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**DIVORCE, DISSOLUTION AND
SEPARATION (ISLE OF MAN) BILL 2019**

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Explanatory Memorandum

1. This Bill is promoted by Mrs Daphne Caine MHK, pursuant to leave granted on 23 October 2018 under Keys Standing Order 4.4(2).
2. *Clause 1* provides for the short title of the resulting Act, whilst *clause 2* provides for its commencement.
3. *Clauses 3 and 4* remove the need to establish any of the five facts which under the existing law are conditions precedent to the grant of a conditional divorce order or an annulment order in relation to a marriage.
4. *Clauses 5, 6 and 7* make corresponding provision in relation to the grant of a dissolution order or a separation order in respect of a civil partnership.
5. *Clause 8 and the Schedule* together make consequential and minor amendments in consequence of the new regime for divorce, dissolution of civil partnerships and separation.
6. The resulting Act is not expected to increase public expenditure or decrease public revenue.
7. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.

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DIVORCE, DISSOLUTION AND SEPARATION (ISLE OF MAN) BILL 2019

A **BILL** to make, in relation to marriage and civil partnership, provision about divorce, dissolution and separation; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

Introduction

1 Short title

The short title of this Act is the Divorce, Dissolution and Separation (Isle of Man) Act 2019.

2 Commencement

(1) This Act comes into operation on such day or days as the Council of Ministers, after consultation with the Deemsters, may by order appoint.

This is subject to the following qualification.

(2) Section 8(2) comes into operation on announcement day.

(3) An order under subsection (1) may include such consequential, incidental, supplemental, transitional and transitory provision, including modification of Manx enactments as the Council of Ministers, after consultation with the Deemsters, considers appropriate.

Tynwald procedure for an order under subsection (1) — laying only.

Divorce and judicial separation

3 Divorce: removal of requirement to establish facts etc

For section 2 of the *Matrimonial Proceedings Act 2003* (divorce on breakdown of marriage) substitute—

«2 Divorce on breakdown of marriage

- (1) Subject to section 3, either or both parties to a marriage may apply to the court for an order (a “**divorce order**”) which dissolves the marriage on the ground that the marriage has broken down irretrievably.
- (2) An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the marriage has broken down irretrievably.
- (3) The court dealing with an application under subsection (1) must—
 - (a) take the statement to be conclusive evidence that the marriage has broken down irretrievably, and
 - (b) make a divorce order.
- (4) A divorce order—
 - (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.
- (5) The court may not make a conditional order unless—
 - (a) in the case of an application that is to proceed as an application by one party to the marriage only, that party has confirmed to the court that they wish the application to continue, or
 - (b) in the case of an application that is to proceed as an application by both parties to the marriage, those parties have confirmed to the court that they wish the application to continue;and a party may not give confirmation for the purposes of this subsection before the end of the period of 20 weeks from the start of proceedings.
- (6) The Council of Ministers, after consulting the Deemsters, may by order amend this section so as to shorten or lengthen the period for the purposes of subsection (4)(b) or (5).

Tynwald procedure – approval required.
- (7) But an order under subsection (6) may not provide for a period which would result in the total number of days in the periods for the purposes of subsections (4)(b) and (5) (taken together) exceeding 26 weeks.
- (8) In a particular case the court dealing with the case may by order shorten the period that would otherwise be applicable for the purposes of subsection (4)(b) or (5).

- (9) Rules may make provision as to the procedure for an application under subsection (1) by both parties to a marriage to become an application by one party to the marriage only (including provision for a statement made under subsection (2) in connection with the application to be treated as made by one party to the marriage only).».

4 Separation: removal of factual grounds

- (1) Section 17 of the *Matrimonial Proceedings Act 2003* (separation) is amended as follows.
- (2) For subsection (1) substitute—
- «(1) Either or both parties to a marriage may apply to the Court for an order (a “**judicial separation order**”) which provides for the separation of the parties to the marriage.
- (1A) An application under subsection (1) must be accompanied by—
- (a) if the application is by one party to the marriage only, a statement by that person that they seek to be judicially separated from the other party to the marriage, or
- (b) if the application is by both parties to the marriage, a statement by them that they seek to be judicially separated from one another.
- (1B) On an application under subsection (1), the Court must make a judicial separation order.».
- (3) Omit subsections (2) and (3).

