

Order of the Day

4. BILLS FOR SECOND READING

4.1. Divorce, Dissolution and Separation (Isle of Man) Bill 2020 – Second Reading approved

Mrs Caine to move:

That the Divorce, Dissolution and Separation (Isle of Man) Bill 2020 be read a second time.

855 **The Speaker:** We turn to Item 4, Bills for Second Reading, and I call on Mrs Caine to move the Divorce, Dissolution and Separation (Isle of Man) Bill 2020.

Mrs Caine: Thank you, Mr Speaker.

860 I am pleased to bring my Private Member's Bill before this Hon. House today. The Divorce, Dissolution and Separation (Isle of Man) Bill is short in size but far-reaching. It represents modernisation of our 50-year-old divorce law and would bring about a significant change to our current process.

865 As I outlined when I sought Hon. Members' support for leave to introduce this Bill, a working group of family court advocates spent more than a year researching alternative systems that would be better than the current process on the Island. I must place on record my particular thanks to Mrs Hazel Smith, who led the working group and who has continued to support me during the drafting of this Bill, in the interests of achieving a better divorce process for the Island.

870 We, like England and Wales, have a system that builds in conflict from the start of the process, one that encourages separating couples to cite a fault-based reason in order to complete a divorce, dissolution or separation more quickly. Couples who decide to separate amicably must wait two years to progress their divorce, or five years if one party objects. It is a system that encourages dishonesty, exaggeration and conflict in order to achieve a faster divorce. That goes against everything family law aims to achieve. It puts on the record forever one parent's failings. Often, seeing the court papers and seeing the fault in black and white, an indelible legal record results in more upset, anxiety and conflict – more breakdown and more impact on the couple and any children. This is needless cruelty, unnecessary finger-pointing and fault-finding.

880 In Scotland, where there is the ability to file for no-fault divorce, fault-based divorces amount to only 6% of the total. The ratio is similar in France. In the Isle of Man, similar to England, fault-based divorces average around 60%. That is three out of every five separating couples that blame their divorce or dissolution on one partner's bad behaviour, or adulterous behaviour. It seems medieval to me.

885 This Bill is seeking a better process, a happier, or at least a cleaner, more honest ending to marriage and civil partnership. It is not seeking to promote or to increase divorce. All the evidence is that separating couples think long and hard before taking the final step, before applying for a divorce.

890 The Bill before us today would enable couples to apply singly or jointly for a divorce or dissolution, without giving a reason, but simply by confirming the marriage had irretrievably broken down. Because if one party says the union is finished, it *is* over, and an honest, clean break is better for the couple and any children they may have. It may also see a reduction in legal costs for this first stage of the process. It is not attempting to fix the whole process; the Bill before us addresses the initial application process for divorce, dissolution and separation.

895 Modernising our family law to enable no-fault divorce or dissolution of civil partnership has wide public support. I am grateful to the 192 individuals who completed the public consultation on the proposed Bill – 94% supported the proposed reform to remove the need to cite a reason for obtaining a divorce, dissolution or separation.

900 The proposed legislation would enable couples to state simply that their marriage or civil partnership had irretrievably broken down. Couples applying on that basis would have no need to state the reason why.

The public feedback to the consultation was humbling in its honesty and support for reform. People shared their personal experiences of divorce, which was extremely edifying.

905 A couple of the supportive comments were, 'It is important that no one person can force the other party to continue in the marriage when one party wishes to leave it'. Also, 'Marriage/civil partnership begins as a partnership, it stands to reason that in some cases it can end in the same way too'.

910 Mr Speaker, approving this Bill, just eight clauses and one schedule, will change forever the process for obtaining a divorce in the Isle of Man. It removes the need to find fault, for one party to accept blame. It will enable one or both parties to apply for the divorce; after a period of reflection of 20 weeks they must individually or jointly then confirm if they wish a conditional divorce or dissolution order to be made final.

