



# Divorce, judicial separation and marriage annulment

Public consultation  
Summary of findings



States of  
Guernsey

# Introduction

Through the work exploring Union Civile and the resulting policy letter on Same-Sex Marriage, (Billet d'État XXIII, December 2015)<sup>1</sup>, it was identified that there were some complex issues surrounding the Law that needed to be addressed in detail later. The States agreed 'To direct the Policy Council to bring forward, in a timely manner, separate Policy Letters to address the issues raised by the work on Union Civile, including the dissolution of legal partnerships.

The complex issues specified were adultery, as grounds for divorce, and non-consummation, as grounds for nullity, as well as other options for dissolution of a marriage. At this time, neither adultery with a same-sex partner nor non-consummation can be considered as grounds for the dissolution of a same-sex marriage, which mirrors the UK legal position. This raises a concern over the equality of the Law when applied to same-sex married couples.

There is also the question about the perceived role of government in personal relationships, a position that has changed significantly since the Law was first established. The necessity to prove fault before divorce can take place has been widely questioned. Equally, it may be considered that the other options specified as reasons to dissolve a marriage do not reflect the needs of modern society, such as citing impotency or mental health problems as reasons for annulment of a marriage.

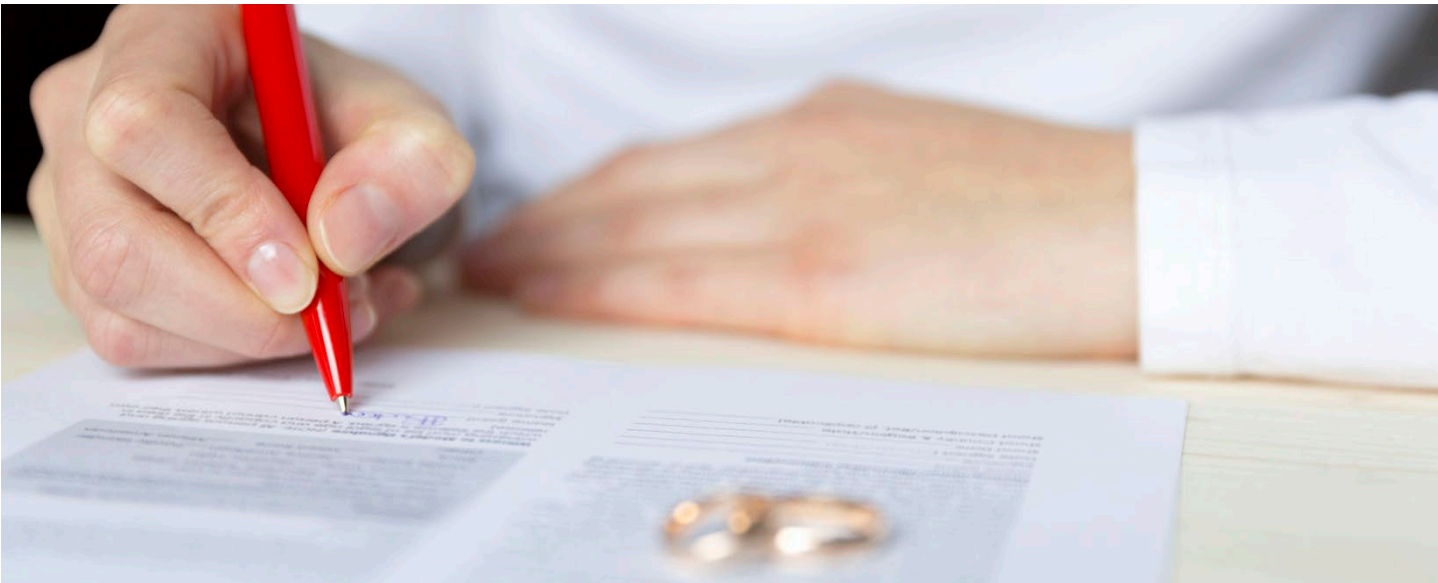
The reform objective is to ensure that the legislation for dissolution of marriage is inclusive and meets the needs of a modern society, with a fit for purpose and accessible process that causes the least amount of distress and detriment to all the parties involved, including children.

The purpose of the report is to capture a summary of the statements and views received during the public consultation and will not draw any conclusions at this stage. The findings will be used to inform the policy changes to be considered by the Policy & Resources Committee and the States of Guernsey in due course.

**Any statements included have been included as originally collected and the responses received should not be considered representative of the views of the entire population.**

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<sup>1</sup>[www.gov.gg/CHttpHandler.ashx?id=98634&p=0](http://www.gov.gg/CHttpHandler.ashx?id=98634&p=0)



## The consultation was divided into eight parts to:

- 1 Help categorise the responses received;
- 2 Gather views on the proposals for changes to divorce;
- 3 Set out proposals relating to judicial separation by consent and decree of separation;
- 4 Gather views on the proposals relating to annulment;
- 5 Cover proposals on reconciliation, relationship counselling and alternative dispute resolution methods;
- 6 Gather views on other related proposals around the procedures, process and availability of information and guidance;
- 7 Capture views on different aspects relating to financial matters (ancillary relief); and
- 8 Any other views on related matters.

# Summary of findings

During March and April 2019 the public were consulted and their views sought on the potential changes to how couples can legally divorce, separate or annul a marriage in the Bailiwick. Total responses received were 158. Not all respondents completed all questions, with some skipping questions or providing full stops as responses.

77%

were very supportive of removing fault

73%

agreed with removing the ability to defend a divorce

79%

agreed with the proposal to retain the legal provision for judicial separation by consent

87%

agreed with the proposal to simplify the current procedures so that couples can process the divorce themselves

64%

said the whole divorce process should be possible to be conducted online

58%

were very supportive of removing separation periods

71%

agreed with the proposal to maintain a 'cooling off period'

79%

agreed with the proposal to amend the facts for a decree of judicial separation in line with any changes made to divorce facts

90%

agreed with the proposal to digitalise some or all parts of the process at a later stage, following the legal changes.

