

**4. Divorce, Dissolution and Separation (Isle of Man) Bill 2020 –
First Reading approved**

Mrs Poole-Wilson to move:

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

The President: Turn to Item 4, Divorce, Dissolution and Separation (Isle of Man) Bill for First Reading.

125 Hon. Member, Mrs Poole-Wilson, to move.

Mrs Poole-Wilson: Thank you, Mr President.

I am pleased to bring forward this Bill today for its First Reading in Legislative Council. Although a short Bill, its objective is I believe of great significance for those couples who find they no longer are able to remain together in a marriage or civil partnership.

130 As things stand, divorce and dissolution, already painful and difficult for couples and their families, often involves an added element of conflict, due to the need to establish irretrievable breakdown by proving one of five facts. The five facts are: adultery; unreasonable behaviour; desertion for two years; separation for two years, if both parties agree to the divorce; or separation for five years if not.

135 This often leaves couples in a difficult position. Minimum periods of separation can lead to many problems in practice, not least emotional stress and strain as well as financial challenges. The impact for couples and their children is often such that people look to resolve their relationship more quickly. But to progress more quickly, our current system builds in conflict by encouraging couples to cite a fault-based fact, leading to personal attack, blame, dishonesty, exaggeration, stress and anxiety, all of which is highly damaging for the separating couple and is particularly harmful for any children.

140 One hundred and ninety two people responded to the public consultation on this Bill, many of them citing personal experience of divorce, with some compelling personal comment about how painful and traumatic the process was. Isle of Man divorce statistics for the last four years indicate that 60% of divorces cite fault. The experience of couples and family advocates on the Isle of Man is that the current approach gives rise to unnecessary conflict and antagonism in many cases, with negative impact for the emotional wellbeing of the couple and their children, as well as leading often to greater costs and financial strain.

150 This Bill seeks to improve this situation, to reduce the scope for unnecessary conflict by removing the need to prove one of the five facts. Instead, the Bill provides for a separating couple to apply singly or jointly for divorce or dissolution on the basis of irretrievable breakdown. It is not seeking to promote or increase divorce. Indeed in Scotland, which adopted a no-fault approach in 2006, there has been a decrease in overall divorce rates, which is in line with the downward trend in marriage. Rather, this Bill recognises that people do not embark on divorce or dissolution lightly, but once a relationship has irretrievably broken down it is better for the couple and their families that the legal process recognises this and does not encourage unnecessary pain and conflict.

160 The Hon. Member for Garff, Mrs Caine, brought this Bill forward in another place following liaison with a working party of advocates from the Family Court Users Group. Led by Hazel Smith, a family advocate with over 40 years' experience and an acting Deemster, the working group explored options for reform, considering models from elsewhere, including Sweden. The proposed reform before you today is based on a Bill currently progressing in the House of Commons. The legislative drafter, working with Mrs Caine and Hazel Smith, based our reform on the England and Wales Bill, as it delivers the key objective of removing the need to demonstrate fault or await a lengthy separation; and legislating in similar terms enables our

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family law to stay in step with that of England and Wales; important, as our legislative provisions in this area have so far been aligned.

170 The draft Bill, as I said, was made available as part of a public consultation process during December 2019. The responses were overwhelmingly in favour of the proposed reform with 94% supporting the no-fault divorce principle. Ninety six percent of respondents agreed that couples should be able to apply for divorce or dissolution singly or jointly.

175 The Bill provides for a standard time period of 20 weeks from application to the making of a provisional order and then a further six weeks until the making of the final order. This allows time for other arrangements relating to finances and for children to be progressed and settled, as well as for a period of reflection and adjustment. The application for an order must be made by the parties and so there is also the option for people to change their minds and not proceed.

180 The proposed time of 26 weeks to obtain a divorce was supported by 62% of respondents to the consultation. However, 25% of respondents said there should be no minimum time period to obtain a divorce. It is also recognised, as is currently the case, that there can be circumstances when progressing a divorce more quickly is in the interests of the parties. So this Bill provides for a court to grant a divorce or dissolution sooner than the 26 weeks where it is 'just to do so'. This discretion would enable the court to take account of different circumstances such as domestic abuse or a situation where the couple has amicably and properly worked out all of their financial arrangements and is able to proceed more quickly.

