

Order of the Day

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

Mrs Poole-Wilson to move:

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

The President: Hon. Members, welcome to this sitting of Legislative Council, held once more in our own Chamber.

Our Order Paper this morning starts with the Divorce, Dissolution and Separation (Isle of Man) Bill 2020 for Second Reading, and I call on the Hon. Member of Council, Mrs Poole-Wilson, to move.

Mrs Poole-Wilson: Thank you, Mr President.

In moving the Second Reading today, I have reflected on the debate at First Reading and want to focus on the purpose of this Bill and in doing so highlight what it seeks to achieve and why I believe it is an improvement on our current system.

As Hon. Members of Council are aware, the reform proposed by this Bill has been brought forward following extensive consultation and consideration by a working party of family law advocates, with, in particular, input and advice from Hazel Smith, family advocate and Panel Deemster with decades of experience. I would like to share with Hon. Members of Council the benefit of that experience and then to place this Bill into that context.

It is presently the case that one party to a marriage or civil partnership has to start the proceedings for divorce or dissolution. Even where both parties consent or the divorce is not contested, one party takes the initiative, the other responds. In the long experience of Hazel Smith, it tends to be the exception that both parties recognise that divorce is what they both want. More often, it is one party who wants to end the marriage and the position of the other party may, as the Lord Bishop put it, be that of feeling let down, deserted and that their marriage is being ended against their will. This sadness and pain for the non-instigating partner is currently the reality of many situations.

However, what makes matters worse very often, under our present system, is the need to demonstrate one of the facts to justify the ground of irretrievable breakdown. A period of separation – two years as a minimum, where both parties agree – can often lead to further problems. Experience from advocates indicates that can include avoidance, or tension and rows, and in some cases abuse, all of which is damaging for the couple, but it is highly damaging for any children. And where the instigator is looking to progress the divorce in a time period of less than the minimum separation period of two years, the application for divorce needs to cite a fault-based fact: adultery or unreasonable behaviour.

Hon. Members, I mentioned at First Reading that 60% of divorces on the Island for the last four years were on fault grounds. To meet the legal threshold for such fault, the instigating party may well resort to exaggerating or devising grounds for fault. This then often leads to increased acrimony and bitterness. Irrespective of which fact is cited to justify divorce or dissolution, the sad reality is in so many cases that having to prove a particular fact simply adds more pain and difficulty for all of those involved – especially any children. It is this potential for additional pain, hurt and emotional damage that the Bill seeks to remedy.

What a Bill such as this cannot do is change the reality of human relationships. For example, either to prevent the change in feeling of one party that leads them to seek to end the relationship, or to stop the upset and hurt of the one who feels let down or abandoned when

their partner wants the union to end. But what it does seek to do is to reflect more honestly that when one party has come to the conclusion that the marriage or civil partnership is over, then it is, and to reform the legal process accordingly.

Such reform is also of significance in other circumstances, at perhaps opposite ends of the spectrum: the rarer situations where a couple does agree jointly that their union is at an end and the terrible circumstances of domestic abuse, where this Bill's provisions would help the abused partner considerably in being able to more quickly legally end the abusive relationship.

Hon. Members, I would also like to make clear that this Bill addresses only the legal process for divorce or dissolution itself. It creates a period of 26 weeks for the process and removes the requirement to prove a fact basis for the divorce. Ancillary matters concerning maintenance and arrangements for any children will remain governed by existing legislation and it is important to note that such decisions can be appealed and arrangements revisited by the parties should circumstances lead to this. Moreover, there will remain protection for a party who will suffer serious financial consequences. They will be able to apply to delay a final divorce order pending proper financial provision being made.

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

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.
I beg to second and reserve my remarks.

The President: Now we are open for discussion, Hon. Members.
Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I would like to extend my thanks once more to both the Hon. Member for Garff, Mrs Caine, who privately promoted this Bill and took it through another place, and also to my hon. colleague on Council, Mrs Poole-Wilson, who I know has also worked hard, despite a myriad of other commitments and responsibilities, on the details of this Bill. Specifically on the 'no fault' element of the Bill, I think it is worth noting that when the latest UK divorce Bill was first introduced in June 2019 after public consultation, the Justice Secretary and Lord Chancellor, the Rt Hon. Robert Buckland QC MP, commented:

By sparing individuals the need to play the blame game, we are stripping out the needless antagonism this creates so families can better move on with their lives.

I think what we have before us, Mr President, is a Bill which will achieve the same important outcome.

During the First Reading, the Lord Bishop commented on clauses 3 and 4 – and as Mrs Poole-Wilson referred to this – he spoke of the pain which one partner may feel due to the fact that just one party in a marriage would be able to apply for a divorce order and that the court must then take that statement to be conclusive evidence that the marriage has broken down irretrievably. The Lord Bishop asked us to consider how the other party in a marriage might feel to be informed that their marriage is over with not necessarily any right to disagree on the matter or even a right for an explanation.

