

Summary of Responses

Proposed No Fault Divorce Legislation

Public Consultation
7th November 2019
to 2nd January 2020

Full Report

Report on the consultation on proposed Isle of Man no fault divorce legislation

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Isle of Man consultation on no fault divorce legislation

Background

In October 2018 Daphne Caine MHK received leave to introduce a private member's Bill that sought to amend the grounds for divorce, dissolution of civil partnerships and judicial separation; and for connected purposes.

This followed a working group of Manx family advocates researching the subject for more than one year, which concluded there was a need for the Island's divorce and dissolution laws to be modernised.

At present couples who want to settle matters amicably must wait two years if both parties agree, but five years if it is contested. That delay can put huge strain on individuals and on families. Alternatively a person might make allegations about their partner's behaviour, generally perceived as showing their spouse was at 'fault' and to blame for the union's breakdown in order to achieve a final separation more quickly. However, extensive research shows that requiring one party to be at 'fault' can increase the adversarial nature of divorce and have a long-term negative impact on the couple and any children.

Similar to England and Wales, around 60% of divorces in the Island cite a fault-based reason. See Appendix 1 for information kindly provided by IoM Central Registry (marriage statistics) and the General Registry (divorce statistics). In jurisdictions such as Scotland where no fault divorce is possible the number of fault based divorces reduces to around 6%.

The consultation on the Divorce, Dissolution and Separation (Isle of Man) Bill outlined the proposal to modernise the divorce process on the Isle of Man, removing the need to claim unreasonable behaviour or adultery in order to achieve a speedier divorce or dissolution of civil partnership.

Coincidentally similar legislation was proposed for England and Wales.

The Isle of Man legislation was drafted along the same lines as the Divorce, Dissolution and Separation Bill now being progressed at Westminster.

The public consultation on the Isle of Man draft Bill ran from 7th November 2019 to 2nd January 2020.

The proposed legislation would change the application process for people applying for a divorce or dissolution but will not alter the process for couples to agree care arrangements for dependent children or finances.

During the consultation a total of 192 responses were received, all from individuals:

- 98% were Isle of Man residents
- 94% supported the no fault divorce principle
- 96% agreed couples should be able to apply jointly or singly
- 62% supported a 26 week process as proposed
- 25% supported no minimum period

See below for the full response to the consultation questions.

No fault divorce consultation

Question 1: What is your name?

There were **181** responses to this part of the question.

Question 2: What is your email address?

There were **192** responses to this part of the question.

Question 3: Are you responding on behalf of an organisation?

The vast majority responded as individuals.



99.4 % responded no to responding on behalf of an organisation.

0% responded yes.

A single individual (0.5%) did not answer this question.

Question 4: Are you a resident of the Isle of Man?

A total of 189 respondents were Isle of Man residents (98.4%) while two were from off island and one person did not answer the question.



Question 5: Which group would you identify as?

Respondents self-categorised themselves as:

Members of the public – 174 (90%)

Family law practitioner – 6 (3%)

Legal professional – 6

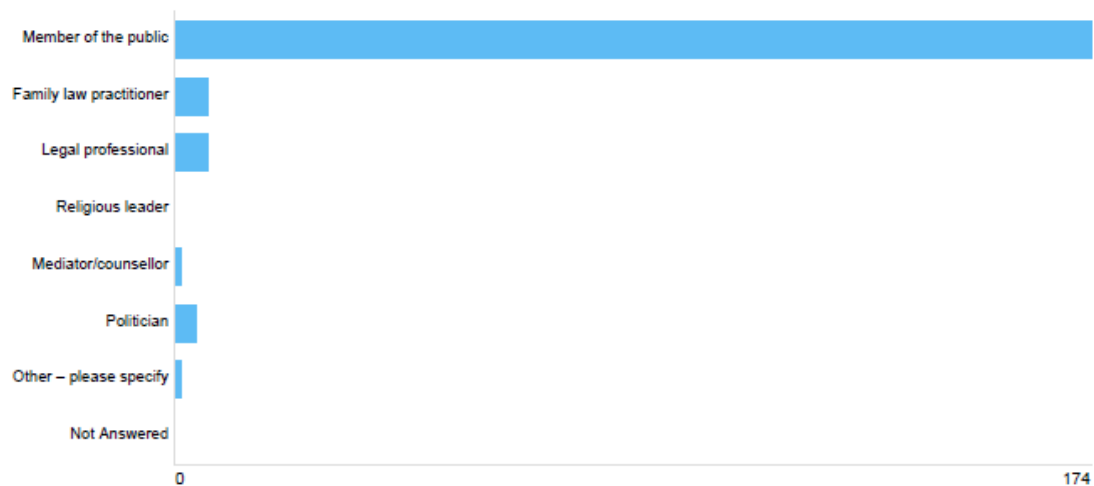
Politician – 4

Mediator/counsellor – 1

Other – 1 (relationship counsellor)