64%

were very supportive of a simple notification system giving notice that the marriage had irretrievably broken down

51%

thought the cooling off period should be kept at 60 days

84%

agreed with the proposal to remove the requirement for the court to consider reconciliation

86%

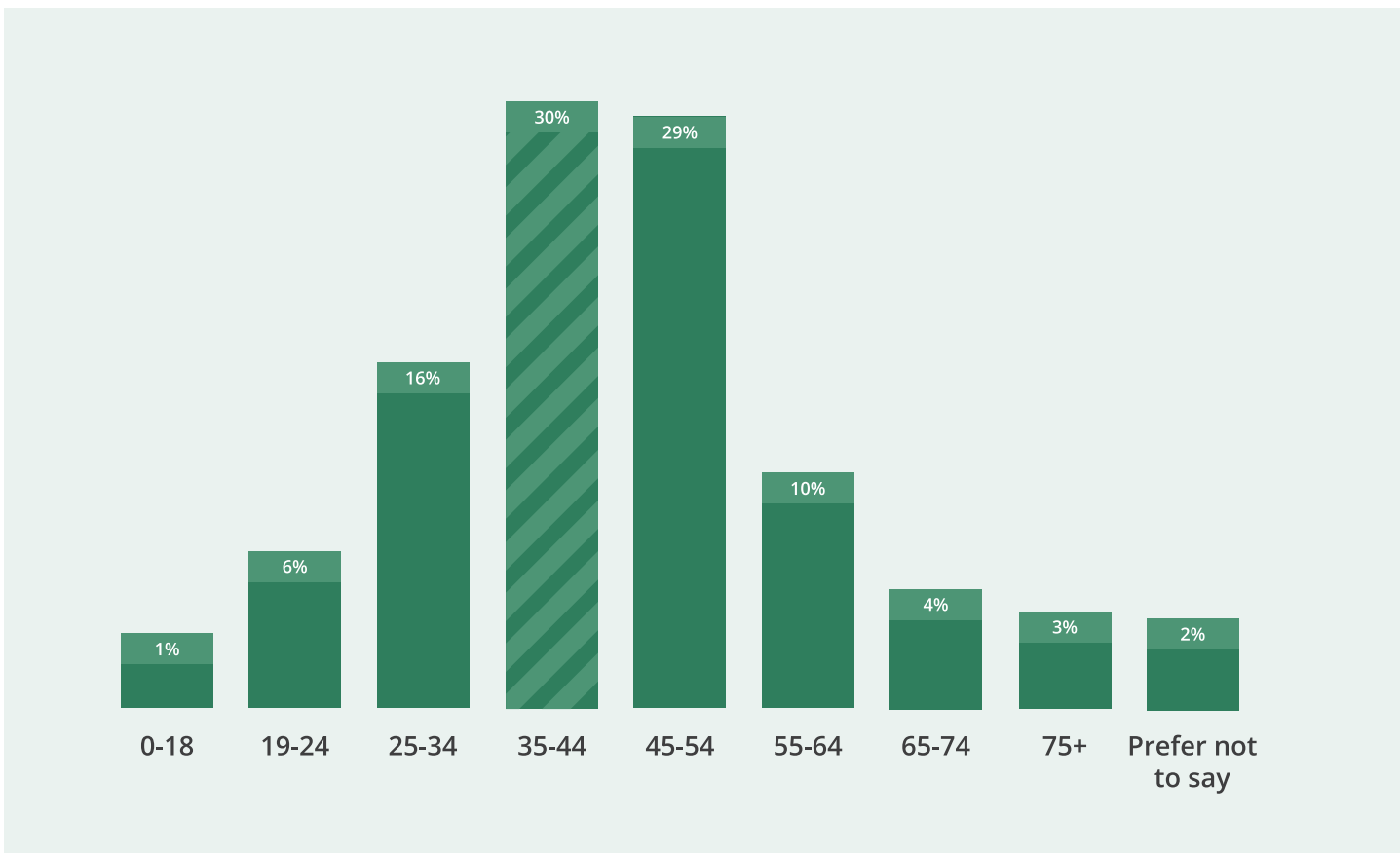
agreed with the proposal to incorporate the principles to seek 'financial independence' and a 'clean break' within the law

# 1

## Categorising the responses received

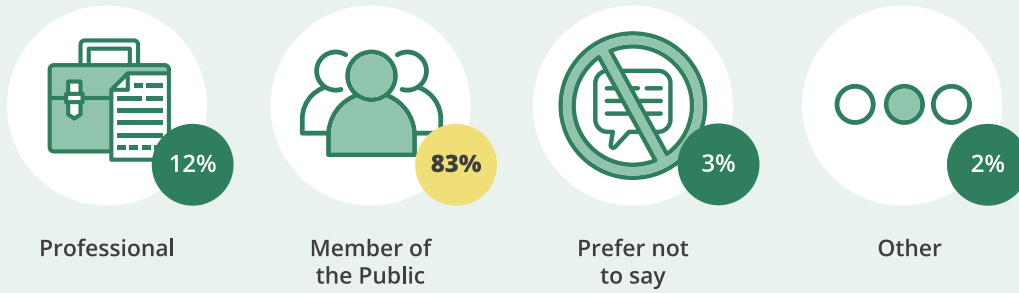
### Question 1 - Age group

There were 158 responses to this question. The highest response was from ages 35 to 44 years old (47, 30%), this was closely followed by 45 to 54 year olds (46, 29%). The fewest responses were received from under 18 year olds (2, 1%).



### Question 2 - In which capacity are you responding to the consultation?

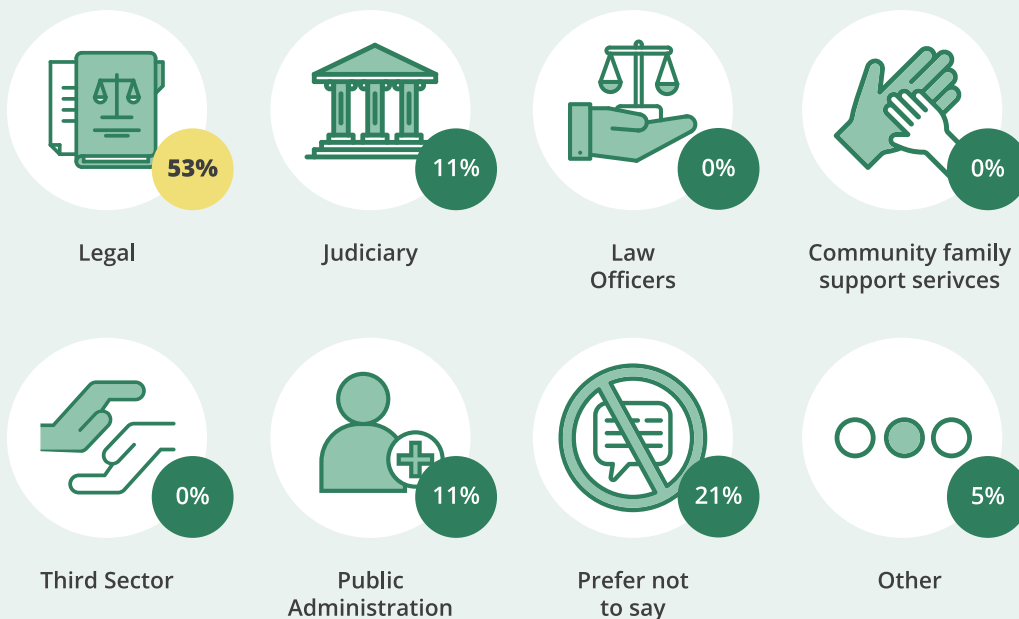
Of the 158 responses to this question 131 (83%) respondents were members of the public. There were 19 (12%) responses from Professionals (see Q3 for further details). There were five (3%) respondents who preferred not to say and three (2%) respondents who identified their capacity as 'other'. The only further comment noted their capacity as 'Liberate - LGBTQ'.