185 It is important to note that the Bill addresses one of the three separate and discrete processes often involved when couples part. Namely, the divorce itself, which is currently usually a paper-based process as the vast majority of divorces are undefended. The other matters which often also need to be resolved are arrangements for any children and financial arrangements. The Bill does not make any changes as regards these additional steps, but it is hoped and anticipated that the very fact of reforming the approach to obtaining a divorce will reduce the conflict involved and make agreeing arrangements for children and finances a far less antagonistic, and therefore damaging, process. It is also hoped that with less conflict there will be reduced costs for separating couples in terms of obtaining legal advice, whether paid for privately or via legal aid.

190 Mr President, it is already a difficult and painful matter when a marriage or civil partnership breaks down. This Bill seeks to ensure that the legal process to formally recognise that breakdown does not add to that pain and anguish.

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

The President: Thank you, Hon. Member.
Mrs Lord-Brennan.

205 **Mrs Lord-Brennan:** Thank you, Mr President.

I am very happy to second the Divorce, Dissolution and Separation (Isle of Man) Bill 2020 and in doing so I would like to recognise the careful efforts of the mover, Mrs Poole-Wilson, and the promoter of this Private Member's Bill in the other place, Mrs Caine, as well as the drafter, Mr Connell, in bringing forward this sensible reform.

210 The present need to establish at least one of the five facts as the basis for grounds for divorce can cause distressing, unnecessary and prolonged conflict, which has understandably provoked criticism and led to continued calls for reform. Baroness Butler-Sloss, at her inaugural speech on being appointed President of the Family Division of the High Court of Justice in 1999, described obtaining a divorce on the basis of unreasonable behaviour as a 'hypocritical charade' and said there was a need to introduce a truly no-fault divorce. These calls for reform have not subsided, Mr President, and I am pleased that we can play our part in answering that call in this Hon. Council.

I beg to second.

220 **The President:** Thank you.
Hon. Member, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

225 I would like to extend my thanks both to the Hon. Member for Garff, Mrs Caine, who privately promoted this Bill and took it through another place, and also to my hon. colleague in Council, Mrs Poole-Wilson, who I know has also worked hard on the details of this Bill.

230 I think it is generally acknowledged, as Mrs Lord-Brennan has just said, that no one takes the decision to go through a divorce lightly. It is usually a deeply upsetting experience for all involved and it is also generally acknowledged that those who could be most deeply affected in a family are children. As the hon. mover has indicated, in order to move a divorce reasonably quickly the current process invites one party to blame the other, and the resulting bitterness and resentment only adds to what is already one of the most stressful experiences a person can go through. I believe this Bill will alleviate some of that stress currently experienced by couples and families and I would like to offer my full support to this Bill.

235 Thank you.

The President: Thank you.
Hon. Member, Miss August-Hanson.

240 **Miss August-Hanson:** Thank you, Mr President.

245 Having been through the divorce process on the Isle of Man myself, this is such a welcome piece of legislation. My ex-husband and I were not part of that 60%. We did not want to prove any of those five facts. It simply was not working, we needed to separate, and it took two years before we could do and it took a long time before that for us to come to the conclusion away from the eyes of others. So it was, as she says, at times painful, and it was entirely unnecessary. So I thank profusely Mrs Daphne Caine, from another place, for bringing this Private Member's Bill forward and also for the assistance in bringing this Private Member's Bill of Mrs Poole-Wilson as well, and for bringing it forward for our consideration in Legislative Council.

250 Respectively of my own personal experience there, I would also like to commend both of those Members for considering the sooner than 26 weeks situation ... needing to provide for that. Having watched my parents, particularly my mother, have to deal with a domestic abuse situation that could not be dealt with for some period of time, it was quite a harrowing experience for her and understanding that there will be others in that situation that are most desperate for the ability to be able to break away at an earlier period of time.

255 So I think that this Bill is extraordinarily sensible and socially it is just going to do some marvellous things for people across this Island that are in this situation. It is a desperately harrowing experience at times, going through the divorce process. So thank you to Mrs Daphne Caine MHK for bringing it about and also for the support of Mrs Poole-Wilson here.

260 Thank you, Mr President.

The President: Thank you.
Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

265 I would just like to add my thanks to Mrs Poole-Wilson and indeed to Hon. Member for Keys Mrs Caine, who has also been mentioned, in bringing this legislation forward and through into the Legislative Council for its final transit, hopefully for Royal Assent and so on, and we can get going with it. I followed it closely in the background and from its inception stages, and just want to place my 100% support behind it, Eaghtyrane.

270 Thank you.

The President: Thank you.
Lord Bishop.

275 **The Lord Bishop:** Thank you, Mr President.