No respondents were religious leaders; every respondent answered this question.

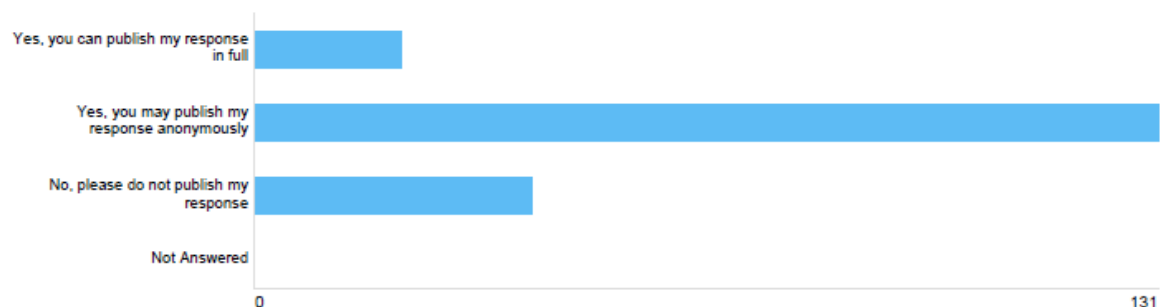
q5 - group - select one



Question 6: May we publish your response?

A large proportion 68% (131 respondents) were happy for their response to be published anonymously; 40 (20%) did not wish their response to be published while 21 (11%) were happy to allow their response to be published in full.

Consent publishing



Question 7: Do you agree with the proposal to retain 'irretrievable breakdown' as the sole reason for divorce without specifying the reason for the relationship breakdown?

While 8 people (4%) preferred the current system, 181 respondents (94%) supported the no fault divorce principle. One person was undecided, while two people did not answer this question.

q7 - agree without specifying reason - select one



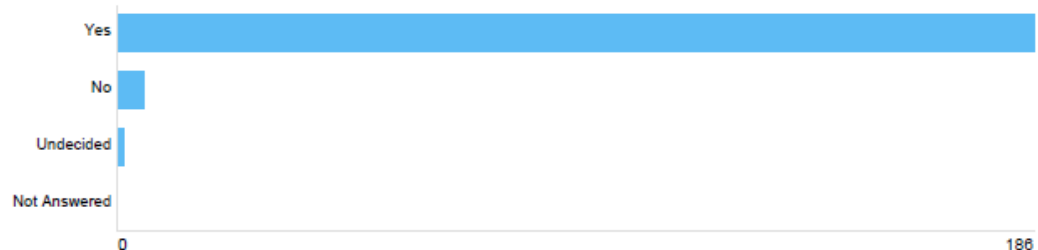
There were 51 comments submitted on this question, a sample of which can be seen below:

- In this way hopefully divorce will be more amicable and less antagonistic.
- It is unnecessary to have to wait for 2 years or for one party to have to take the blame when a marriage has hit irreconcilable differences and agree to part.
- This would take away any lasting stigma that might remain and relationships breakdown and no one is at fault - people just fall out of love.
- It's a real hardship when one has to prove reason for breakdown ... children grow up believing their Father/ or Mother was responsible when in reality they were just incompatible.
- There are no valid reasons to retain the current system, it is old fashioned in the extreme and is causing divorce to be more traumatic than necessary.
- 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.
- The requirement to attribute blame with the current system makes what is already an incredibly painful, emotional and unsettling period in anyone's life, far worse than it needs to be. The need to apportion blame is outdated and unnecessary.
- What started as an amicable and mutual agreement to divorce very quickly and explosively turned into a nasty, protracted and costly divorce. Almost all of the angst could have been avoided had blame not needed to be apportioned.
- It is medieval that people cannot end a relationship in a cost efficient and least traumatic way possible.