But I am glad the Lord Bishop raised this, as I had not yet considered things from this point of view. Though having thought long and hard about it, although I sympathise with the sentiment, I am of the belief overall that clauses 3 and 4 will do more good than harm. I am content with the hon. mover's observation during the First Reading and this Reading that if one party feels very definitely that a marriage is over, then to all intents and purposes this is the case.

I wonder whether perhaps sometimes it can be impossible, especially after a long period of time, for a person to define the precise reason why they now wish to divorce. Overall, I see it as an advantage for one party to be able to apply for a divorce, especially in cases where one party in the marriage may be suffering domestic abuse, as Mrs Poole-Wilson referred to, and I wonder if the hon. mover, in her summing up, might be able to reflect a little on this and share with us any comments which Manx family advocates have made.

Certainly during my research on this Bill, I noted that during the introduction of its own recent divorce Bill in the UK, the UK government stated that the ability for one party to apply for a divorce on their own without having to cite blame and for that application to be taken as conclusive evidence in itself will in some cases remove the opportunity for those who are being domestically abused being further coercively controlled by a perpetrator.

So I am in full support of this Bill, and it is just on this one point I would be interested to know whether the hon. mover has any more information from Manx advocates on whether they have seen this kind of coercive control exerted during divorce proceedings here on the Island, and if so, just for the record, what comments the advocates have made.

Thank you.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I am grateful to the hon. mover for the introduction this morning at Second Reading, and grateful also to my hon. colleague for the reflection on the debate at First Reading two weeks ago. Hon. Members will recall that at First Reading I raised what I perceived to be some of the advantages of this legislation, which actually are self-evident and they have been well-rehearsed this morning. But I also raised the question of what I regarded as a fundamental weakness, which was the example that I gave of a spouse who is faced with divorce against their will and has no subsequent recourse. I would like this morning to raise three more points, really, where I believe this Bill needs to be tested for its utility, and indeed for what I would call its ethical value.

The first is that this Bill only assists couples to divorce. It allows divorce on request, clearly, but that is all it does. There is no support offered to help couples stay together. So the Bill removes fault, but it also removes what I would perceive as a human right, that is the right of either party to contest the dissolution of their marriage or even to suggest reconciliation in the hope of a new beginning. So my disappointment here is that the Bill is essentially negative in its workings. It has no constructive counterweight in the form of increased support for relationships. That is not only disappointing, it is also, I believe, an anomaly, an inconsistency of the law, which on the one hand gives people the option of marriage as a lifelong commitment, but then allows one partner to terminate it without any prior warning, leaving, as I say, the other partner with no voice or recourse at all.

My second concern, Mr President, would be that this is entirely based around the petitioner. So if the petitioner wishes to leave then they can do so, and within just 26 weeks. The salutary thing about that is the insecurity it would bring to marriages. So on the passing of this Bill, anyone who is in a marriage is a potential respondent and could be divorced in just 26 weeks, simply because their spouse has changed their mind and no longer wants to be married. My concern there has to do with marriage vows, which actually under those terms are less binding than gym membership or a subscription to a periodical, or a variety of other things that we enter into as routine parts of life.

But I think it is worse than that as well, Mr President, because in fact the Bill surely makes the respondent vulnerable to being divorced in what is actually a six-week process. So, as I see it, there is no mechanism to compel the petitioner to serve notice on the respondent until that first decree of divorce comes through at the end of the 20-week reflection period. So perhaps the mover can respond to that and say whether I am correct or not in thinking that the first a spouse

might know about it is when the provisional order arrives. I see that that is perhaps not the case, so I look forward to enlightenment on that, thank you. And –

150

The President: Mrs Lord-Brennan –

The Lord Bishop: Sorry –

155

The President: Sorry, Lord Bishop.

The Lord Bishop: Sorry, Mr President; thank you.

My third concern would be, again, that it is about the interests of the petitioner rather than those of the children, if there are any children involved in that marriage.

160

So we are told that the Bill will help children by freeing them more readily from the context of an unhappy home, with less conflict or psychological stress. I would take issue with both of those premises. First, I think the literature of social science shows us that divorce does not free children from conflict. It makes conflict a permanent feature of their lives which then become lived over two separate households. And, second, rather than making it easier, fault-free divorces can be the most difficult of all, because they come so suddenly, with no prior warning and for no apparent reason. I offer a quote from the social scientist Elizabeth Marquardt, author of *Between Two Worlds: The Inner Lives of Children of Divorce*, who writes that:

165

The children of low-conflict couples fare worse after divorce because the divorce marks their first exposure to a serious problem. One day, without much warning, their world just falls apart.