Civil partnership: dissolution and separation

5 Dissolution: removal of requirement to establish facts

- (1) Section 42 of the *Civil Partnership Act 2011* (dissolution of civil partnership which has broken down irretrievably) is amended as follows.
- (2) In subsection (1), for “either civil partner” substitute “either or both civil partners”.
- (3) After subsection (1) insert—
- «(1A) An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the civil partnership has broken down irretrievably.”
- (4) Omit subsections (2) and (3).
- (5) For subsection (4) substitute—
- «(4) The court dealing with an application under subsection (1) must—

- (a) take the statement to be conclusive evidence that the civil partnership has broken down irretrievably, and
 - (b) make a dissolution order.».
- (6) Omit subsections (5) and (6).
- (7) At the end insert—
- “(7) Without limiting section 25 of the *High Court Act 1991*, rules may make provision as to the procedure for an application under subsection (1) by both civil partners to become an application by one civil partner only (including provision for a statement made under subsection (1A) in connection with the application to be treated as made by one civil partner only).».

6 Dissolution orders: time limits

- (1) The *Civil Partnership Act 2011* is amended as follows.
- (2) In section 35 (powers to make orders and effect of orders), omit subsection (2).
- (3) After section 35 insert—

«35A Dissolution on ground of breakdown: conditional and final orders

- (1) Every dissolution order—
- (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order (the “**first prescribed period**”).
- (2) The court may not make a conditional order unless—
- (a) in the case of an application that is to proceed as an application by one civil partner only, that person has confirmed to the court that he or she wishes the application to continue, or
 - (b) in the case of an application that is to proceed as an application by both civil partners, those persons have confirmed to the court that they wish the application to continue;
- and a person may not give confirmation for the purposes of this subsection before the end of the period of 20 weeks from the start of proceedings (the “**second prescribed period**”).
- (3) The Council of Ministers, after consulting the Deemsters, may by order amend this section so as to substitute—
- (a) a different definition of the first prescribed period, or

- (b) a different definition of the second prescribed period.
Tynwald procedure — approval required.
 - (4) But an order under subsection (3) may not provide for a period which would result in the total number of days in the first and second prescribed periods (taken together) exceeding 26 weeks.
 - (5) In a particular case the court dealing with the case may by order shorten the first prescribed period or the second prescribed period.».
 - (4) In section 36 (the period before conditional orders may be made final)—
 - (a) for the heading substitute—
- “36 Annulment and presumption of death: conditional and final orders”;**
- (b) before subsection (1) insert—
 - «(A1) Every nullity or presumption of death order—
 - (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the prescribed period for the purposes of this paragraph.»;
 - (c) in subsection (1), in the words before paragraph (a), for “section 35(2)(b)” substitute «subsection (A1)(b)»;
 - (d) in subsection (2), for “section 35(2)(b)” substitute «subsection (A1)(b)».

7 Separation: removal of factual grounds

- (1) Section 54 of the Civil Partnership Act 2004 (separation orders) is amended as follows.
- (2) In subsection (1), for the words from “either civil partner” to the end substitute «either or both civil partners.».
- (3) After subsection (1) insert—
 - «(1A) An application under subsection (1) must be accompanied by—
 - (a) if the application is by one civil partner only, a statement by that person that he or she seeks to be separated from the other civil partner, or
 - (b) if the application is by both civil partners, a statement by them that they seek to be separated from one another.».
- (4) Omit subsection (2).
- (5) For subsection (3) substitute—
 - «(3) The court dealing with an application under subsection (1) must make a separation order.».

- (6) Omit subsection (4).

General

8 Minor and consequential amendments

- (1) The Schedule contains minor and consequential amendments.
- (2) The Council of Ministers, after consulting the Deemsters, may by order make provision consequential on any provision made by this Act.
Tynwald procedure – approval required.
- (3) An order under subsection (2) may amend Manx legislation (whenever passed or made).

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

[Section 8(1)]

**PART 1: AMENDMENTS TO THE MATRIMONIAL
PROCEEDINGS ACT 2003****1 Matrimonial Proceedings Act 2003 amended**

The *Matrimonial Proceedings Act 2003* is amended as follows.

2 Sections 3, 5 and 6 omitted

- (1) Omit section 3 (supplemental provisions as to facts raising presumption of breakdown of marriage).
- (2) Omit section 5 (divorce not precluded by previous separation order).
- (3) Omit section 6 (refusal of order in 5 year separation cases on hardship grounds).

3 Attempts at reconciliation: section 7 amended

In section 7(1) for “divorce” substitute «a divorce order».