Question 8: Do you agree couples should be able to apply for divorce jointly and singly?

This received the strongest support with 186 (96.8%) agreeing that couples should be able to apply singly or jointly; five were against the proposal (2.6%) and one person was undecided.

q8 - couples able to apply jointly and singly - yes/no



Amongst the 40 comments posted were:

- It is important that no one person can force the other party to continue in the marriage when one party wishes to leave it.
- By filing jointly, the couple are demonstrating that they are both in agreement with the dissolution process and have come to the decision together - a far better way to start off amicable proceedings than to have one party need to divorce the other. Marriage/civil partnership begins as a partnership, it stands to reason that in some cases, it can end in the same way too.
- Anything to reduce conflict is welcome.
- This enables couples who have just reached "the end of the line" to try to remain amicable for the sake of their and their families mental health and wellbeing - not to mention bank balances.
- If either party really wants a divorce why should the other have the ability to void it.
- I would have appreciated this as an option when we went through our own mostly amicable separation and subsequent divorce 2 years ago.
- If both parties wish to get divorced they should be able to do this more quickly, and the costs can and should be shared.
- It's simply a good idea.
- The couple may mutually decide the best course of action is to end the marriage, the joint application allows it to be seen as this.
- A joint application provides a fairer way to complete the paperwork, to have both parties involved and engaged in the process, and to share the costs.
- A joint application gives more equality and mitigates the blame being attached to one party.

Question 9: What length of time do you think is reasonable to obtain a divorce whether or not both parties agree?

Responses were mixed to this question but most were strongly in support of the 26 week process proposed:

No minimum – 49 (25%)

26 weeks as proposed – 119 (62%)

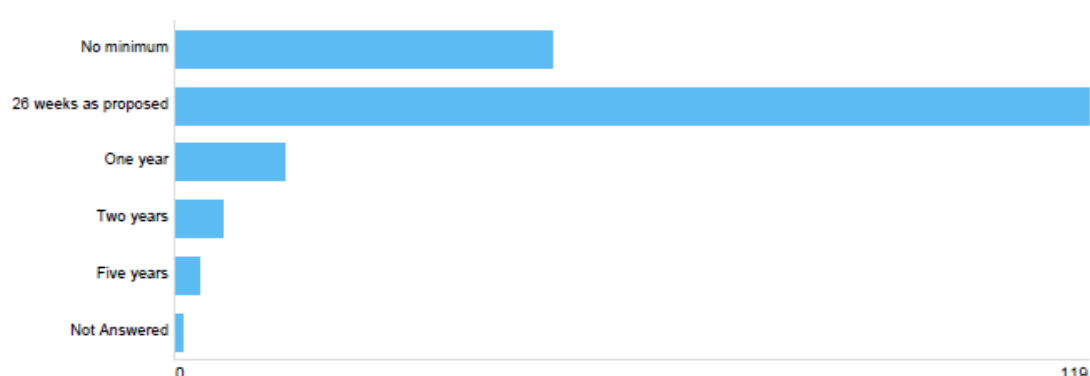
One year – 14 (7%)

Two years – 6 (3%)

Five years – 3 (1.5%)

Not answered 1 (0.5%)

q9 - length of time reasonable - select one



Comments included:

- There is no use in prolonging the inevitable.
- 26 weeks is a reasonable time to allow both parties to plan ahead.
- As quick as possible.
- What if there are no children involved? If divorce is the decision of both parties a mandatory six months of 'reflection time' appears patriarchal. The minimum should be shorter. Under the current system, a divorce can be applied for and completed in around 12 weeks (in theory, if the parties are quick with their filings and make no errors with the paperwork).
- I think 26 weeks is a good balance. The current 2 year period, which is the short period for divorce where no fault is alleged, is too long. However, having some waiting period does allow for cooling off.
- 26 weeks if there are arrangements re children to consider, less if there are no children or they are over 18. I see no reason that this process need be longer than 10 or 12 weeks.
- Three months would be better.
- This would help all parties. Unfortunately sometimes marriage[s] do come to a conclusion without either party being at fault.
- I don't see what a minimum time period does - once the decision to divorce is made, it is surely best to enable this to happen as quickly as possible to allow both parties