### Question 3 – Which category best represents the professional capacity in which you are responding to the consultation?

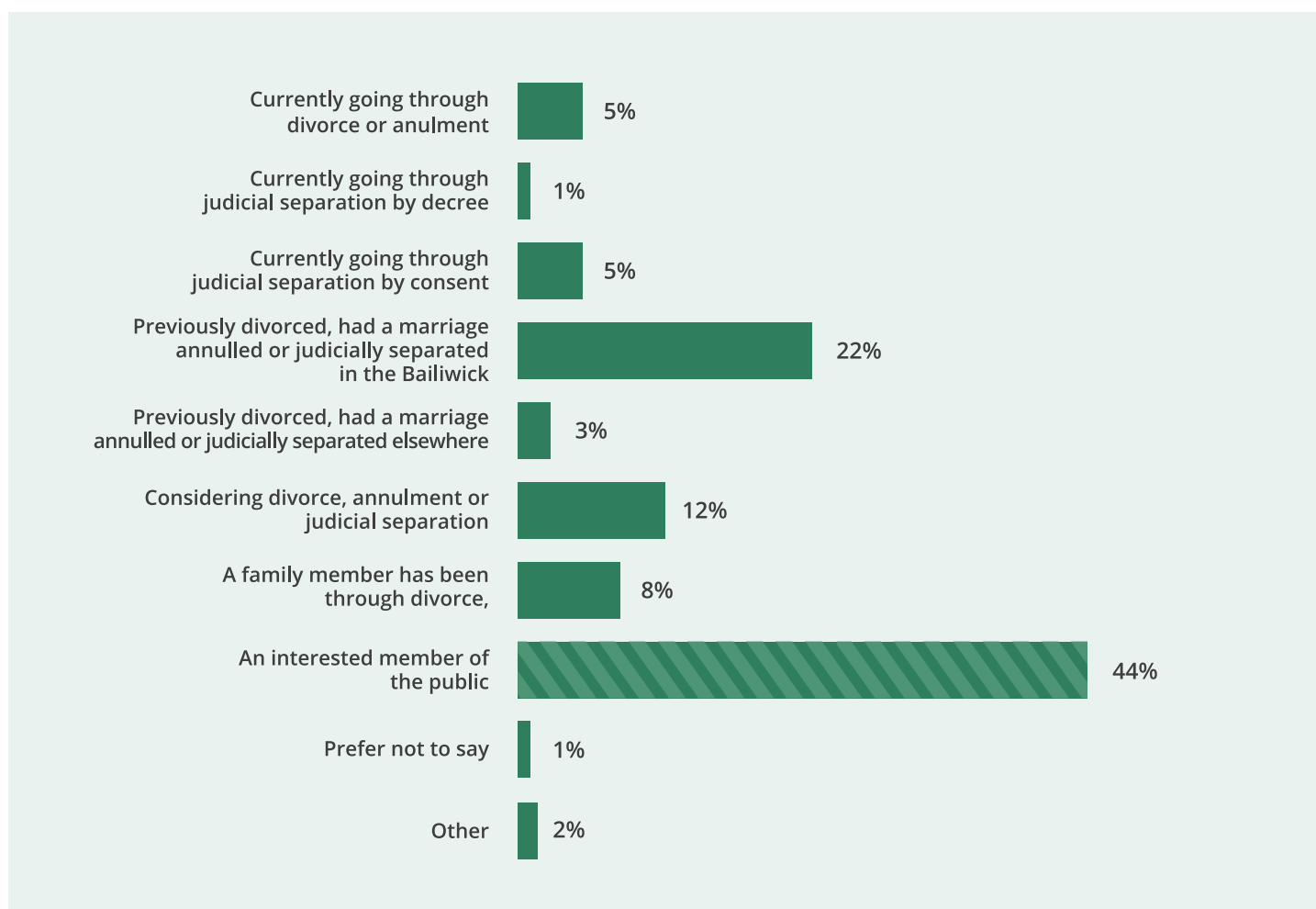
There were 19 responses to this question, of these responses: 10 (53%) categorised themselves as legal, four (21%) preferred not to say; two (11%) were responding in a judiciary capacity; and two (11%) respondents were from a public administration including public services.

There was one further comment identifying their professional capacity as a journalist.



## Question 4 - Which category best represents the personal capacity in which you are responding to the consultation?

Of the 130 responses to this question: 57 (44%) respondents identified as interested members of the public; 29 (22%) respondents had previously been divorced, had a marriage annulled or judicially separated in the Bailiwick; 15 (12%) respondents were considering divorce, annulment or judicial separation; six (5%) respondents were currently going through the process of judicial separation by consent; and six (5%) were currently going through the process of divorce or annulment. There were two further comments.



### Comments:

"Starting the 2 year process of being separated from husband before being able to petition for divorce."

"Younger member of the public who will more than likely be settling and marrying in Guernsey, and has an interest in the laws that will affect me."

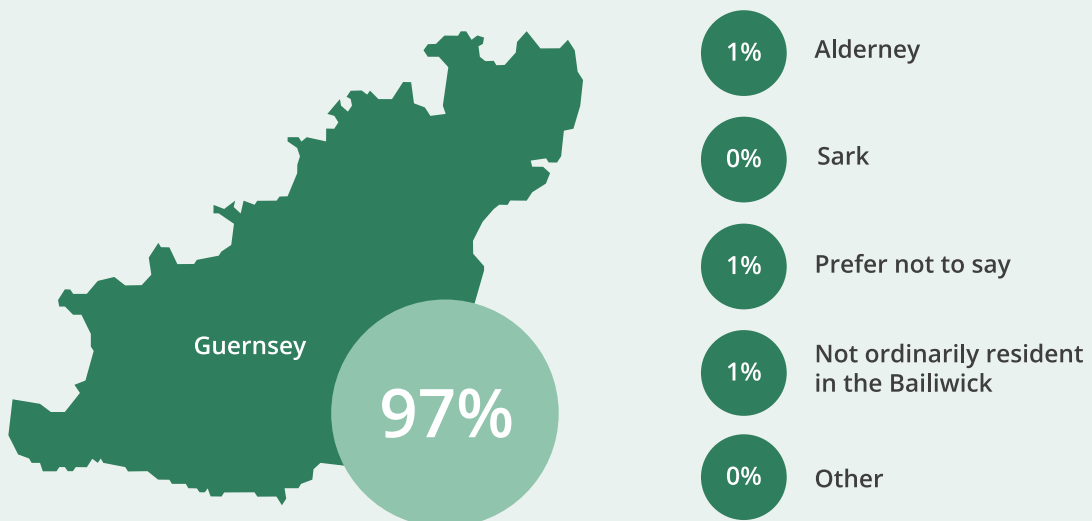
## Question 5 - If previously divorced, had a marriage annulled or judicially separated in the Bailiwick, please indicate when this happened.