915 There was some comment that this was dangerous, that it could negatively impact cases where there was domestic abuse or other reasons for a speedier divorce. With the legislative drafter, Mr Howard Connell, I considered clauses that would enable Deemsters in the family court to permit a swifter divorce for exceptional reasons, such as domestic abuse or a deathbed divorce to remarry. The clauses before you today include an exceptional reasons clause, but it is wider. It states simply that the time periods that amount to six months in total before granting a divorce order can be reduced if a Deemster believes it is 'just to do so' on a case-by-case basis, and on evidence.

920 But for the vast majority of cases, the simple fact of divorcing could be achieved without legal advice, without legal aid and without court time, amicably and pragmatically. I must emphasise it is only one part of the process and does not improve the financial settlement or childcare arrangements. I wish it could! This simply removes the need to cite a fault and streamlines the process for every divorce or dissolution application. Potentially it could set a better tone. 925 Couples whose marriage or civil partnership has irretrievably broken down would be able to finalise divorce or dissolution in a standard six months, rather than longer. Hopefully, commencing proceedings in this way will give it more structure and foster more positive future relationships.

930 The proposed six-month no-fault process received 62% support in the public consultation. A further 25% thought there should be no minimum period for reflection. However, what is proposed, totalling six months from applying for a divorce, is felt to strike a balance in terms of providing time to reflect; but also, after the 20 weeks, it serves as a trigger for certain legal processes to start arrangements in respect of finances. Applications for legal aid for final financial orders, for instance, can be made on receipt of the provisional order, and that would 935 continue.

940 It is likely that the proposed reform would result in more couples doing it for themselves, divorce that is, with no need to obtain legal advice on how to present the fault-based reasons that is currently necessary, to ensure the unreasonable behaviour is unreasonable enough. It is possible it will lead to a reduction in the legal aid budget on that point. But that is not its aim, its objective is to modernise the process, put in more fairness and honesty, and to remove the adversarial nature of the current process.

945 On the Isle of Man it is possible for two adults to arrange to marry eight days after they apply to the Central Registry. Is it right that a no-fault divorce takes two years minimum, and only if both parties agree? Hon. Members, I would suggest that this is outdated, even cruel. It builds in conflict where it is not necessary. It is well documented how that impacts negatively on the

couple, on future relationships and most particularly on any children. The most stoic spouse can later resent the statements given detailing his or her fault; it festers, and causes more anxiety, more anger and more conflict.

950 This Bill simply removes the need to find fault, enables a process that provides a reasonable time for reflection but one also that credits adults with the capability and good judgement to make the right decision for them.

Mr Speaker, I beg to move that the Divorce, Dissolution and Separation (Isle of Man) Bill 2020 be read a second time.

Thank you.

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

Mrs Barber: Thank you, Mr Speaker.

960 I would like to thank the Hon. Member for the valuable work she has undertaken with this Bill and for bringing a sensible and clear piece of legislation for us to consider today. Some may query the timing, have we not got more important things to be talking about? But the potential damage from divorce is important, and the pressures that self-isolation, shielding, no school and lockdown can have on a couple or family are obvious. I think the timing is very pertinent.

965 Divorce and breakdown of marriage are difficult times, not just for the couple, but for the wider family, friends and of course any children. It has often been felt that there is the need for all of these groups to 'take a side', but why is this necessary?

970 Countries that have introduced no-fault divorce have found it to be a commonly used reason for divorce, and I hope that the Isle of Man will be no different. Removing the apportionment of blame from divorce proceedings will benefit all parties, but children are likely to be one of the main beneficiaries of this change.

While children are a key beneficiary of the no-fault element of divorce it must also be remembered that, unless there is an immediate risk to them, a hurried situation can be as unhelpful as a protracted process. Children need time to adapt, reflect, and get used to their new normal.

975 Relate are the largest provider of relationship advice across the UK, and they support both no-fault divorce and the 26-week time frame from application to final order. They cite the time frame as allowing time for reflection, and accessing support services if requested.

980 I am certain I am not the only person in this Hon. Court to have told my children that after an argument it is better that we all sit down and seek to resolve things, but that where we cannot, just because they might decide they do not want to be friends with someone any more, they must always be nice and be kind. In fact, I often think I sound like a parrot on this topic. But it is no different for adults, and if through legislative change we can allow for divorce that removes hostility and blame, then I believe we should grab that opportunity with both hands.