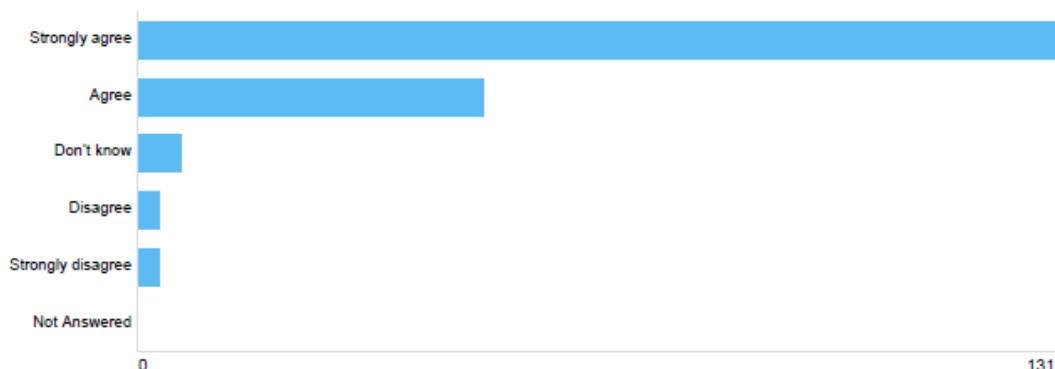
to get on with their lives. The idea of enforcing a minimum time period assumes that people are not able to make their own choices about their lives, an assumption I don't agree with.

- I think that is a lot more reasonable than the couple to have to wait 2 years. By making it 26 weeks, it provides both parties to fully reflect on the decision they are making, gives ample time for reconciliation and keeps parties in a happier position which can only be more beneficial to the parties and most importantly should reduce the emotional impact on any children.

Question 10: Please indicate your views on the following statement: the process should be an administrative one (rather than a court process).

Very strong support for this question with 131 selecting 'strongly agree' and 49 'agree' (a total of 93%); six marked 'don't know' while three disagreed and a further three strongly disagreed (a total of 3% disagree/strongly disagree).

q10 - process should be administrative - select one



Comments included:

- Divorce is difficult enough especially for the children so anything that makes it easier and less a trauma, as lengthy court time quite often does, must be a bonus to all and it encourages at least a civil relationship during the administration period rather than animosity.
- If there is nothing to be settled in a court, then what logical reason is there to involve lawyers and the costs that go hand in hand with their expertise?
- The family Courts are overburdened and the entire justice system is under-resourced. Anything which can save Court time and resources should be welcomed.
- There is no need to involve the courts and add financial pressures onto an already stressful event.
- If finances are agreed and there are no children or the arrangements are acceptable to both parties there should be no need to go to Court.
- This would cut down the cost and help speed up the process.
- No need to add additional financial and emotional stress to a difficult period for all parties involved.

- A lot of time and money is wasted by advocates having to go to court for 10 minute hearings.
- I know of amicable couples becoming embroiled in vicious court disputes when neither party wanted to but under the present rules somebody was deemed to be 'at fault'. This causes considerable upset and hardship for the divorcing couple and their family.
- Agree in principle providing it can be demonstrated that both parties have been able to access suitable legal and financial advice.
- If both parties are in agreement, then there shouldn't be any need for court time.

Question 11: Please indicate your views on the following statement: there should be mandatory mediation (for divorcing couples):

96 strongly agree (50%)

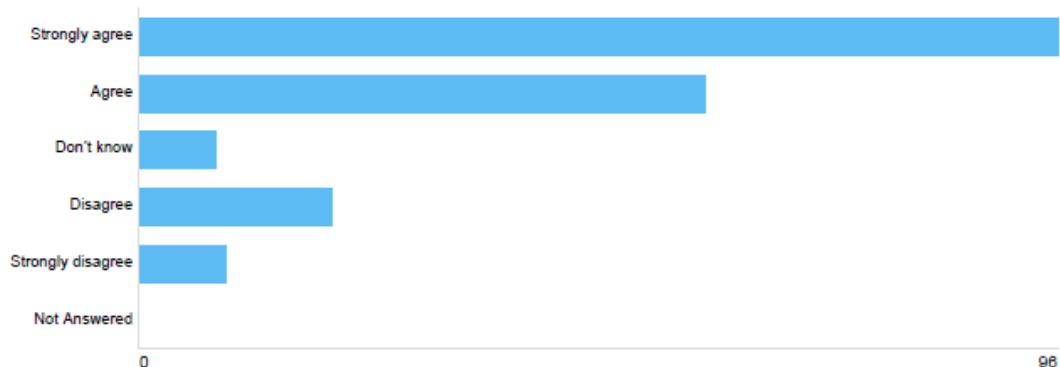
59 agree (31%)