So I remain unconvinced, Mr President, that the Bill will help the welfare of children and families, and I have a particular concern I think in that last area for the mental health of children, which research clearly shows to be adversely effected by the separation of parents.

170

So if I draw together those three concerns that I have raised this morning – firstly, the fact that the Bill does give no support to relationships; second, that it makes anyone in a marriage a potential respondent over that short period of 26 weeks; and third, the implications for children – then I still remain concerned that the Bill is unhelpful to any sense of commitment to marriage and to family. And that is a sadness in itself, but it also leaves society open to increased unhappiness, to social and psychological disruption to children, which may well endure into their adult lives, and the concomitant cost, not just to social wellbeing, but also to the public purse.

175

So this Bill, Mr President, is an expedient, but really it is nothing more than that. I believe its moral value is uncertain and that its good intentions are offset and undermined by its capacity for significant social harm. With those reflections, Mr President, I remain unconvinced about the value of this Bill.

180

Thank you.

The President: Mrs Lord-Brennan.

185

Mrs Lord-Brennan: Thank you, Mr President.

First of all, to thank the mover for encapsulating so well and so far the debate around all this, and highlighting again the difficulties around the current process, which are so well established both here and in the UK that it is very difficult to take a different view; that, actually, damage is caused by the current way of doing things, and it causes behaviour which is divisive and really adds fuel to the flames of already very difficult situations. So I appreciate again the answering of the call to improve the process and the law around difficult times of separation and divorce.

190

I welcome very much also the Lord Bishop's contribution to the debate, because it is absolutely right that we examine, and we can examine in detail in this place, and that has provoked some thoughts from my side, which I confess I have not got written down in a speech

195

readily. However, the comments from Mrs Sharpe around domestic abuse also focused my mind on some things that I have spent a lot of time reading around family law in general and the research that has gone into the experience of families and children suffering in this way, whether or not there are matters to do with domestic abuse.

200 If I can be of help to the mover, I am not sure about precise numbers or cases to do with domestic abuse in terms of advocates on the Isle of Man who are saying this is an issue, but certainly much more broadly it is an element in coercive and controlling behaviour, because the essence of what we are probably dealing with is the fact that a spouse *thinks* they cannot leave, *cannot* leave, or thirdly is *told* that they cannot leave and must remain in that relationship, which perhaps links into some of the points that the Lord Bishop has asked us to consider, 205 certainly today.

Firstly, in terms of the Bill only assisting couples to divorce. The way I would look at this is a little bit different, because I would question what the role of the state and the role of the legislature is, actually, in primary legislation, to try and fix and mend matters of the heart and of 210 the home, and that really speaks to the very essence of liberty. Whilst I think that there is so much that can be done in terms of rescuing relationships with mediation and of helping with children and families get through this, how much of that is really down to us to ensure? How much of it is really down to us to potentially block? I feel that many will see this Bill as an unblocking of an already difficult process. But it is right, in that unblocking, that it is an opportunity to discuss what support is available to help, to mediate, to resolve and to remedy. 215 But those are very personal issues of the heart. If an individual, if a couple, cannot get over those, what right has the state or what position has the state to try and enforce?

So I am not convinced that reconciliation should or can actually be legislated for. I am not sure there is a mandate for us to preserve that into the longer term and I think it needs to be 220 weighed against personal liberties and freedoms. And people change in life. I think people take their vows in good faith and then people change in life. So although there is that commitment that people make, nothing that we do in this place, the other place or as Tynwald is ever going to change that, in the same way as you will never change somebody's feelings.

So I do not think that it will devalue the very serious vows that people take in good faith and 225 in good heart earnestly on those days. In fact, and it may just be a funny thing to say, but I certainly know people who decided not to get married because they feel that it would take away this point that if somebody can leave, then actually do people stop trying? That is not helpful in this debate, but I am just saying that out there there is a thought that actually there are different ways to maintain a relationship. I think that people enter into marriage in good faith and do not 230 think that that will change. However, people may change.

The second point is that – and I thought about this at the last sitting – for every person in a relationship that feels that they are being cast aside or abandoned, there may well be another person in that relationship who actually feels trapped, and I think that there is this balance in terms of, it could be one or both people in the marriage that could take forward via this process. 235 I do not think that the balance is wrong with allowing somebody to petition on that basis. I think that if there was to be an assertion of power imbalance, again, you would have to question whether that is going to be resolved in the law. Is it right to preserve and maintain that marriage, purely because legally it is complicated to get out of? Again, there would have to be something more in that relationship to sort that out.

