

FOCUS

DIVORCE: KEEPING IT IN THE FAMILY

The Matrimonial and Family Proceedings Bill, which has now received its second reading in the House of Commons, has had considerable support from sections of all the main political parties. Despite this it is a particularly controversial piece of government legislation. Originally a private member's bill introduced before the general election last year, it was taken on board by the Government in the Tory manifesto commitment to 'reform the divorce laws to offer further protection to children, and to secure fairer financial arrangements when a marriage ends'.

The Bill includes a number of clauses relating to England and Wales: in particular Part 1 allows for petitioning for divorce after one year of marriage instead of the current requirement of three years; while Part 2 concerns financial relief in matrimonial proceedings, removing the current requirement that the court should place the parties in the financial position in which they would have been if the marriage had not broken down. Supporters of the Bill argue that the present law provides a 'meal ticket for life' in the provision of maintenance for former wives, while those opposing it argue that there is not enough regard for wives who have given up a career on account of family commitments and who then are expected to 'stand on their own feet'.

Clearly central to the debate surrounding the Bill is the employment situation of divorced women and indeed trends in married women's employment. It is therefore relevant to know to what extent divorced mothers already rely on their own earnings and what factors affect the ability of women, with or without children, to become more self-sufficient. The recently announced examination of occupational pensions and divorce by the Lord Chancellor's Department highlights the importance of this issue. It remains to be seen whether these issues will be examined by the special standing committee on the Bill which is now receiving evidence from interested parties before going on to examine the Bill in detail.

The current level of divorce is now causing problems and raising issues in a number of areas. The increase has been truly staggering over the last 20 years, fuelled in part by the changes in the law in 1971. In 1982 there were nearly 147,000 divorces in England and Wales compared to 74,000 in 1971 and 25,000 in 1961. Overall, if present trends continue, one in



three marriages is likely to end in divorce. (However the overall figures disguise a complex reality both in terms of who divorces and why people divorce. For example the risk of divorce is higher the younger the woman at marriage; presently one marriage in two involving a teenage bride is likely to end in divorce.) In 1982 158,000 children were affected by the divorce of their parents. Again if current trends continue about one in five children will experience their parents' divorce before they reach the age of 16.

While supporters of the Bill have admitted that the needs of children should be of primary importance in the legislation, it is clear from the Bill's almost exclusive reference to the private law of maintenance that a conflict may arise between the avowed consideration of children's welfare and the desire for a 'clean-break' and greater 'self-sufficiency' on the part of both spouses. The changes in the law seek to distinguish between the obligation to a former spouse and the obligations to children, while recognising that the financial situation of the custodial parent and children will be 'inextricably inter-linked'.

The preoccupation of much of the media with 'alimony drones' has obscured what little evidence there is as regards the contribution of maintenance to incomes of the divorced¹, usually the mother in the case of those 60% of divorcing couples with children. Both awards of maintenance and

income from employment, particularly part-time work, can be and often are offset against social security entitlements. This complex interaction of various sources of income has given rise to a severe poverty trap for one-parent families, two-thirds of whom are divorced or separated. Divorced women with dependent children are more likely to work full-time than other women with dependent children, including married women, suggesting a greater degree of 'self-sufficiency' than is generally assumed.

However, lone mothers are as subject to the concentration of female workers in poorly paid jobs as women in general, and this inevitably gives rise to a greater degree of poverty in one-parent families reliant on only one wage than is the case in two-parent families where the woman's husband may also be in employment. Thus despite comprising only one in eight families in Britain, one-parent families account for two in every five families receiving family income supplement to 'top-up' their low earnings. Nor is the impact of divorce on women's employment similar across all classes. While approximately seven out of ten wives of men in professional occupations were working either part-time or full-time both before and after separation, the proportion of women in work previously married to unskilled and semi-skilled workers fell from a half to little more than a third after separation.

¹ *Divorce: a Briefing Paper*, Family Policy Studies Centre, 1984.

As the Law Commission has noted, the most serious problems faced by lone parents, including divorced mothers, are caused by economic factors and there is little if anything private law can do to alleviate the hardship and deprivation that they experience. But there are no proposals in the legislation on these wider social security issues. Many of these, raised by the Finer Committee on one-parent families, remain unresolved, and with little apparent willingness to return to them. The new Bill has not been designed as an anti-poverty measure nor is this to be expected. But it does raise serious questions about the relationship of private law both to the public provision of social security benefits and to the role of conciliation services for divorcing couples. Equally important is the need for close monitoring of the effect of the legislation on the living standards of one-parent families and on the second families of maintenance-paying divorcees, given the uncertainty about its likely impact on the welfare of all families affected.

It is essential that this new legislation is examined in this broader context of family welfare. It will also be evaluated in the context of the Government's self-perceived role of 'defender of family'. The often contradictory aspects of this role which encourages self-reliance and yet puts obstacles in the way of working mothers wishing to provide their children with a decent standard of living, suggests that we must be wary of legislation which might prove to be the proverbial conservative wolf in liberal sheep's clothing.

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