8 don't know (4%)

20 disagree (10%)

9 strongly disagree (5%)

q11 - mandatory mediation - select one



Although there was strong support to force couples to obtain mediation (over 80% agreed/strongly agreed), this was not recommended by mediators as it is pointless to force someone to attend mediation if they are unwilling to participate.

While there are no plans to include mediation in the legislation, it may be something for the Family Court to consider including in the new process, the Rules of Court, perhaps with financial penalties for parties that refuse to engage in mediation.

Comments included:

- 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.

- Where mediation is not suitable, or has failed, the Isle of Man should look to introduce a Family Dispute Resolution Hearing process, as an indicative process, before the main court hearing, in order that the parties expectations can be managed in a court setting. This could be done at a relatively early stage, and would manage the misconceptions held by some individuals navigating the process and may lead to more constructive offers and thus settlement of the issues. This approach would also reduce the time and costs involved in the divorce process, as it should result in fewer cases proceeding to a full hearing.
- Mandatory help and advice and assistance well done would help very much so and may even change the situation.
- Mediation is admirable and of benefit to most, but will not always work. It should be avoided in cases where there has been domestic abuse/coercive control.
- Mediation by its very nature is a conciliatory process, and parties must have that mind-set if there is any hope of it succeeding. I do not seek that there would be a benefit to forcing parties to mediate, if one or both is not prepared to make concessions.
- I think there should be some kind of costs consequences if one party refuses to mediate and is hell-bent on going to Court, e.g. being responsible for the other side's legal costs.
- This should be mandatory for all parents alongside a parenting after divorce course.
- Where children and finances are concerned it is in everyone's interest to meet a professional mediator to bring clarity to the situation.

Question 12: Do you agree that divorce should not be permitted in the first year of marriage?

This had a very mixed response with:

38 strongly agree (20%)

39 agree (20%)

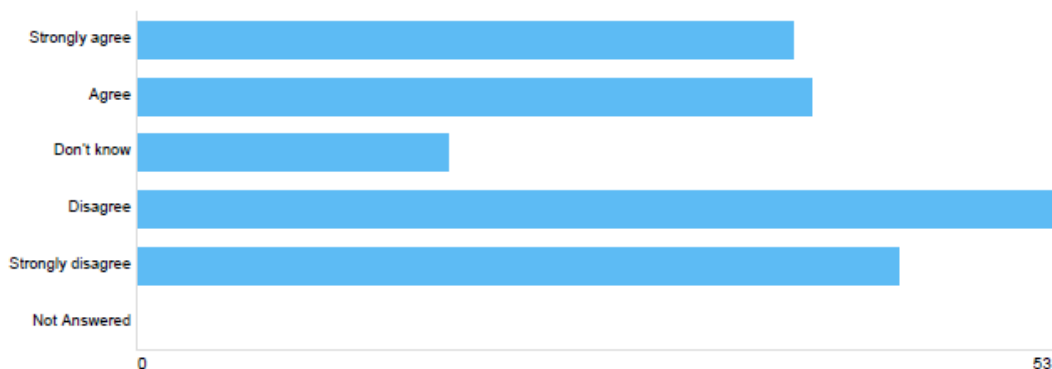
18 don't know (9%)

53 disagree (28%)

44 strongly disagree (23%)

There are no plans to change the current law on this minimum time in the private member's Bill.

q12 - agree divorce should not be permitted in first year of marriage - select one



Comments included:

- Couples have to give it a chance and need to commit to at least a year.
- Why should the state enforce minimum marriage times?
- As a photographer I do see too many couples who I don't believe should be getting married in the first place. Perhaps no change to the current divorce procedures but change to getting married, what about compulsory counselling before getting married?
- If the marriage was a mistake, why force people through the misery of staying legally tied to each other for the remainder of that year? What purpose will it actually serve? The marriages that are meant to last will do so.
- This is open to abuse by people seeking residency etc.
- This feels arbitrary. If the couple both feel like it isn't working out, why make them suffer?
- But there should be exceptions if there is physical or mental abuse, or the marriage has been forced on one or other party.
- Breakdown of marriages can happen at any time - I can't believe the Government has a right to prevent you from divorcing in the first year! This is surely dangerous in terms of abusive marriages.