I just think that our role in this is to make sure that our law is not modernised to the detriment of people and to the detriment of marriage, but is also not to the detriment of people who are seeking to move on from that. It is still a serious undertaking. I cancelled my gym membership the other day, my marriage is still intact – for now. (*Laughter*) I make that point in 240 jest, but honestly, this is still a serious undertaking. Twenty weeks, big stuff to think about: children; money. It is all major, all of that will still exist to be sorted out and I think there has been a great deal of thought that has gone into this. The point I wish to make with that light-hearted comment is that no matter of the mechanics of the law and of the forms and of the 245

250 stages and the times that somebody must go through, it is still a big decision. The reason I make that point is to say that I think it would be pretty unusual, and perhaps odd circumstances, should a will to separate and to get a divorce come completely out of the blue. I think that there would be other markers that are perhaps not so administrative in nature to perhaps signify that that is the way things are going.

255 Finally then, obviously in an ideal world people would stay together, their families would stay together and their children would experience a blissful family life throughout the time, and is that not what everybody wants when they enter into marriage and into family life? But regrettably, we do not live in that ideal world, so our job is to try and do the best thing that we can in our narrow portion, which is the legislation, which has been thought of as being problematic, divisive and stressful for past more than 20 years. There is a huge amount of research and advocacy on that basis, not just from people that probably, if they have been
260 through it, have said, ‘Actually, I wish it wasn’t so hard’, because of course that exists – we know that – but also through family lawyers and people who are experienced at the highest end of this, and as well as people who work with children.

265 But I of course recognise that the Lord Bishop has also rightly found another piece of the puzzle that we have to assess between us, and we can never know how it is going to go in any individual family; that would be a huge undertaking for us to think that we could. So I would just put the view, what is our appropriate response within our narrow fit of the legislation? But I am also *really* grateful, Mr President, that we can talk in detail about these matters in this Council, because it is a significant and heavy social matter that should be regarded with such significance.

270 Thank you.

The President: Thank you.
Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

275 Eaghtyrane, I am supportive of Hon. Member, Mrs Poole-Wilson’s endeavours in the round, and I have got no problem with that and always have been supportive. I have been down to Mrs Smith’s office over the last, I do not know, three/four years, and had good conversations with her and briefings. She has put her concerns, which are legitimate, as far as I am concerned, and genuine in the cases that were cited to myself – fine. On those grounds, and for the grounds
280 of the Bill, I am quite happy.

I have to say, Eaghtyrane, I do give some weight to the points our Lord Bishop was highlighting. They may seem a little more traditional to some people, some Hon. Members. However, there are points to be had there, and we need to have a balance, as the Lord Bishop says, as far as that goes. I have some sympathy and empathy with regard to what the
285 Lord Bishop was pointing out.

What I would just like to make clear, and I am sure it is so – absolutely certain – is that when everyone here who has contributed thus far is talking about domestic abuse, that we are talking male-female, female-male abuse, not just from one particular gender on another, (**Miss August-Hanson:** Hear, hear.) because I can say without a shadow of a doubt, not that it is
290 as common, but certainly abuse coming from a female within a relationship can be just as traumatic in some ways as is a male who is dishing out the abuse. Certainly, as I say, it is rarer to come across that from a female point of view, but it does happen.

295 **A Member:** Quite right.

A Member: Yes, it does.

Mr Henderson: The other thing I want to point out, in my experience in mental health and certainly from a constituency point of view, the number of cases I have come across over the

300 years – not many, thankfully, but – due to the behaviour of one partner in a marriage, the application for divorce or the first knowledge that the other partner – the innocent party, if you like – has that something is wrong is when they are told on the day. It is not a case of there should have been signals, should have been something to be picked up upon as you are going along.

305 I have come across at least two or three cases where an innocent party has in fact been completely oblivious up to a point as to what was going to befall them, unfortunately, until the point of where they are told quite bluntly that the party who is going to leave says almost on the day that they have had enough, they are leaving, or that something else occurs. But because the innocent party actually still loved the other party, as it were, had complete faith in them and so
310 on, that it would not occur to them, only as much as any particular little bits of behaviour that might have given a signal, they are just taken as personality traits or, ‘It’s just a phase we’re going through’, ‘It’s just something we can sort out’. It never, ever occurred to them that what in fact was actually unfolding was something far more dangerous or sinister in one particular case I am thinking of, and it came as a bolt out of the blue.

315 So sometimes I am afraid we cannot just say, ‘Oh it’s something we should be able to pick up on’, because life just does not work like that in all circumstances. So I just want to put some balance on that particular observation, Eaghtrane. But in the main, very supportive of what Mrs Poole-Wilson is doing.

320 **The President:** Mrs Maska.

Mrs Maska: Thank you, Mr President.

This matter is always a very complex discussion. In a past life – another past life – I spent eight years working for an advocate locally, and one of my ultimate tasks in the end was to draft
325 pleadings and papers on divorce. That was one of the most difficult things that you can be asked to do when you are having to get a client to try and dig deep and find the reasons, that they may not wish to remember, to blame the person who they have loved and gone very seriously into a relationship, and equally that situation can also prolong a very difficult and painful climate for children as well as the two parties to the marriage.