I beg to second.

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The Speaker: Thank you.

I call on the Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

990 Firstly, I would like to thank the Hon. Member for all of her work in bringing this Bill forward which I am absolutely fully supportive of.

995 I do just have one question for consideration though, and this is in respect of the 20-week period or the 26-week period that is being retained in the Bill. So both the mover and the seconder mentioned this is about giving a period of reflection, and I think it is a period of time to allow other aspects of divorce proceedings to be finalised. But my understanding of the Bill in front of us is that it does not make changes to any other aspects of divorce proceedings. So people will still need to have all of these other things in place irrespective of whatever timescale

is set down in this Bill. So if there are children involved there will need to be custody-sharing arrangements; if there are financial assets involved they will need to be sorted. All of this needs to happen anyway, irrespective of whatever arbitrary time scale is placed in this Bill, and so it kind of feels to me that this 26-week restriction is somewhat irrelevant.

I would just like to get some clarity on what the actual purpose of this restriction is because, other than to add another barrier in and potentially more added cost and court time for those who are already ready and have already sorted out all of the other aspects of a divorce, I cannot really see that this 26 weeks in the Bill will have the effect as intended by the mover because all the other processes around divorce still exist and still have to go on. It is not a massive issue for me; I just think it is something that really should be considered, Mr Speaker.

Thank you.

The Speaker: Thank you.

I call on the Hon. Member for Ayre and Michael, Mr Baker.

Mr Baker: Thank you very much, Mr Speaker.

I find many things to commend in what the Hon. Member for Garff is bringing forward today: modernisation, better process, reduction of dishonesty, exaggeration and conflict. They are all clearly good things, as are potentially reduction in time and legal costs, and also less blame and fault. I think there is very little in that that any of us would disagree with.

I was also reassured by Mrs Caine's comment that she is not seeking to promote divorce, and I think that is right. I think long-term relationships, if they can be made to work, are the best way for family life, and I think that is generally widely held.

I do have some concerns though and some of those have been allayed by comments by the mover and seconder, but some have actually been magnified. The reflection period of 20 weeks is not a particularly long period, particularly where relationships may have been built over tens of years even. We all know that relationships go through phases and some phases are better than others; and 20 weeks to have a view that there is no future in a relationship I think is not a particularly long period. Clearly, if the relationship is terminally damaged then that will prove to be the case but if it is not, and it may have recovered, then 20 weeks may result in some relationships being terminated that otherwise would have lasted.

I was also concerned about the comments that this would allow couples to do this potentially without legal advice. Now, in some respects that could be a good thing in terms of the process and certainly the cost of getting the marriage or long-term relationship dissolved. However, I do worry that one party, particularly the weaker party in the relationship, if there is one, may be disadvantaged by not having legal advice and not having that independence and that experienced person to guide them through the process. I do think that this could well end up with outcomes from divorces and separations being more onerous on some parties than would be desirable.

There is a temptation to save the cost and do it for yourselves. If one party is a little bit better advised or a little bit sharper this may well result in power being exercised and a poorer outcome for the other one. This is magnified by the fact that essentially, as I understand it, the proceedings can be instigated and achieved purely at the behest of one party and if the other party does not agree there seems to be very little that can be done to prevent the process concluding. I appreciate that that is partly the intent of the reform and it does potentially leave the weaker party in a relationship more exposed.

I was very pleased to hear Mrs Barber's reference to the voice of the children. They tend to be, in my experience, the parties that suffer the most and have the most long-term damage from a relationship breakdown. It is reassuring to hear her belief that this process, and the view of Relate, is that this will help. We absolutely must ensure that their interests are protected to the maximum extent because they are the least able to speak up for themselves.

1050 Finally, I am just concerned that this move, whilst it does reinforce the freedom of choice and gives people a way of conducting their personal lives as they see fit – and I have got absolutely no opposition whatsoever to that; however, it does tend to reinforce the disposable culture that we have lived in in modern times. I would come back to the statement that long-term relationships are the best form of family life. I think you have to work at relationships.

1055 I would be very concerned that this change would result in a more disposable culture towards long-term relationships and, in that context, I wonder if there ought to be some reference to counselling arrangements being part of this Bill.