The final question sought views to inform the equality impact assessment, and attracted 37 responses.

- Whilst certain religious groups are anti divorce this should not be a factor in the bill. My only concern is for very elderly people being left in a vulnerable position.
- The Bill should apply to both marriage and civil partnerships
- Like the Equality Act itself, this proposed bill is liable to further weaponise "Rights" without underpinning responsibilities.
- Surely this approach should also be carried out before a couple marry?
- The major flaw appears to be when one partner has sole responsibility for the upbringing of children. Allowing the equal division of assets between both partners in this case does not take account of the long term financial burden which is undertaken by the parent who has sole responsibility for children..... It is absolutely essential that pensions accrued by both parties are split 50:50 at the time of divorce,

if the marriage is a long one, with children and one partner, normally the wife has given up working to bear and care for children.

- I would guess men are not a "protected group"? there are many instances of men being discriminated against in divorce proceedings, maybe that should be looked at.
- I can't see what equality has to do with obtaining a divorce. It shouldn't matter what race/sex/religion etc. one or both the couple are - if one or both of them want a divorce, they should be allowed.

General comments:

Not all responses were supportive of the proposal for a six month no fault divorce process. Some wanted a longer period of reflection, others a shorter process altogether.

- I do not think the current system is broken or requires updating and I am one that would readily accept and encourage change. If the approach had been different i.e. more counselling and help and advice before the actual marriage I would've been totally supportive.
- This would appear to be yet another pus[h] in the direction of mass social suicide....We are supposed to be more advanced, more tolerant, better adjusted et al. Yet I believe that the freeing of divorce will hasten the end of the society that we know and will not be a world leader for the Isle of Man.
- Great idea but the problem is the insuring [sic] financial settlements that put children's futures first and their responsible parent a fair chance of the equity in a relationship.
- This proposed process will make it too easy to file for divorce and it is not addressing the issue. Why are people getting divorced and should they really have got married in the first place - we should be addressing marriage and making looking at the changes needed to bring in to make marriages work.
- There may be circumstances where one of the parties wishes to move on in a new relationship, there may be issues surrounding age and fertility, particularly if these have been issues contributing to the breakdown of the marriage.

But the overwhelming majority of comments submitted were positive about the proposed change:

- This is an excellent idea and cannot come soon enough.
- Please reform maintenance payments set before 2012 along the lines proposed here!
- I think this is one of the better ideas that has been put forward in the last few years. It will take a lot of financial worries of those getting divorced and hopefully help make the whole process more amicable at what is a very difficult time.
- If nothing else, it may preserve relationships on a platonic level as there has been no need for blaming or playing the waiting game. This is massively crucial when there are children involved
- If one of the party or both parties want to end the contract, they should be able to, without having to wait more than a month.
- It is about time the IOM came out of the 19th century and began changing its laws to suit all members of public.

- Divorce made the whole family hurt. Confrontations made much worse by lawyers making obscene amounts money. Divorce should be civilised, the children will suffer less!
- My wife and I have separated, through no fault of either party. We are still on very amicable terms and have sorted the splitting of assets already. The "No Fault" divorce would allow us to dissolve our marriage and get on with our lives.
- Divorce is generally traumatic without having to go into a blame situation sometimes purely in order to get it over with quicker. 2 and 5 years separation is way too long, whereas 26 weeks seems much more reasonable and will lessen the emotional and financial strain on both parties plus any children they may have.
- It is unnecessary to have to wait for 2 years or for one party to have to take the blame when a marriage has hit irreconcilable differences and agree to part.
- There are no valid reasons to retain the current system, it is old fashioned in the extreme and is causing divorce to be more traumatic than necessary.
- Bring it in as soon as possible.
- I am very much in favour of no-fault divorce, as a means of reducing conflict in family law matters. We also have an opportunity to lead the way here, as the English move towards no fault divorce is being held up by political chaos.
- Current legislation makes the moving on process much harder than necessary, divorce is already a difficult time without being stuck in purgatory for 2-5 years.
- I think it's vital that this legislation goes ahead.