330 I always have great respect for what the Lord Bishop advises us, and again I do today. But I would also say that children more often than not do suffer regardless of the grounds for a divorce. Living – and again, I have lived through this; I have had a difficult divorce – it was a situation where the family environment ... we were all trying – even the children – to make things work, but the result can be more damage than good coming out of that situation.
335 Fortunately, we have all survived well – all of us – but the world of a child falls apart, I would say, when their parents do and have to go their separate ways, whether it be a prolonged process with blame involved. It will be difficult with a no-fault process, but I think there is a potential to improve what is currently on offer to us and also can, as hon. colleagues have said, create a climate for abuse/domestic abuse, and a situation that no one would wish to happen.

340 There may be a case for better counselling, better advice before the marriage itself takes place, whether that be a civil ceremony or a religious ceremony. I know some beliefs and religions do put great store by pre-marriage counselling and training. I think that is so valuable and really should be more widely available. You should not just be able to get married and then just hand your subscription in. But I do think that the time where one party might have to wait
345 five years to be able to get a divorce from a partner, who may no longer even be in this jurisdiction, we need to actually move on from that. I do welcome this modernisation, but also a very thoughtful of dealing with the divorce legal process, and family matters remain in the same situation as they are handled very sensitively now.

Thank you, Mr President.

350

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

355 I will make it very brief, because the points that have been made by my colleagues on Council have been comprehensive for one, and two, have been very on point. Much of what has been said I could not possibly add to, simply because I agree with all of it.

360 The Lord Bishop: I do welcome your comments, and particularly because you offer that different opinion on the Council that I think we very much need in order to know that what we are doing is quite right and the balance there is quite right. I do appreciate your opinion, so thank you. And it has been quite thought provoking, particularly in relation to how that other party might feel, because having gone through the divorce process here on the Isle of Man myself, I spent two years thinking about how my partner, or my ex-partner, feels, because there are very much ... we talk about one person in a relationship finding themselves, or feeling, trapped, as Mrs Lord-Brennan pointed out. Well, in my situation we both did, and we both had
365 for a considerable amount of time before that point, and still continued down this road thinking, 'Right, okay, well, we don't want to point the finger at one another, because it is nobody's fault that we are in this situation'. We thought about this long and hard and then we took the decision to separate and then to divorce on the two-year route.

370 Just to look at the points that were made, and I am sure ... I am just trying to help my colleague Mrs Poole-Wilson here as well in relation to her having said on points one and three of the Lord Bishop's argument there that ... Firstly, you mentioned that it assists people to divorce, that there is no support that is offered, that it is quite a negative Bill. I disagree with that because I think that a marriage is a balance between something that is a healthy marriage and something that is an unhealthy marriage, and it is about finding that point at which you literally
375 cannot return. Many couples, like myself and my now ex-partner, have gone through the counselling route, gone through the talk therapy route, tried everything to try and make something work, and then figured out, 'This isn't going to work and what shall we do about it?' So I do not think that anybody goes into it light-heartedly by any stretch of the imagination. I know a couple of other people that have been through this situation and they certainly did not
380 either.

Now, the legislation, as Mrs Poole-Wilson said, regarding children and the court process regarding children, is not going to change here. Am I right? I believe I am, aren't I? (*Laughter*) It is not going to change here. It only addresses this one issue, which is something that I actually do not believe is negative. I believe it is also positive – very positive. I think that it is a move towards
385 a more enlightened community here on the Isle of Man, understanding that relationships are complex and they are different from one to the next. It does not over-legislate, this piece of legislation. It does not, I believe, under-legislate. It provides that balance between the issues that we need to deal with and all of the different opinions that I am sure will sit around our community, whether it be religious or otherwise.

390 I am awful also with gym memberships, by the way (*Laughter*) – absolutely dreadful. I have been through so many of them where I have picked it up for a month and have shoved it to one side. I have allowed the payments to go out month on month on month on month (*Laughter*) before cancelling it at the appropriate time, which is, no doubt, down the line where an awful lot of money has been spent. I certainly do not see any link between that and the situation that I
395 found myself in for eight years, while we tried so exceptionally hard to make something work that just was never going to be. It is like Mrs Poole-Wilson said: if it is over, then it is over. If one party says, 'I can't do this anymore, this is too hard', then it is over – it is done. It takes a long time for somebody to figure that out. You try and you try and you try and you delay and you delay and you delay before that point, and I think that due respect does need to be given to
400 that.

Thank you, Mr President.

The President: Now, are there any other contributions before I ask Mrs Poole-Wilson to reply to the debate?