There were a total of 32 responses to this question: 16 (50%) respondents had been previously divorced, had a marriage annulled or judicially separated in the Bailiwick more than 10 years ago; 15 (47%) less than 10 years ago; and one (3%) respondent preferred not to say. There were no other comments.



## Question 6 - Where in the Bailiwick do you reside?

Overall there were 136 responses to this question. The majority of these responses, 132 (97%), resided in Guernsey, two (1%) respondents identified as not ordinarily being resident in the Bailiwick and one (1%) respondent resided in Alderney. One (1%) respondent preferred not to say.



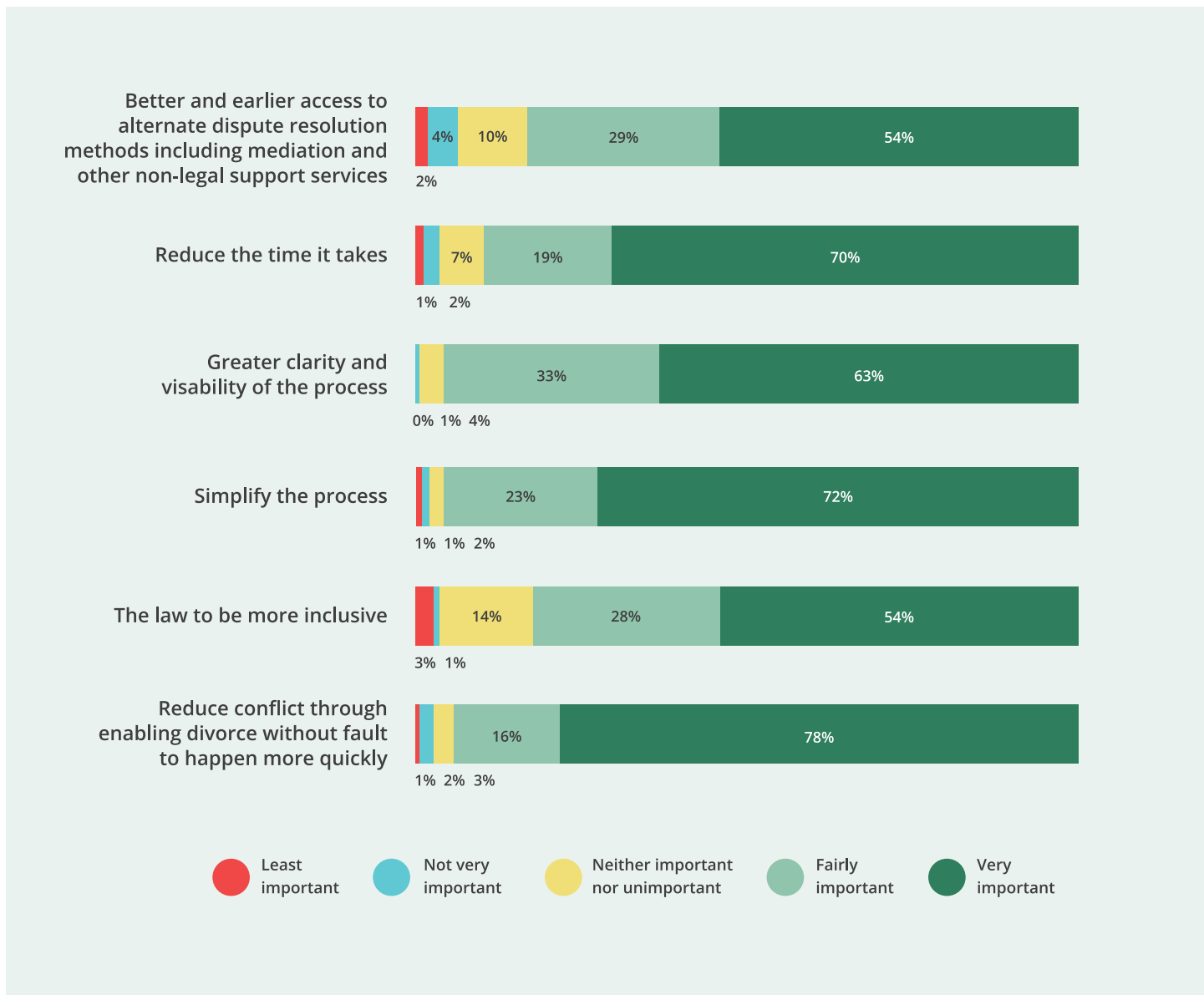


# 2

## Views on the different proposals for changes to divorce

### Question 7 - How would you score the following outcomes around changing the marital relationship?

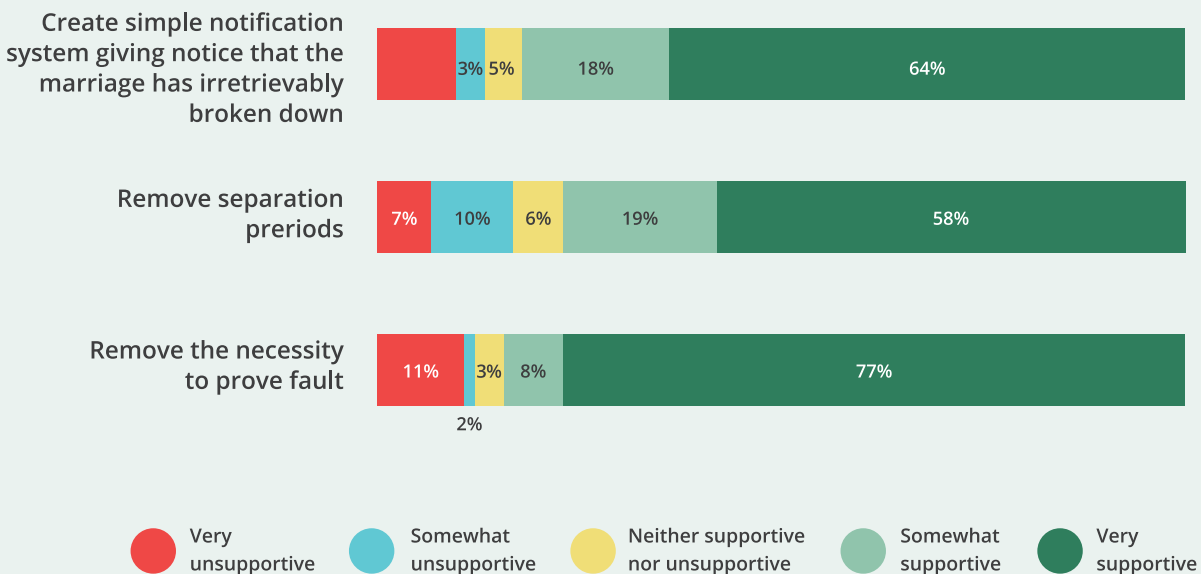
The majority of respondents felt that each outcome listed was very important with 'reducing conflict through enabling divorce without fault to happen more quickly' being the most important with 106 (75%) responding that it was very important.