4 Consideration of certain agreements or arrangements: section 8 amended

- (1) Section 8 is amended as follows.
- (2) In paragraph (a) —
 - (a) for “either before or after the making of an application for a divorce order” substitute—

«when proceedings for a divorce order are contemplated or have begun»;
and
 - (b) for “the proceedings for divorce which are contemplated or, as the case may be, have begun” substitute «the proceedings».

5 Special protection for respondent in separation cases: section 9 amended

- (1) Section 9 is amended as follows.
- (2) For the heading substitute —

«9 **Proceedings before divorce order made final: special protection for respondent».**

(3) Omit subsection (1).

(4) For subsections (2) and (3) substitute—

«(2) The following provisions of this section apply where—

(a) on an application for a divorce order a conditional order has been made and—

(i) the conditional order is in favour of one party to a marriage, or

(ii) the conditional order is in favour of both parties to a marriage, but one of the parties has since withdrawn from the application, and

(b) the respondent has applied to the court for consideration under subsection (3) of his or her financial position after the divorce.

(3) Subject to subsection (4), the court hearing an application by the respondent under subsection (2) must not make the divorce order final unless it is satisfied—

(a) that the applicant should not be required to make any financial provision for the respondent, or

(b) that the financial provision made by the applicant for the respondent is reasonable and fair or the best that can be made in the circumstances.

(3A) In making a determination under subsection (3) the court must consider all the circumstances including—

(a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties to the marriage, and

(b) the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the applicant should that person die first.».

(5) In subsection (4)—

(a) in the words before paragraph (a), for “order final” substitute «divorce order final»; and

(b) in paragraph (b), for “applicant that he will make such financial provision” substitute «applicant that he or she will make such financial provision».

6 Relief for respondent in divorce proceedings: section 10 omitted

Omit section 10.

7 Period before annulment orders may be made final: section 13B inserted

After section 13A (grounds on which a marriage converted from a civil partnership is void or voidable) insert—

«13B Period before annulment orders may be made final

- (1) An annulment order—
 - (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.
- (2) Rules of court may amend this section so as to shorten or lengthen the period for the purposes of subsection (1)(b).
 - Tynwald procedure — laying only.
- (3) But rules of court under subsection (2) may not lengthen the period so that it exceeds 6 months.
- (4) In a particular case the court dealing with the case may by order shorten the period that would otherwise apply for the purposes of subsection (1)(b).».

8 Bars to relief where marriage voidable: section 14 amended

- (1) Section 14 is amended as follows.
- (2) In subsection (1)(a) —
 - (a) for “him to have” substitute «him or her to have»;
 - (b) for “so conducted himself” substitute «so conducted himself or herself».

9 Parties to proceedings under Part I: section 24 amended

- (1) Section 24 is amended as follows.
- (2) Omit subsections (1) to (3).
- (3) In subsection (4)—
 - (a) omit “, in cases not falling within subsection (1),”;
 - (b) in paragraph (a) omit “adultery or other”.
- (4) In subsection (5) omit paragraph (a) (and the word “or” immediately following that paragraph).

10 Duration of continuing financial provision orders and effect of remarriage: section 40 amended

- (1) Section 40 is amended as follows.

- (2) In subsection (2) for “term specified in the order” substitute—
| «term specified in the periodical payments order or secured periodical
| payments order».

PART 2: AMENDMENTS TO THE CIVIL PARTNERSHIP ACT 2011

11 Civil Partnership Act 2011 amended

The *Civil Partnership Act 2011* is amended as follows.

12 Proceedings before order has been made final: section 38 amended

In section 38(4)—

- (a) for “section 35(2)” substitute «sections 35A(1) and 36(A1)»;
- (b) in paragraph (b) omit “in separation cases”.

13 Time bar on applications for dissolution orders: section 39 amended

In section 39, omit subsection (2).

14 Supplemental provisions as to facts raising presumption of breakdown: section 43 omitted

Omit section 43.

15 Dissolution not precluded by previous separation order, etc.: section 44 omitted

Omit section 44.

16 Refusal of dissolution in 5 year separation cases on ground of severe hardship: section 45 omitted

Omit section 45.

17 Proceedings before order made final: protection for respondent in separation cases: section 46 amended

In section 46—

- (a) in the heading omit “in separation cases”;
- (b) omit subsection (1);
- (c) for subsection (2) substitute—
| «(2) Subsections (3) to (5) apply if—

- (a) on an application for a dissolution, a provisional dissolution order has been made and—
 - (i) the provisional dissolution order is in favour of one civil partner only, or
 - (ii) the provisional dissolution order is in favour of both civil partners, but one of them has since withdrawn from the application, and
- (b) the respondent has applied to the court for consideration under subsection (3) of his or her financial position after the dissolution of the civil partnership.».