405 In that case, Mrs Poole-Wilson, thank you.

Mrs Poole-Wilson: Thank you, Mr President, and can I thank hon. colleagues for their contributions and to assisting us to have some reflection on this short, but significant, Bill.

410 If I begin with Mrs Sharpe's contribution, and in particular her question that she posed about what this Bill would mean in the context of a relationship where there is domestic abuse. And she asked specifically am I able to reflect with any comments from any Manx advocates as to what the situation is currently and what a difference this Bill would make. I do not have any particular comments that I can share with Hon. Members of Council in that regard. But it is the case that sadly at the moment, because of the requirement to prove a fact-based ground that demonstrates irretrievable breakdown, it can be very difficult for those who are in the situation of domestic abuse.

420 In fact, the current law could act as a barrier to being able to exit that abusive relationship. For example, even where unreasonable behaviour is cited, it may be very difficult to prove if the abuse has been going on behind closed doors for many years and is of the coercive controlling type. It is not necessarily easy to evidence it. It is also – referring to the point that Mrs Maska made in writing down facts about unreasonable behaviour – extremely painful to have to relive the abuse that one has lived with for, potentially, many years in order to demonstrate that the marriage has irretrievably broken down.

425 I think the alternative to fault is of course separation: two years with consent, but five years without consent. If there is an abusive relationship, that is an incredibly long time for someone to remain within the control and the potential to be abused by an abusive partner. So there is no doubt that the current law does not help the individual who wishes to try and exit an abusive relationship.

430 Turning to the Lord Bishop's contribution, which I thank him very much for raising some significant points that I think, actually, really we should reflect on and concern us all on this Hon. Council. So the first point: I think his first point was really about the Bill being essentially negative; that what it does is it permits divorce and dissolution, but does not provide a counterbalance to encourage reconciliation and support. I think this is extremely difficult, because what this Bill is doing – and I think I tried to get this across in my opening remarks today – is it acts at the point when irretrievable breakdown has happened and it provides for the legal process to recognise that and not add antagonism and pain to the process that then follows. I think the challenge of how we support couples, how we provide counselling, again, the Hon. Member, Mrs Maska, suggested that perhaps there is more scope or there should be more scope for pre-marriage counselling and support. I think probably that is where efforts should be directed in order that we better support people as they make decisions to commit to relationships.

445 However, the sad reality is – and this is something that is borne out by my conversations with Manx advocates, and certainly my own more limited experience as the Deputy Legal Aid Certifying Officer looking at the number of divorce applications that came through the Legal Aid Office – the sad fact is that by the time somebody crosses the threshold of an advocate's office, makes that application and pays the fee to make that application, they have thought long and hard about the situation, and they are at the point of deciding that the marriage or the civil partnership has irretrievably broken down. I think that is why this Bill recognises that in changing the legal process.

450 Another point I think it is worth highlighting is there was in the consultation the question about mediation and compulsory mediation, and there was some interesting response on that point. The interesting response from those who are involved in the work of mediation was perhaps most compelling, and it is the reason why the Bill itself does not include compulsory

455 requirement for mediation. I would like to quote from the public consultation one response in particular:

I work as a mediator. My experience is that people intensely dislike being told by someone else what to do. I agree strongly that mediation is much the best option for couples but by making it compulsory may make it much harder to gain the active engagement of some couples in collaborative problem solving. Thus having the unintended consequence of making it harder to achieve a negotiated agreement.... I am also of the view that compulsory mediation may inadequately protect vulnerable parties from further abuse or oppression.

460 So, again, the Bill does not seek to require parties to attempt to reconcile. I can however say also that certainly when couples apply for Legal Aid, as part of seeking advice and assistance in the context of divorce, the question is always asked by the Legal Aid Office: has mediation been attempted; and if it has not, what is the reason? I can also say that a number of family advocates on the Isle of Man are members of Resolution, and it is their ethos to try and support couples and to ask that question when they are approached about what alternatives have been considered before the couple proceeds with divorce.

465 So I think *many* professionals who are supportive of the stance taken in this Bill also recognise that where reconciliation or mediation is possible, that absolutely should be encouraged and tried. It is difficult, however, to legislate and make that compulsory when we are in the field of human relationships.

470 In terms of the second point that the Lord Bishop raises about any individual in a marriage today or under this Bill effectively becoming a respondent, I am afraid that is the case now. It is the case under our present law that in the field of human relationships it is possible at any point for an individual to become a respondent. There is no minimum time period under our law as it stands. If you wish to proceed with a fault-based divorce, the Registry's timetabling at the moment is a minimum of 17 weeks in the Isle of Man. It is only if you do not wish to proceed with a fault-based divorce that then potentially you are looking at a longer time period, which are the separation facts. The difficulty is though that our present system, for those who do not or are not willing to continue with a period of separation, they are forced, in effect, to cite fault, and it is this citing of fault that then adds damage and stress and pain and antagonism to the process.