But with those caveats, I understand the rationale for why the hon. mover is bringing this forward and I certainly think that the objectives she is trying to achieve are laudable, but I do have some concerns about how this will work in practice.

1060 Thank you, Mr Speaker.

The Speaker: Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1065 I would like to thank the Hon. Member for Garff for bringing this quite important bit of legislation forward. As the seconder has already said, although this has been in the pipeline for some time actually now is a very opportune moment for it to come in because we have seen that legislation that deals with human relationships is very difficult to get right. And we have seen that some of the restrictions that have been necessary through the emergency powers
1070 have had a profound effect on some families.

I think what this piece of legislation does is really respect personal choice and the ability for individuals to negotiate their future, but to do that perhaps free of state control and free of the court process, which can often be adversarial and extremely costly and expensive.

1075 I think we have also heard from Hon. Members that in one way 20 weeks is too long but in the other way 20 weeks is too short, and I think what the mover of the Bill has done is try to get a pragmatic compromise in terms of giving people enough time to make the arrangements they need. The reality is that very few people go into divorce proceedings on a whim. Most of them have been in a relationship which has become more unhappy over a long period of time, and that unhappiness often feels like a prison both for them and their extended family, including
1080 their children. So the 20-week compromise I think is a pragmatic response to this. In terms of my fellow Member for Ramsey and his comments on that, I think most people would be going into the process already having made some of the arrangements in terms of finance and child care.

1085 The Hon. Member for Ayre and Michael talks about disparity between different parts of the relationship, but I have seen that already now that if you are in an unhappy relationship and one of the party refuses to divorce, the other party is kept in a prison, not of their own making, in an unhappy relationship unable to escape from it at all, and that can be used in terms of a power over those people who want to get on and create a better life for themselves.

1090 So I think what this relatively short Bill does is actually inject the humanity back into relationships and allow those individuals to determine what is best for them, their families and their futures.

And with that, Mr Speaker, I will be very, very happy to support this Bill going forward.
Thank you.

The Speaker: I call on the Hon. Member for Douglas North, Mr Ashford.

1095 **Mr Ashford:** Thank you, Mr Speaker.

I am fully supportive of the Bill, but my query is around a technical point within the Bill, and I apologise if I missed this in the mover's introductory remarks. Throughout the Bill there are littered references to consultation with the Deemsters before certain things happen such as, for
1100 instance, even the commencement of the Act after it comes in, but it does not state what

consultation with the Deemsters is. Now, it might sound a picky point, but is that consultation with the First Deemster or all of the Deemsters?

1105 I am just wondering what the thinking is behind having those provisions in because it is very rare, and going through the other Acts that are currently in place around matrimonial affairs there is no reference to having to consult with the Deemsters before say the appointed day order comes forward and I was wondering what the thinking behind that, in a technical way, was?

The Speaker: Thank you.

1110 Next up I have Mr Shimmins, Hon. Member for Middle.

Mr Shimmins: Thank you, Mr Speaker.

1115 I would also like to commend and thank the Member for Garff, Mrs Caine, for bringing forward this important Private Member's Bill. For me, it is a modernising and progressive piece of proposed legislation.

I actually take a lot of comfort from the knowledge that many experienced Manx family law practitioners have worked on this Bill with Mrs Caine; and that, I think, will ensure that it is a pragmatic and workable piece of legislation, which I think is key in this particular instance and in other instances obviously as well.

1120 I guess different people will sit at different points of the spectrum in terms of number of weeks. I am probably more leaning towards Mr Hooper's point on that spectrum than Mr Baker's. But for me, this is all about reducing pain and conflict in relationships where it is just not working and the love has gone.

In summary, I am very supportive and welcome Mrs Caine's initiative in this matter.

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The Speaker: I call on Mrs Caine, Hon. Member for Garff, to reply to the debate.

Mrs Caine: Thank you, Mr Speaker.

1130 I would like to thank everybody who has contributed this afternoon. I think it is a very progressive and sensible piece of legislation and I am pleased with the responses from Members who have spoken today.

