list that the Minister for Policy and Reform said. I admire her – she is getting on with it. She is not listing all the obstacles. She has identified the problem and she is tackling it. (**Mrs Beecroft and another Member:** Hear, hear.) I would suggest that that approach is the right approach in many things in this House.

Thank you.

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A Member: Hear, hear.

The Deputy Speaker: Thank you.

Member for Ayre and Michael, Mr Baker.

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Mr Baker: Thank you, Mr Deputy Speaker.

I rise in principle to offer words of support to the Hon. Member for Garff in that it does appear that the divorce process is less than it might be and we are absolutely right to tackle and to try and minimise the harm, as the Hon. Member for Middle has just said, that the process causes – the actual damage, if you will – to families and society.

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But I just also bring a word of caution that I hope the Hon. Member will take forward as she deliberates exactly what form this Private Member's Bill takes. Let's ensure we do not erode the value of marriage in the Isle of Man and the value that long-term relationships in all their form actually bring to the upbringing of children and to society. It provides a sense of permanence and it does add value to society as a whole.

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When marriages go wrong it is right that we deal with them and that divorce is a part of dissolving those arrangements, but we must make sure we do not make this just a transitory relationship which is just thrown away when people find it inconvenient. You look into other jurisdictions and divorce is almost marketed as any other consumer service. I think that is a dangerous road to go down and I hope that where we end up as a result of this process will get the balance between reflecting the value of marriage and of long-term relationships in all their forms and the need to exit relationships and arrangements which are not working.

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Thank you, Mr Deputy Speaker.

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The Deputy Speaker: Thank you.

Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you, Mr Deputy Speaker.

I just want to rise really to try and offer some words of comfort to the Hon. Member from Garff: do not take the Minister for Policy and Reform's comments to heart. It felt more like he was complaining about the lack of resource available to him, not Members of the House, and I suggest he is better placed having that conversation with his colleagues in Treasury rather than with you.

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I would just like to say all the best in wishing you the best with this Bill. I think it is being brought for the right reasons and I am looking forward to seeing the first draft.

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The Deputy Speaker: Hon. Member for Douglas East, Miss Bettison.

Miss Bettison: Thank you, Mr Deputy Speaker.

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I rise also to support this Bill and, I think, just to offer a little bit of thought on it in that divorce is one of those things where I think it becomes only very real in your mind when you fall into that situation. And so for me it is about looking at people who are already suffering within

195 that five-year period and making sure that any provisions that we may bring, through a Private Member's Bill, into law actually are able to resolve issues for people who are already sitting in a very uncomfortable cooling-off period that is already affecting children and families on this Island right now.

I absolutely support this. I think it is a very important aspect of law and very much a social duty of us to look into, so thank you.

200 **The Deputy Speaker:** If that concludes the debate, could I invite Mrs Caine to reply to that debate.

Mrs Caine: Thank you, Mr Deputy Speaker, and thank you to all the Members for their comments this morning.

205 As a start, thank you, Mrs Beecroft, for your support.

If I could turn to the Member for Douglas Central, Mr Thomas, it is a very important issue and the terms of the motion are there deliberately so that it is possible to go forward and consult on the principle of changing the grounds for divorce. If he has a list of other matters that are pressing that he would like to be incorporated, let me know! *(Laughter)*

210 This has been prompted by a working party of advocates. They are dealing with this day in, day out, week in, week out, often in very trying circumstances. Families are being put under huge financial and emotional strain because of having to wait lengthy periods of time for a no-fault divorce.

215 There is a suggestion that perhaps the current system is not entirely based on honesty. Perhaps people, when they have reached the very difficult decision ... and I acknowledge the Hon. Member for Ayre and Michael's comments on this point about the length of marriage and everybody knows it is better for children to be brought up in a stable family, long-term relationship or marriage. However, again referring back to the Nuffield Foundation report, they found that a no-fault based divorce, a quicker divorce process, did not actually encourage a quicker divorce or less weighty consideration by the divorcing couple for the marriage. It is actually apparent that people deliberate long and hard before they come to the decision to separate legally. At that point, often people, as Miss Bettison alluded, do not know what the situation is until they find themselves in it, and suddenly to be amicably separated and divorced you have to wait a minimum of two years – and if one party does not agree to the divorce, five years – unless there is fault put into the system. The working party of advocates has come to the conclusion – and generally across the Family Court Users Group that I attended – that the Isle of Man could do much better, that we do not need to build acrimony and argument and division into a family already in the trying circumstances of having a divorce. The system is adding to the hardship and the financial strain, aside from any of the emotional strain.

225 I do take on board the comments and I can assure Members that if anybody has any suggestions or ideas or wants to discuss it with me, I would be very happy to hear from Members what principles they think could be included in any consultation.

230 Moving on, I thank Mr Shimmins. I agree it is a modernisation of the law, but it is also to reflect the actual fact of how couples are divorcing, and it seemed almost, to me, like a workaround, that people come up against it and no matter how amicably people start out, once one party has decided to take the blame and the fault is put on them, that seems to fester. Once it was described to me as a pile of invective coming out from somebody and it is put on the other person. That is forever on the records in the court and the judicial system, so any family members who later refer to it, the blame, the unreasonable behaviour or whatever behaviour is the reason for the divorce, one of the facts currently, that is there forever and it is not a healthy way to move on, particularly in terms of a couple remaining friendly for the benefit of the children.

240 Finally, thank you, Mr Hooper and Miss Bettison, for your support.

I think I will just beg to move. Thank you, Mr Deputy Speaker.

245 **The Deputy Speaker:** Thank you, Mrs Caine.

Hon. Members, the motion before us at Item 5 is that the Hon. Member for Garff, Mrs Caine, be given leave to introduce her Private Member's Bill. All those in favour, say aye; all those against, say no. The ayes have it. The ayes have it.

250 Thank you, Hon. Members, and thank you for all your contributions to the debates this morning. That brings us to the end of our Order Paper today.

The House now stands adjourned until our next sitting, which will be held on Tuesday, 30th October at 10 a.m. in our own Chamber.

Thank you.

The House adjourned at 11.40 a.m.