480 In terms of the position of the party who was not expecting the divorce, or for whom, as Mr Henderson highlighted, in some cases it might be a complete bolt from the blue, they did not see what was coming. I think the difficulty there, again, is we are in the field of human relationships, and it is incredibly difficult to legislate for all of the dynamics of different relationships. However, the court process does provide, and it will provide under the rules of court even under this Bill, that on petitioning for divorce that petition will still need to be served on the other party and they will be required to give an acknowledgement of service. The main difference is that in the petition itself you will not need to cite the fact-based grounds for the divorce, and the respondent will not be forced into answering that, either to contest it or to accept the fault-based grounds.

490 There is further protection in that the parties need to apply for the conditional order and further for the final order. I did make the point that the existing protection in the law for those who might suffer severe financial consequences will remain, in that that party can apply to delay the final order if inadequate financial provision is at issue. Further, in terms of any children, and around the court process, it will still be the case that the court will have to certify that arrangements for any children are appropriate and protect the children.

495 I suppose that brings me onto the third point that the Lord Bishop raised: the situation of children. Again, I think all Members on this Hon. Council are all very concerned for the best interests of children, and it seems to me that not many of us would argue that the best position for any children is of course to grow up in a family, in a positive and enduring adult relationship that offers them full support and that provides the mutual support of the two adults who care

500 for those children to remain together and endure throughout the challenges that life throws at all of us.

I think, though, we must also recognise that when a relationship does break down, whether that is characterised by high conflict or by a more low-level misery and unhappiness on the part of one or both parents, the negative impact for children should not be underestimated. I appreciated the Lord Bishop's quote and I think what is interesting is that quote is applicable today. The damage from divorce and dissolution for any children is an issue today under our current law. I think what this Bill seeks to do is to recognise that it is actually in the best interests of children, where a relationship breakdown has occurred, that that relationship and its termination in law should not be made more difficult, that that breakdown should not be made more antagonistic by the legal process. The possibility for those parents to part and to be able to co-parent into the future positively should be supported by the legal process.

510 It is worth at this point I think noting the comments of the President of the Law Society in England and Wales:

For separating parents, it can be much more difficult to focus on the needs of their children when they have to prove a fault-based fact against their former partner. Introducing a 'no fault' divorce will change the way couples obtain a divorce – for the better.

I also think it is worth quoting again from the responses to the public consultation in the Isle of Man. Some of these responses were compelling, and one in particular struck me as getting to the heart of this issue:

515 Divorcing was made extra painful, extra expensive and made extra animosity between my ex and myself. My children suffered badly. The system is geared up for confrontation which took years to get over.

So I hope that assists the Lord Bishop with some of the thinking about where this Bill would fit with the concerns that he has raised. I think they are concerns that all of us rightfully do reflect on and will continue to reflect on, and that perhaps there are other ways in which we can seek to do more to support couples before they choose to make a commitment through marriage or civil partnership, and during that time. But I think once irretrievable breakdown has happened, sad and painful as it is, the law should recognise that.

520 Thank you to my seconder, Mrs Lord-Brennan. She has talked a lot about the difficulties with the current process, and that, actually, the current process at the moment encourages divisiveness, rather than helps couples move on in perhaps a more constructive manner. She also acknowledged the issues in domestic abuse; that the process at the moment can add and enable further coercive and controlling behaviour, which is a significant concern.

I think it is true, and this is what we perhaps struggle with the most, is what our role is when it comes to matter of the heart and home. It is difficult. Of course, in an ideal world, none of us want to see relationships break down with the pain and hurt that follows. Sadly, it is a reality of life, and I think this Bill, whilst it cannot legislate to change people's hearts, it can try to support more constructive behaviour.

530 Mr Henderson, I thank you for your contribution and also your reflection – I think very importantly – that abusive behaviour happens on the part of both genders, and we should not forget that; and the pain and damage to partners in abusive relationships can be significant, irrespective of which party is the abusing partner.

I have already touched on his point that for some individuals the divorce itself is damaging and is a bolt from the blue. Sadly, that is currently the case, and we cannot necessarily change that, because that is about people's behaviour. Again, I would emphasise that we hopefully can minimise the scope for conflict if we take away fault.

540 Thank you to Mrs Maska for her reflection on her time working in this field and having to sit with parties as they rehearse the painful facts that they feel they have to put forward to support the irretrievable breakdown of their marriage, and her recognition that the world of a child does

545 fall apart. It does fall apart when the people they love most in the world part. Again, I would reflect on a point earlier made that if we can try and help those parents move on and co-parent in a constructive way then that will be of better service to those children in the future than an antagonistic and drawn out process.