18 Relief for respondent in dissolution proceedings: section 60 omitted

Omit section 60.

PART 3: AMENDMENT OF OTHER ENACTMENTS

19 Inheritance (Provision for Family and Dependants) Act 1982 amended

- (1) The *Inheritance (Provision for Family and Dependants) Act 1982* is amended as follows.
- (2) In section 1 (application for provision from deceased's estate) in subsection (2)(a) —
 - (a) for “a decree of judicial separation” substitute «a separation order»;
 - (b) for “the decree” substitute «the order».
- (3) In section 3 (matters to which the court is to have regard in exercising powers under section 2) in subsection (2) in the words following paragraph (b)—
 - (a) for “a decree of judicial separation” substitute «a separation order»; and
 - (b) for “a decree of divorce” substitute «a divorce order».
- (4) In section 14 (provision as to cases where no financial relief granted in divorce proceedings etc) —
 - (a) in subsection (1)—
 - (i) in the words before paragraph (a) for the words from “decree of divorce” to “granted” substitute «divorce order or annulment order has been made final or a separation order has been made»;
 - (ii) in the words after paragraph (b) for the words from “decree of divorce” to “granted” substitute—

- «divorce order or annulment order had not been made final or the separation order had not been made,»;
- (b) in subsection (2)—
- (i) for “decree of judicial separation” substitute «separation order»; and
- (ii) for “the decree” substitute «the order»;
- (5) In section 15 (restriction imposed in divorce proceedings etc)—
- (a) in subsection (1) for “grant of a decree of divorce, a decree of nullity of marriage or a decree of judicial separation” substitute «making of a divorce order, an annulment order or a separation order»;
- (b) for subsection (2) substitute—
- «(2) In the case of a divorce order or an annulment order an order may be made under subsection (1) before or after the divorce or annulment order is made final, but, if it is made before that order is made final, it shall not take effect unless that order is made final.»;
- (c) in subsection (3) for “the grant of a decree of divorce or nullity of marriage” substitute «the making of a divorce order or an annulment order»;
- (d) in subsection (4) —
- (i) for “the grant of a decree of judicial separation” substitute «the making of a separation order»
- (ii) for “the decree is” substitute «the separation order is».
- (6) In section 19 (effect, duration and form of orders), in subsection (2)(b)—
- (a) for “a decree of judicial separation” substitute «a separation order»;
- (b) for “the decree” substitute «the order».
- (7) In section 24 (interpretation)—
- (a) in subsection (1), in paragraph (a) of the definition of “former spouse” for the words from “decree of divorce” to “granted” substitute «divorce order or an annulment order made or a decree of divorce or a decree of nullity of marriage granted,»;
- (b) after subsection (5A) insert—
- «(5B) In sections 1(2), 3(2), 14, 15 and 19(2)—
- (a) a reference to a divorce order includes a decree of divorce;
- (b) a reference to an annulment order includes a decree of nullity;

- (c) a reference to a separation order includes a decree of judicial separation;
- (d) a reference to making includes granting;
- (e) a reference to an order being made final includes a reference to a decree being made absolute.».

20 Wills Act 1985 amended

In section 8(1) of the *Wills Act 1985* (effect of divorce, etc on will) in the words preceding paragraph (a)–

- (a) for “a decree of the High Court” substitute «an order of the High Court»;
- (b) for “his marriage” (in both places) substitute «the testator’s marriage».

21 Legitimacy Act 1985 amended

In section 10 of the *Legitimacy Act 1985* (interpretation) in the definition of “void marriage” in subsection (1), after “jurisdiction to grant” insert «an annulment order or».

22 High Court Act 1991 amended

In section 19 of the *High Court Act 1991* (restrictions on appeals to the Appeal Division) after subsection (2) insert–

- «(2A) No appeal shall lie to the Appeal Division from a divorce order or an annulment order under the *Matrimonial Proceedings Act 2003* that has been made final by a party who, having had time and opportunity to appeal from the provisional order on which that final order was founded, has not appealed from the provisional order.».

23 Children and Young Persons Act 2001 amended

In section 8(3)(a) of the *Children and Young Persons Act 2001* for “ a decree of” substitute «an order of».