There were five other comments provided, the majority of those comments were supportive of greater clarity around cost. Three comments (60%) referenced reducing legal costs. One comment (20%) noted the need to simplify the dispute resolution process through predictable financial outcomes. One other comment (20%) suggested introducing a Family Code procedure where property prior to marriage is not divided on divorce, but kept.

## Question 8 - How supportive would you be of the Policy & Resources Committee's preferred option: to remove the necessity to prove fault; to remove separation periods; and to have a simple notification system giving notice that the marriage has irretrievably broken down?

Of the 130 total responses, the majority, (77%) of respondents, were very supportive of the proposal to remove fault, (58%) of respondents were very supportive of removing separation periods and (64%) were very supportive of a simple notification system.



## Question 9 - Do you have any further comments in relation to the divorce facts?

- Nine (39%) respondents were supportive of no fault divorce being introduced, one comment noted the improvement in wellbeing as a reason;
- Two (9%) respondents commented on the need to simplify the divorce process in order to reduce risk of harm to parties involved in the process and subsequently improve wellbeing;
- Two (9%) respondents wanted greater fairness in the divorce process, one of these mentioned tax as a reason;
- Three (13%) respondents noted that the need to prove fault or live separately cost people more and added unnecessary complexity to the divorce process, one (4.5%) additional comment noted the increased cost of having to live separately and maintain two separate households before the divorce proceedings are finalised and ancillary matters resolved;
- Two (9%) respondents proposed alternatives, notably the introduction of a Family Code and the French system of deciding marital asset allocation before marriage;
- Two comments (9%) raised concern with the oversimplification of divorce, with one of these noting that marriage could be undermined;
- Two (9%) comments were not applicable to the question; and
- One respondent was keen to know when the law would come into place.

### Some comments:

"Divorce is an incredibly agonizing process to go through. Simplifying and quickening the process reduces the risk of harm to both parties."

"Currently the system is very confusing."

"If both agree, a year and a day with neither party revoking the request should be sufficient for a divorce period."

"The French have a very good system of choosing marital asset allocation within a marriage. We should follow that template and largely eliminate financial inequity and unfairness."

## Question 10 - Do you agree with the proposal to remove the ability to defend a divorce?

In total there were 128 responses to this question: 93 (73%) respondents agreed with the proposal to remove the ability to defend divorce; 18 (14%) respondents did not agree with the proposal; and 17 (13%) of respondents did not know.



There were 12 further comments to this question. Of these comments five (42%) suggested retaining the right to defend divorce, two (17%) of these comments noted abuse as a reason. There were three (25%) comments wishing to remove the ability to defend divorce, and two (17%) that were partially supportive of removal. One (8%) comment was not applicable to the question and one (8%) comment did not understand what was being asked.

### Some comments:

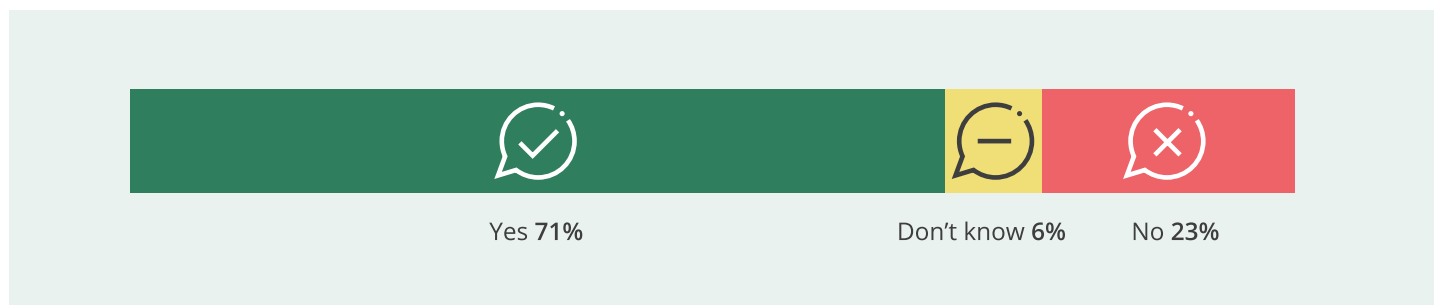
"If one person believes the marriage has broken down, then the marriage has broken down. Both people need to be happy for the marriage to be functional."

"In order to reduce the risk of a miscarriage of justice, in my experience it's essential to retain the right to defend a divorce petition, although it would be likely to be rarely exercised."

"Providing that if any fault were nonetheless asserted in the papers, an avenue remains to dispute that fault. One party can make all sorts of claims, such as stealing assets or physical/mental abuse or child abuse which must not be allowed to go through without a right of defence."

## Question 11 - Do you agree with the proposal to maintain a 'cooling off' period after a Petition has been filed and before the provisional order is made?

Of the 124 responses: 88 (71%) agreed with the questions proposal; 28 (23%) did not agree with the proposal; and eight (6%) did not know.



There were 16 further comments to this question (two of which were not applicable to the question).

### Supportive -Eight (56%)

- Three (19%) noted that if the period was short or shorter than 60 days: one (6%) suggested 30 days; one (6%) suggested just short and one (6%) suggested shorter than 10 days;
- One (6%) comment was supportive in cases of abuse;
- One (6%) comment agreed if mediation was provided;
- One (6%) comment said if the period was sensible;
- One (6%) comment noted that it made it possible for couples to reconcile; and
- One (6%) that a waiver should be in place that could terminate the cooling off period.

### Some comments:

"People can and do reconcile, so that facility should be left open."

"Although a cooling off period might not meet all people's interest, it helps stop rash decisions being made."

"Couples should have the ability to waive the cooling off period if, they are both in agreement at the date the Petition and they feel that full consideration has been already been given prior to the Petition being filed."

## Unsupportive - Five (31%)

- Two (13%) did not want the delay;
- Two (13%) noted that the decision to divorce had already been made and so there was no need for a cooling off period; and
- One (6%) noted money and added cost as the issue.