Conclusion

There was a good response to the consultation with significant support for a change in Manx law to enable no fault divorce/dissolution applications by one party or jointly by the couple.

Many contributions on the subject of mandatory mediation made clear that forcing couples to participate in mediation is not workable. However, there is support for mediation to be encouraged, a view that can be taken into account when the procedures (Rules of Court) are compiled.

There was majority support (62%) for the divorce period to become 26 weeks: 20 weeks' reflection time from application then a further six weeks between the Conditional Order being received to being finalised should one or both parties confirm their support for that. A further 25% preferred no minimum time.

There was no consensus to change the minimum time married requirement (currently one year) before the divorce or dissolution process can be started. The draft Bill contains no measures to change the law on this aspect.

However, some comments received expressed concern that a blanket six month divorce process might negatively impact certain cases.

"What if there are no children involved? If divorce is the decision of both parties a mandatory six months of 'reflection time' appears patriarchal. The minimum should be shorter. Under the current system, a divorce can be applied for and completed in around 12 weeks (in theory, if the parties are quick with their filings and make no errors with the paperwork).

There may be circumstances where one of the parties wishes to move on in a new relationship, there may be issues surrounding age and fertility, particularly if these have been issues contributing to the breakdown of the marriage.”

After consideration of all the feedback, it has been decided to seek a new clause to the Bill for exceptions to the standard 20-week ‘reflection period’ for reasons of:

1. Care arrangements for any dependent children and/or financial arrangements have been agreed;
2. Domestic abuse: a Domestic Abuse Protection Order is in place;
3. Other exceptional circumstances.

It is felt that this would provide flexibility in exceptional cases that can be further detailed in the Rules of Court accompanying this legislation to ensure:

- Any party applying for a divorce to be granted under the minimum 26 week time period would have to provide a Statement of Information citing one of the exceptions, and this would have to be accepted by the Deemster granting the Conditional Order.
- The Rules of Court could also provide that the Deemster could determine whether or not additional evidence was required or if the parties were required to appear before the Deemster in person before granting a Divorce Conditional Order or an immediate Final Order for an exceptional reason.

This legislation considered how we can improve the process to best protect any children involved, reduce conflict and toll on families and there is general support that the legislation will achieve that. It should be noted the legislation will not change the law in respect of agreeing childcare or financial arrangements but should enable many couples to start the process on a less adversarial basis.

It could possibly lead to savings to the legal aid budget, a reduction in court time and to individual couples’ legal fees.

Daphne Caine wishes to thank everyone who completed the public consultation or otherwise contacted her to discuss the process and the proposed legislation. She would also like to place on record her gratitude to advocate Hazel Smith and Jane Poole-Wilson MLC who have assisted throughout the draft Bill and consultation process. Additionally she wishes to acknowledge the assistance of officers at the Isle of Man General and Central Registries for enabling her to research the current process and in providing relevant statistical information.

It is intended that a revised Bill, with the addition of the ‘exceptional circumstances’ clause detailed above, will be progressed through the branches of Tynwald during 2020.

Appendix 1

Marriage statistics (kindly provided by Isle of Man Central Registry)

	2016	2017	2018	2019
Church of England	125	100	88	No data available until March 2020
Methodist	4	14	6	No data available until March 2020
Roman Catholic	15	12	14	No data available until March 2020
United Reformed	0	1	1	No data available until March 2020
Baptist	2	2	1	No data available until March 2020
Others (Hindu, Spiritualist, Salvation Army, Living Hope, Jehovah's Witnesses, 7 th day Adventist etc....)	1	6	4	No data available until March 2020
Total Religious	147	135	114	No data available until March 2020
Civil Registry Marriages (Douglas, Ramsey & Peel)	235	240	235	221
Civil Registry Civil Partnerships	10	7	11	18
Total Civil	245	247	246	239

Nisi pronouncements (kindly provided by Isle of Man General Registry)

Year	2 years separation with consent	Behaviour	Adultery	5 years separation	Desertion (2 years)	Total	Fault-based divorces % (behaviour & adultery)
2016	81	113	29	27	1	251	56.9
2017	55	93	22	17	0	187	61.5
2018	65	89	25	24	1	204	56.3
2019	51	77	27	16	0	171	60.8

Divorce Proceedings 2016-2019 kindly provided by the Isle of Man General Registry