1135 First of all, I would very much like to thank my seconder, Mrs Barber, and I agree. I mean, it has been highlighted today with the current emergency situation, and we are aware of many people who are under strain. I would say that there are organisations obviously who are able to support them. But in terms of Relate, yes, all the evidence from Relate and even from the Nuffield Foundation and the original, very extensive survey and assessment that they carried out a few years ago – all the evidence points to this kind of structure.

1140 Moving on to Mr Hooper's point, and also Mr Baker and Mr Shimmins, in terms of the 20-week period there are so many reasons for that. We could point to other jurisdictions where the six-month process is successful. One of the places that the family law advocates here looked at particularly was Sweden, where it is a success. But I think what we are saying is, it is a better compromise than currently. Currently in theory a divorcing couple can achieve a final separation and a final order in 12 to 15 weeks. But if one party obviously is alleging on that basis adultery or unreasonable behaviour against the other there is no certainty as to when the time is up, or when the conditional order will be issued and the six-month period is triggered for the certain legal matters to be then addressed.

1145 So in fact I would say that the current law – where it can be anything from 12 weeks to years, if people have to wait – actually works against reconciliation. Those people who have decided – and let's be clear, the longer the relationship they quite often think extremely long and hard before making this step and usually engaging a lawyer to assist them. But once a spouse makes allegations about the other spouse's conduct, *there* is the conflict, and in fact people have resorted to an untrue system. There is no minimum in fact if you are prepared to overstate

1155 unreasonable behaviour. If you are prepared to take the blame because the finances perhaps between a couple and the debt of one party moving out of the family home, or for a whole raft of other reasons – if it is just not workable, people are finding a way to do it more quickly and are even less likely to take some mediation or counselling on board.

1160 Now, that actually was a subject that we looked at very closely; and it came out a lot in the public consultation that counselling was something that people really felt should be there. In fact one of my favourite comments from a wedding photographer who responded to the consultation, suggested that actually the fault was that there should be more counselling before people were married and then perhaps they could save some of the anxiety and fall-out in conflict later. Obviously that is undertaken by churches and other religious institutions, but it is probably not something that is available as standard from the Registry. But why should it be, when adults should know their own minds?

1165 So I would say that actually I think the 20 weeks, this whole-six month process, is probably longer than we have now. It is a genuine reflection, reconsideration period that can give people the option; and even if it is a tiny proportion, even if it is a very small number who might take the counselling and decide to give their marriage or their civil partnership another go, then it is worth having, I would say, the period of reflection.

1170 Again, as Mrs Barber pointed out, Relate and other jurisdictions support that. In fact a very similar piece of legislation has completed its passage through the House of Lords now and has had its first reading at the Commons. This has a similar length of time that they have determined to go for, and that is supported by the government through the Ministry of Justice. I would say it is for Members to make their mind upon that but overall, and again with 62% of the public consultation I would think that is a sensible compromise, as Dr Allinson pointed out.

1175 Now, just turning to Mr Baker and the other concerns that he had, I think it was particularly in terms of legal advice. Well, it is no different from how it is now. Some couples could determine to go through the process alone. The only difference now is there has to be one party who applies for the divorce and the other party is the respondent. Allowing people to do this tiny part of the process does not take away at all that they would be, in terms of financial settlements and child care arrangements, very well advised to seek legal advice, especially when there is a weaker person. I think what comes out would be that in the rules of court, which are the processes that go around this, they perhaps could include the aspect of mediation.

1185 Now, many people who called for it suggested that the mediation was ... We did not put it in to legislate or enforce counselling or mediation, because it is impossible to force somebody to go to mediation if they absolutely do not want to, because there would be no engagement. I would say that it is not at all saying there should be no legal advice to support, and certainly in cases where there is a weak party. But the option is there in fact where couples are able to come to an amicable arrangement that this aspect, this one third of the divorce process, this one application out of the three would not need an advocate to advise any longer to make sure that one of the five facts, the *grounds* for divorce, are suitable enough to enable a quicker divorce.

1190 So any matters of finances and custody of course would still benefit from people taking legal advice and that will still be an option, including applying to Legal Aid on that point.