550 And thank you to Miss August-Hanson again for her reflections and contributions. Yes, couples may try *very* hard to avoid divorce and, as I have previously said, advocates' experience here is that people have thought long and hard before they cross the threshold; and relationships are complex. But once that decision is made, it is my belief that this Bill does the right thing in enabling that decision to be enacted through the legal process, minimising the scope for conflict.

555 I hope that I have managed to cover everybody's questions and points, and with that, I beg to move.

The President: Thank you.

Hon. Members, I put the question that the Divorce, Dissolution and Separation (Isle of Man) Bill be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Divorce, Dissolution and Separation (Isle of Man) Bill 2020 – Clauses considered

560 **The President:** We turn now to the clauses stages, and I understand, Mrs Poole-Wilson, you will wish to group some of the clauses and you can of course indicate that as we move along. So, clause 1, Mrs Poole-Wilson to move.

565 **Mrs Poole-Wilson:** Thank you, Mr President. If I may move clauses 1 and 2 together.

The President: Is that agreed? (**Members:** Agreed.) Thank you.

Mrs Poole-Wilson: Clause 1 provides for the short title of the resulting Act, while clause 2 provides for its commencement.

570 Mr President, I beg to move that clauses 1 and 2 stand part of the Bill.

The President: Mrs Lord-Brennan.

575 **Mrs Lord-Brennan:** Thank you. I beg to second and reserve my remarks.

The President: I put the question that clauses 1 and 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 3.

580 **Mrs Poole-Wilson:** Mr President, with the Council's agreement, I would like to take clauses 3 to 7 together, as they are interlinked.

The President: Is that agreed, Hon. Members?

585 **Members:** Agreed.

The President: Thank you.

590 **Mrs Poole-Wilson:** Clause 3 replaces the current fact-based procedure with a simple
administrative application process that will enable one or both parties to declare that the
marriage has broken down irretrievably. Clause 5 achieves the same in relation to a civil
partnership. The Bill, if passed, will remove the need to establish any of the five facts which
under our existing law are the conditions precedent to the granting of a conditional divorce
595 order in relation to marriage.

Subsection 2, paragraph 6 of this clause – this is clause 3 – outlines how the court dealing
with a divorce application will make a conditional order in the first instance not less than 20
weeks after an application is received. A conditional order may not be made final until either or
both parties give confirmation they wish to progress to a final order, which will not be issued
600 until a further period of six weeks.

Clause 4 amends section 17 of the Matrimonial Proceedings Act 2003, which deals with
separation, again, removing the need to establish any of the five facts.

Clause 5 deals with the dissolution of a civil partnership in the same way, removing the need
to cite a reason. Unlike the way the Matrimonial Proceedings Act 2003 is set out, the Civil
Partnership Act 2011 deals with the time limits in a different place. Hence clause 6 is necessary
605 to bring these into line with the new 20 weeks plus six weeks process.

Clause 7 makes corresponding provision in relation to the granting of a separation order for
civil partners who may not want to apply for a dissolution.

The Bill is drafted to enable the Council of Ministers to amend the time periods by order, but
they may not make the prescribed periods amount to longer than 26 weeks when combined.
Also, any change to the time periods would require Tynwald approval. A little-used provision in
the Matrimonial Proceedings Act has been included in this Bill to give discretion to the court to
enable a divorce or dissolution to be granted before the expiry of the time periods if it appears
to the court to be just to do so. It is felt this gives flexibility to the courts to grant a final order in
615 exceptional circumstances, and, Hon. Members, the situation of domestic abuse may be such a
circumstance.

This provision can be seen in clause 3, in substituted section 2 of the Matrimonial
Proceedings Act 2003, paragraph (6), and in clause 6(3) amending 35A of the Civil Partnership
Act 2011. The Bill also allows that the rules of court may make provision for the process to
620 follow, should a joint application for divorce or dissolution become an application by one party
only.

Mr President, I beg to move that clauses 3 to 7 stand part of the Bill.

The President: Mrs Lord-Brennan.

625

Mrs Lord-Brennan: I beg to second.

The President: If Members are content, I will put the vote on clauses 3 to 7 collectively. I put
the question that clauses 3, 4, 5, 6 and 7 do stand part of the Bill. Those in favour, say aye;
630 against, no. The ayes have it. The ayes have it.

Clause 8.

Mrs Lord-Brennan: Thank you, Mr President.

Clause 8 and the Schedule make minor and consequential amendments to various legislation
635 that will be necessary upon the passing of this Bill.

Mr President, I beg to move that clause 8 and the Schedule stand part of the Bill.

The President: Mrs Lord-Brennan.

640 **Mrs Lord-Brennan:** I beg to second.

The President: I put the question that clause 8 and the Schedule do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members.