I too thank the hon. mover, Mrs Poole-Wilson, for bringing this Bill to Council and for her explanation of the aim, the design and intent of the Bill. It is clearly a straightforward piece of legislation that certainly has far-reaching implications and I imagine that this Hon. Council will scrutinise those effects and implications when we come to Second Reading, not least perhaps in
280 how they bear upon any children in the marriage. But for now, at this First Reading, I just want to see if I can get a sense of how the legislation might work and what it might achieve.

I can see how it might act as a response to the hopes of many people who are otherwise hopeless in unhappy and loveless marriages. People marry and sometimes, sadly, they grow apart. And even if they have begun that married life in the context of faith, they may come to
285 find just a few years later that there is nothing left which has any resonance with those first vows taken under God. And that is immensely sad. I know that it can lead people to continue to exist in what one correspondent calls, 'a living hell of hurtful verbal exchanges day by day'.

A couple may simply have grown apart, and therefore there is no blame. In fact, not any fault even on either part. But also, possibly, no willingness or readiness on the part of one of them to
290 admit that the marriage is over and for the other partner it then becomes a question of enduring joylessly and hopelessly, regretting the opportunity to make a new beginning and find love once again in a new relationship. It is into that sort of unhappiness that this new Bill would speak very effectively indeed.

But I can also imagine, Mr President, another kind of sadness just as acute, and that is the
295 sadness of someone who is abandoned without any recourse left for them at all. And that is very likely to happen, because three quarters of divorce petitions are against the will of one spouse. It is simply not the case that most divorce proceedings are initiated by the couple which is the context which this Bill assumes. If that were so, the Bill would be much less problematic. Instead, divorce proceedings are usually initiated by one person against the wish of the other. So my
300 concern here is that the proposed legislation would accentuate that inequality, rather than reduce it.

I need to imagine myself into the shoes of an abandoned spouse, whose pain at being abandoned will be increased by the fact that absolutely no justification is required – none at all. 'I do not need to give any justification for abandoning you and the law gives me the green light'.
305 That is a crushing message for anyone to receive and I cannot wish that anyone would be the recipient of such a thing. And it strikes me further that the one who is being deserted both by spouse and, if this Bill goes ahead, by law, is very likely to be the one who is more committed to responsibility, to reconciliation, to the long-term view. Whereas the one who is leaving could be doing so for reasons of impatience, control, divisiveness, even a bad-tempered moment, misuse
310 of power, a failure to engage with personal weakness or turning away from the challenges that we face in any relationship. Those are not characteristics that I would wish to see rewarded by the law or given greater currency in society.

So with those thoughts in mind, Mr President, I begin to understand just how deeply this legislation might reach both for better and for worse, and if I am to support it, I need to be sure
315 in my own mind that in seeking to alleviate bitterness, the Bill is not perversely going to increase the capacity for it, and that in seeking to bring relief, it is not also going to cause potential for great and long-lasting sadness. And most of all, I need to be sure that the compassion and the humanity that it so obviously wants to bring is available, not just for one partner in the marriage, but for both.

320 Thank you, Mr President.

The President: Thank you, Lord Bishop.

Hon. Member of Council, Mrs Maska.

325 **Mrs Maska:** Thank you, Mr President; and thank you to the hon. mover and to the promoter of this Bill in another place. I thank them for all the hard work and for the briefings that they have given us on this important Bill.

I would say that marriage is not and never undertaken lightly, and nor should it be, and maybe it should be even more difficult to get married than it is at present in some
330 circumstances. However, I would also say that divorce is not likely to be undertaken lightly, but those setting out on divorce pathway maybe do not envisage how difficult that pathway can become and once they are on that pathway, things can get very difficult and emotional, and a process that is difficult can become even more harrowing when a party has to cite grounds for behaviour and for the breakdown of the marriage, which is necessary under the current system.
335 In my own experience, this can lead to even more difficult times as the divorce process goes through its paces. It also might reduce the cost of the process of divorce by having a no-fault process in place, that really in the past has excluded some people who really need to start anew and leave all the harrowing and worrying times behind them.

So I will be supportive of this Bill as it comes through. I know we will be scrutinising it
340 appropriately and I do hope in the fullness of time it will be a welcome part of the legislation that we have in the Isle of Man and to help our Island community; and, as the Lord Bishop says, achieve a balance, but an appropriate balance.

Thank you, Mr President.

345 **The President:** Thank you, Hon. Member.

If no other Member wishes to speak, I will call on the mover to reply to the First Reading debate.

Mrs Poole-Wilson.