### Some comments:

"Treat adults as adults, who know their own mind."

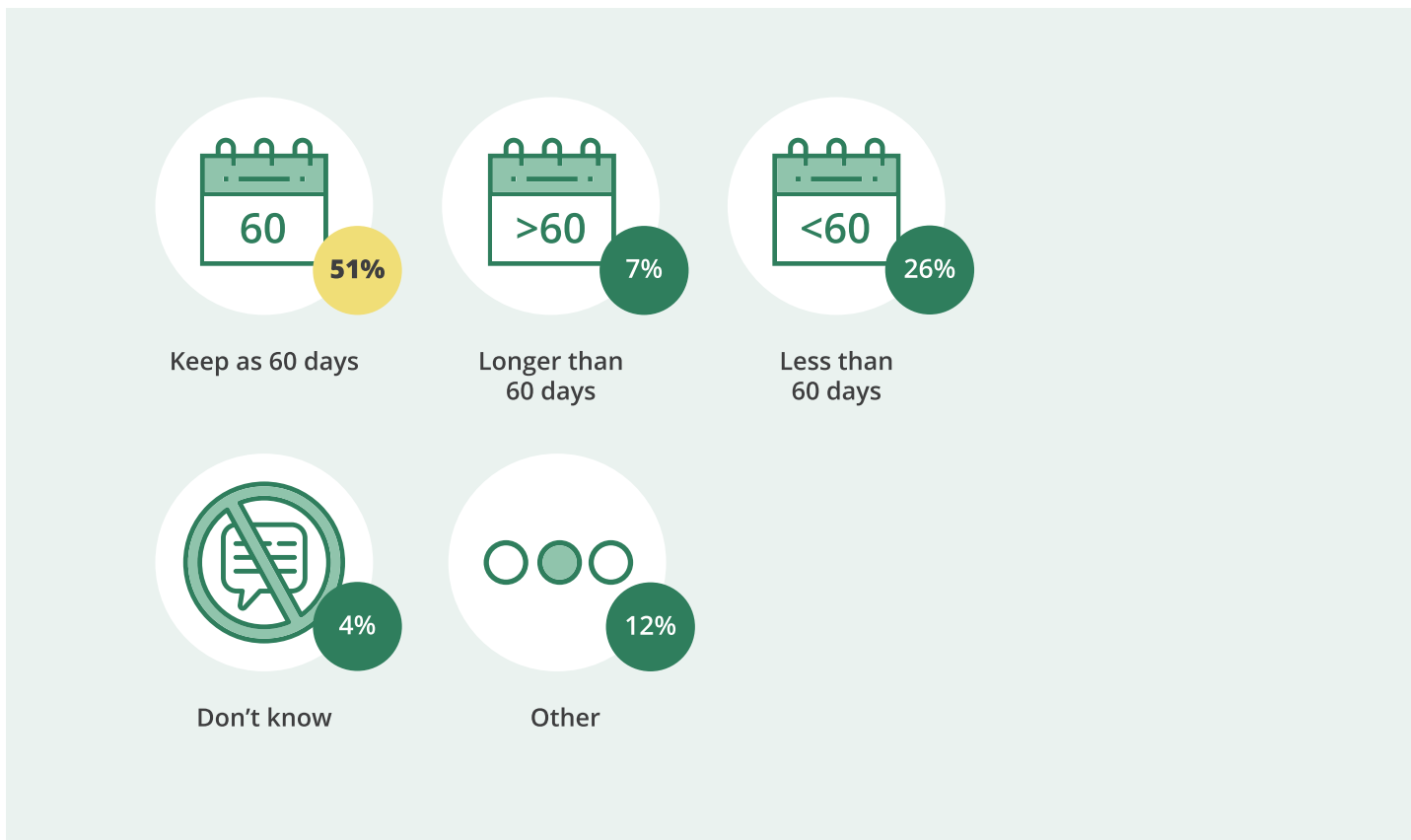
"Most people petitioning for divorce will have given it a lot of thought, so a cooling off period will only bring more delay."

A 'cooling off' period makes it sound as though expect divorce to be a spur-of-the-moment decision, which it most assuredly is not (I have several family members who can attest to that). Perhaps that time would be better spent providing non-legal support for the parties to help maintain their wellness in such a trying time.

## Question 12 - How long do you think the minimum cooling off period should be?

In total there were 124 responses to this question. 63 (50%) of respondents answered keeping the cooling off period as it currently is. 32 (26%) respondents thought less than 60 days, nine (7%) respondents registered more than 60 days and five (4%) did not know.

There were 15 other comments, of these responses there was a group (5, 33%) that suggested no cooling off period was required. Another selection of comments specified less than 60 days with one (7%) comment proposing 30 days, one (7%) comment suggested 10 days, one (7%) comment two days and another (7%) comment one day. One (7%) comment indicated that more than 60 days should be necessary, unless there was domestic abuse whereby there should be no cooling off period. One (7%) comment suggested keeping the cooling off period as 60 days with the addition of a wellness support service. One (7%) comment suggested the option of there being a waiver that can be signed by both consenting parties to cancel the cooling off period. One (7%) comment suggested the consultation was inherently biased towards keeping a cooling off period. One (7%) comment was not applicable to the question. One (7%) comment was not supportive of the cooling off period, and had stated their previous response of 'no' to this question.



### Question 13 - Please give reasons for your choice on the length of the cooling off period.

There were 124 responses to this question. 79 (64%) of these comments were supportive of a cooling off period, of those comments 37 suggested the current period of 60 days or less was sufficient. 24 (19%) were not supportive of maintaining a cooling off period. 21 (17%) comments were not applicable.

#### Those comments supportive of the cooling off period gave various reasons:

- 37 (30%) comments deemed the current period of 60 days to be sufficient;
- 18 (15%) respondents were generally supportive of a 'cooling off' period;
- 12 (10%) respondents thought less than 60 days was appropriate for a 'cooling off period', with three of these comments supportive of a short 'cooling off' period;
- Two (2%) comments noted 30 days as appropriate;
- Two (2%) comments noted two weeks as an appropriate time;
- Four (3%) comments suggested more than 60 days;
- One (1%) comment noted one month as sufficient, 60 days was considered too long;
- One (1%) comment said two months was too long and would cause hardship; and

- Two (1%) comments noted the cooling off period did not need to be too long

Several (20, 16%) comments noted the cooling off period as a measure to prevent decisions made in haste, and an opportunity to review any effect on dependents.

**Those comments not supportive of the cooling off period provided various reasons:**

- 13 (9%) comments deemed the cooling off period to prolong the divorce process, some noted this was unnecessary;
- Seven (6%) comments noted that the cooling off period was not needed;
- One (1%) comment noted the cost involved in the cooling off period;
- One (1%)comment suggested there should be no judicial or legal interference;
- One (1%) comment noted that a cooling off period was unlikely to result in reconciliation; and
- One (1%) comment suggested it added to the pain and uncertainty of the divorce.