1195 In terms of the comment, 'It is a disposable culture', I think that this process would actually recognise that once people have decided, it is better to allow them to proceed without the blame game; and reducing the period where amicable couples have to wait two years I feel it is actually *much* better that they are able to go ahead. In terms of a longer period, we can all remember the *Owens v. Owens* case, the unedifying spectacle where an elderly wife could not get a divorce because her husband refused to consent to the divorce. She still moved out of the family home for that period, until all the way to the Supreme Court it was judged that the unreasonable behaviour was not unreasonable. And this, I just think, has no place in the modern world.

1200 Perhaps counselling might have assisted some couples but it is not legislated for or proposed in this Bill. But in terms of the timeframe of 20 weeks, if people were able – and a good family

1205 lawyer would always emphasise and suggest that people go to counselling if there is any benefit
in that. A family court lawyer signs up to do all they can to bring around a reconciliation; but in
1206 *many* cases it simply is not possible to do that.

Now, in terms of the query from the Hon. Member for Douglas North, Mr Ashford, he is
speaking about the query about the Bill having references to so many Deemsters having to agree
1210 and then coming forward to the Council of Ministers in terms of having an appointed day order
for it to come in. Obviously this is an enormous change from the current system and there will
be a period of time when people, who have applied for divorce or dissolution under the existing
law, will have to run alongside people who are going forward on applying for the no-fault
1215 process. I think it is simply something that in terms of all the rules of court – for instance, the
processes, procedures and rules that everybody has to undertake, and the route by which
people take the path towards the final separation – all those processes are, I am told, really
quite antiquated at the minute, and perhaps this will enable them also to be modernised and
the appropriate guidance leaflets and information will be readily accessible to couples going
through it.

1220 So I think that amount of consultation and the various points in the Bill where consultation is
necessary with the Deemsters, because of the significant amount of court-focused secondary
legislation, perhaps that will make the system work.

Turning then to Mr Shimmins, the Member for Middle, I am very grateful for his comments
and of course I agree. I do think the balance is right if we have Members who think it is too
1225 short, and 25% of the public in the consultation obviously felt there should be no minimum. But
my own feeling is that that does really give a good structure and a better start for people who
have made this decision. I do think, looking at some of the comments that came out, I really feel
that this is a pragmatic compromise and significantly better, I would say, than what we currently
have.

1230 If I could just conclude by saying that amongst the comments from the public a selection I
think really support, as most Members have said, that this is a positive thing – and it will be
welcomed by the community. I quote: ‘This is an excellent idea, it cannot come soon enough’. ‘If
nothing else, it may preserve relationships on a platonic level as there has been no need for
blaming or playing the waiting game. This is massively crucial where there are children involved’.
1235 ‘If one or both parties want to end the contract they should be able to ...’.

And in terms of the final one I will leave you with, it is saying, ‘Current legislation makes the
moving-on process much harder than necessary. Divorce is already a difficult time without being
stuck in purgatory for two to five years. I think it is vital that this legislation goes ahead’.

1240 I am really grateful for all the public who took the trouble to respond and for Members’
supportive comments today. If there are any queries that I have not responded to I am more
than happy to engage with Members and discuss any points or queries, questions or concerns
that they may have before we reach the clauses stage. But for now I thank everyone who has
contributed to the debate and particularly Mrs Barber for supporting me and seconding this
legislation.

1245 Mr Speaker, I beg to move.

The Speaker: Thank you. I put the question at 4.1 on the Order Paper that the Divorce
Dissolution and Separation (Isle of Man) Bill 2020 be read for a second time. I presume the
motion will be carried unless any Member indicates dissent, which they should do so now.

1250 No dissent being indicated – oh, Mrs Caine has indicated dissent, so we move to the vote.

Voting resulted as follows:

FOR

Dr Allinson
Mr Ashford

AGAINST

None

Mr Baker
Mrs Barber
Mr Boot
Mrs Caine
Mr Callister
Mr Cannan
Mrs Corlett
Miss Costain
Mr Cregeen
Ms Edge
Mr Harmer
Mr Hooper
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: In which case, 23 votes for and none against; the ayes have it. The ayes have it.