350 **Mrs Poole-Wilson:** Thank you, Mr President; and may I thank all Hon. Members of Council who have spoken for their contributions to this First Reading debate.

To begin with: Mrs Lord-Brennan. I would like to thank her for seconding this Reading today and for all her assistance and support so far in working on the Bill. I think the point she made, by
355 Baroness Butler-Sloss, that calls for reform to address the hypocritical charade have been running for many years now and there is an honesty that is about this Bill that recognises that where there is irretrievable breakdown, whether decided upon by the couple together or by one of them, then the legal process should recognise that without adding additional anguish and pain.

Then if I can thank Mrs Sharpe for her support and her noting that people do not make these
360 decisions lightly. I hope that this Bill will alleviate some of the pain that, having made that decision, currently can be part of the process then to actually achieve the divorce or dissolution.

Miss August-Hanson: thank you for your contribution, particularly speaking from personal
365 experience with your own situation and your parents. I note Miss August-Hanson commented that it took a long time for her and her partner to reach their decision to divorce, but then waited for the two years, took the separation route, which for some couples can be too difficult and cause greater pain and anguish. I also note that she recognises that the Bill provides for progress quicker than 26 weeks where the circumstances justify that; and domestic abuse, sadly, of course would be one such situation.

Mr Henderson, thank you very much for your support and I am grateful again for your
370 recognition in the background of the work that has gone into the Bill.

The Lord Bishop: thank you very much for your contribution and your thoughts. As ever, very good to reflect on how the legislation might work and what it might achieve for different situations. And of course we recognise that behind every divorce or dissolution statistic there is a very personal situation, and those personal situations will differ greatly. I think the way the Bill

375 would seek to try and meet the various situations that people find themselves in is by
acknowledging that the point a marriage or civil partnership has broken down the legal process
should not add to that pain.

The particular example that the Lord Bishop highlighted of the abandoned partner who feels
they have no recourse. I think what can be very difficult is that where one partner feels the
380 marriage or civil partnership has broken down, in many cases, in reality that means the marriage
has broken down, and that is the ground that the law will recognise: irretrievable breakdown.
Of course, if in a moment of temper or a sudden moment decisions are made that the couple
can then reconsider, the Bill's 26 weeks does retain the principle of divorce law which is 20
weeks of time to reflect and there is a requirement to apply for the conditional and then final
385 orders. So there is time for reflection and for people to change their mind – not to proceed. The
two stage element of the conditional and final order also provides for that.

I think the other thing is that probably long before we get to a point of somebody actually
filing for divorce or dissolution, that is perhaps where more education, support and so on could
usefully be available to help couples; to help couples find their way through the many challenges
390 and stresses and strains that will arise. This Bill does not seek to address everything that makes a
difference to whether marriages and civil partnerships endure through very difficult times or
whether they result in irretrievable breakdown. What it does is it looks to provide some honesty,
that once that point is reached the law will not add to the anguish and pain that then couples
may experience as they try to get the law to acknowledge that divorce or dissolution.

395 Finally, Mrs Maska. Thank you very much for your comment as well and your support and,
again, referencing your personal experience. It is acknowledged, I think by everyone, that
divorce and dissolution ... these things are not undertaken lightly. They will be painful and
difficult and, again, the law, the way in which we process that final parting, should not, if at all
possible, add to that pain or difficulty.

400 Thank you, Mr President. With that, I beg to move.

The President: Thank you, Mrs Poole-Wilson.

Hon. Members, I put to the Council the Divorce, Dissolution and Separation (Isle of Man) Bill,
that it be read for a third time.

405 **The Clerk:** First time.

The President: I beg your pardon; that it be read for the first time. We have a bit more
discussion to do before that vote! That the Bill be read for the first time: I take Council to be in
410 agreement; if there is dissent, please indicate this now. The ayes have it, the ayes have it – Oh,
there being dissent, we shall proceed to a vote.

The Clerk: Mr President, we have not done a division in the Legislative Council in the virtual
Chamber before. It is normally a called vote in this Council. Do you want to do a called vote or do
415 you want to vote in the chat box as if it was Tynwald?

The President: Just vote in the chat box.

Voting resulted as follows:

FOR

Miss August-Hanson
Mr Greenhill
Mr Henderson
Mrs Lord-Brennan
Mrs Maska
Mr Mercer

AGAINST

The Lord Bishop

Mrs Poole-Wilson
Mrs Sharpe

The President: Hon. Members, 8 votes for and 1 against; the motion carries.