**Some comments:**

“Due time for reflection and consideration of how their decision will effect any dependants.”

“I believe the current length is adequate and does not need any reduction or increase.”

“By this stage you know you want the absolute it’s just needless waiting.”

“Bitter experience of the process dragging on.”

“More than 60 days gives abusers the time to persuade their spouse. 30 days should be sufficient.:

“Costly, more expense and enables advocates to charge more, once you have made the decision it should be immediate.”

“Sometimes divorce proceedings can be made in haste in the heat of the moment and sometimes a period of reflection is needed to assess the situation eg the needs of any children etc.”

“If a couple has gone as far as to file, they will not be reconciling during a cooling off period.”

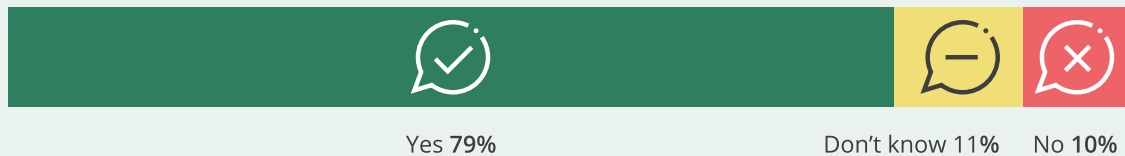


## 3

## Judicial separation by consent and decree of separation proposals

### Question 14 - Do you agree with the proposal to retain the legal provision for judicial separation by consent?

There were 120 responses to this question. Of these responses 95 (79%) agreed with the proposal, 12 (10%) disagreed and 13 (11%) did not know. There were eight further comments.



#### Comments:

- Two (25%) comments raised concern with the legal cost involved of obtaining a judicial separation;
- Two (25%) comments suggested an alternative to judicial separation, one (12.5%) of these comments proposed recognition of prenuptial agreements and adoption of the French model of determining marital assets before marriage, the other (12.5%) comment suggested a form of preliminary orders as in other jurisdictions;
- One (13%) comment noted an issue with the requirement for separate living arrangements as part of a judicial separation;
- Two (25%) comments had issue with the length of time involved, one (12.5%) comment wished to simply reduce the amount of time required, the other (12.5%) comment would accept an option that allowed parties to divorce the quickest; and
- One (13%) comment held the view that judicial separation would no longer be necessary if no fault divorce was put in place.

## Question 15 - Do you have any comments on the consideration to remove the need for unrepresented couples to attend court, such as what other safeguards should be in place if this requirement is removed?

There were 34 responses to this question. Four (12%) comments were not applicable to the question asked and two (6%) comments had stated 'no comment'.

### **Supportive of unrepresented parties attending court:**

- Three (9%) comments were generally supportive of the measure,
- One (3%) comment noted the need to maintain formality of divorce;
- One (3%) comment suggested it would ensure parties were aware of the binding nature of the divorce order;
- One (3%) comment suggested it would prevent corruption;
- One (3%) comment mentioned retaining as a means to prove consent;
- One (3%) was supportive of retaining the need to attend court so long as one person had not left the island and there was representation from a lawyer;
- One (3%) comment outlined the need to retain barriers at difficult times;
- One (3%) comment suggested represented parties should attend court; and
- One (3%) comment suggested that an individual need not be physically present, Skype could be used for example.

### **Unsupportive of unrepresented parties attending court:**

- One (3%) suggestion was made to have private meetings with legal representatives instead of going to court;
- One (3%) comment believed the court should only call parties in if they have any particular questions;
- One (3%) comment suggested have an alternative meeting to Court; and
- Four (12%) comments suggested sworn affidavits should suffice in place of parties attending court.

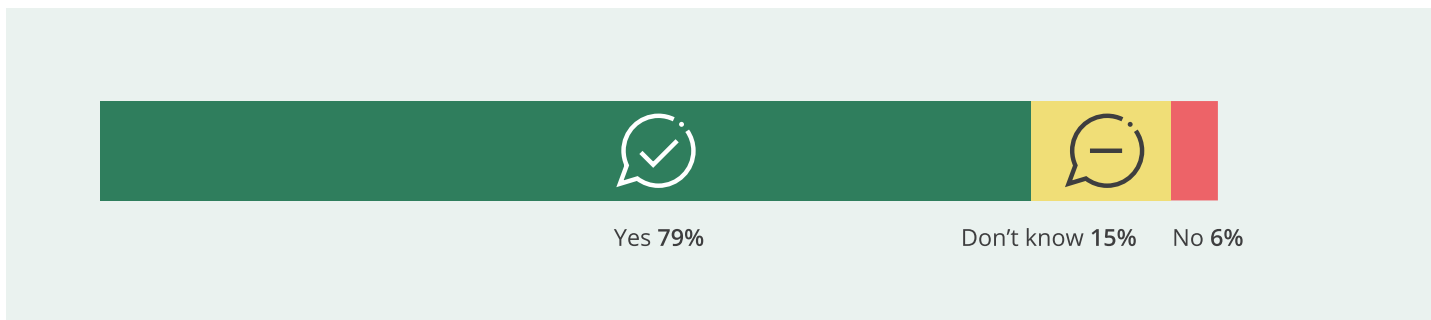
### **Other related comments:**

- One (3%) comment noted that legally represented parties should not have to attend court, but unrepresented parties should be encouraged to seek independent legal advice so they too did not have to attend;

- Two (6%) comments suggested free legal representation;
- One (3%) comment raised cost as a barrier to legal advice and suggested legal aid needed to be improved; and
- One (3%) comment suggested an independent expert to be provided.

## Question 16 - Do you agree with the proposal to amend the facts for a decree of judicial separation in line with any changes made to the divorce facts?

Of the 120 responses to this question: 95 (80%) answered Yes; seven (6%) answered No and 18 (15%) responded 'Don't know'. There were six further comments.



### Some comments:

Those parties who break the marriage contract should be liable for breach of contract damages to the other, even if only by a nominal sum;

I don't feel that the judicial separation has any place in future. You're either divorced or you're not;

The divorce facts are a farce and can be bent and presented how one likes dependant on your lawyer and the loopholes. I declined divorce and said I would happily sign after my degree was over (May 2019) instead I was presented with another petition and a court date. The whole thing is dishonest and cause stress which I am sure has been responsible for many mental health cases. It's disgusting;

However, uncertain why JS on no fault basis would be required if divorce on no fault is possible;

Get rid, it only serves to be a money spinner for advocates, ultimately you have to get divorces if you want to move on with your life.

The whole idea of duty to cohabit is a legal nonsense and has been for decades; and

## 4

### Views on the different proposals relating to annulment

#### Question 17 - Do you have any comments on the proposals to change the grounds for annulment?

There were 45 comments on the proposal to change the grounds for annulment. 22 (49%) comments were not applicable or relevant to the question asked.

##### **Supportive of changing grounds for annulment:**

- 14 (31%) comments supported changing the grounds for annulment and one of those comments further noted that they were unable to remarry due to the current law.

##### **Not supportive of changing the grounds for annulment:**

- Four (9%) comments were not supportive of changing the grounds for annulment

##### **Other comments:**

- One (2%) comment suggested making the grounds to annulment simpler if one party wants this, and leaving the courts to decide how to proceed;
- One (2%) comment suggested annulment would be irrelevant if no fault was in place;
- Two (4%) comments related to inclusion, one related to any decision should consider inclusivity and one suggested annulment should be unilateral and the grounds for it should be made more inclusive; and
- One (2%) question asked what the proposed changes were.

## 5

## Reconciliation, relationship counselling and alternative dispute resolution methods

### Question 18 - Do you agree with the proposal to remove the requirement for the court to consider reconciliation?

114 responses were put forward for this question. 96 (84%) agreed with the proposal, 10 (9%) did not agree and eight (7%) did not know. There were nine further comments.



#### Some comments:

"I fear this would further undermine the importance of marriage and the need for couples to enter into marriage after careful and mature consideration."

"This may be better as part of an earlier stage of the proceedings."

"One would hope that by the time a case reaches court attempts at reconciliation have been attempted and it is unlikely to find couples willing to resile from their collective or individual positions so far down the line."

"The court is not the place to openly discuss why a reconciliation is not likely to work. Recommend and provide for free 3 conciliation sessions would be good, but if one party refuses to open up and admit faults, there will never be a reconciliation."

## Question 19 - Do you have any comments on the suggested proposals for support services before a marriage has irretrievably broken down?

In total there were 37 responses to this question. The majority were supportive of support services being provided. Nine (24%) comments were not applicable to the question.

- Eight (22%) comments suggested affordable support services should be provided;
- Eight (22%) comments suggested support services should be provided, and one thought especially in circumstances where children were involved and one where support services were targeted at children;
- Seven (19%) comments proposed affordable support services should be provided;
- Three (8%) comments suggested a third sector subsidy to remove waiting lists, improve affordability and have free access; and
- Two (5%) comments said support services were not needed.

## Question 20 - Do you have any comments on the suggested proposals for support services after a marriage has irretrievably broken down?

In total there were 31 responses to this question. On the whole respondents were in favour of support services being provided at this time. 16 (52%) responses were not applicable to the question.

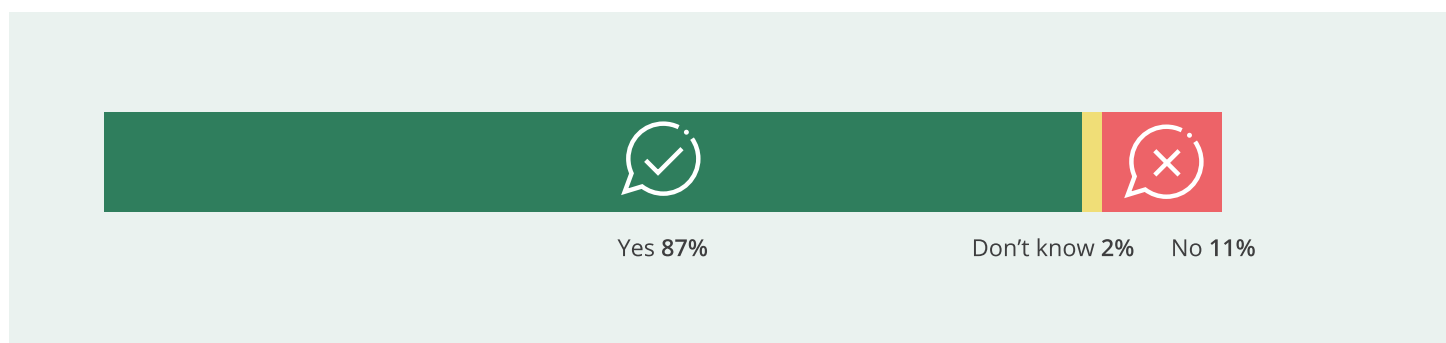
- Four (13%) comments indicated that there should be provision for support services;
- Two (6%) comments suggested a neutral, independent support service being provided;
- One (3%) comment noted that support services should be free;
- One (3%) comment suggested a free advice service was needed;
- One (3%) comment said the more support and information there was the better;
- Two (6%) comments suggested raising awareness of support services, one comment noted Alternative Dispute Resolution (ADR) in particular;
- Two (6%) comments specified children being the priority and focus of support services;
- One (3%) comment was satisfied with the current support provision; and
- One (3%) comment suggested relationship counsellors needed to be professionally trained and recognised.

# 6

## Other related proposals around the procedures, process and availability of information

### Question 21 - Do you agree with the proposal to simplify the current procedures so that couples can process the divorce themselves i.e. 'Do it yourself' divorce?

There were 111 responses to this question. 97 (87%) of respondents answered Yes, 12 (11%) said No and two (2%) Did not know. There were 16 further comments. Two (13%) comments were not applicable.



- Ten (63%) comments agreed with the simplification in order to reduce costs;
- One (6%) comment suggested a mediator or third party be involved in the process;
- One (6%) comment agreed with the proposal and suggested recognition of pre-nuptial agreements; and
- Two (13%) comments thought there was a need to protect the status of marriage.

## Question 22 - Do you agree with the proposal to digitalise some or all parts of the process at a later stage, following the legal changes?

There were 111 responses to this question. 100 (90%) of these agreed with the proposal, seven (6%) respondents did not agree, and four (4%) did not know. There were six further comments. Comments were generally supportive of the proposal to digitalise some or all parts of the process and move away from a paper based system.



### Comments:

"Generally the financial settlement follows a set pattern and a spreadsheet would be just as much use as an advocate. The current modus operandi is for the two lawyers to make ludicrous claims against the other party and take as long as possible to come up with a settlement they both have in mind at the outset. This damages both the petitioner and the respondent and perhaps more importantly any children."

"please be mindful of anything that will be put in the online if it will be in the public domain - some countries do not accept same sex couples and this is a way that some people could possibly be 'outed'."

Yes as long as there are places to go to for free clarification due to not understanding legal jargon. Or the digitisation being in understandable language.

"This reform shouldn't need to wait, the court process in general is too reliant on a paper based system."

"There is a high risk of exploitation in the divorce process, so the Court should retain a responsibility to ensure fairness and true consent in the absence of duress."

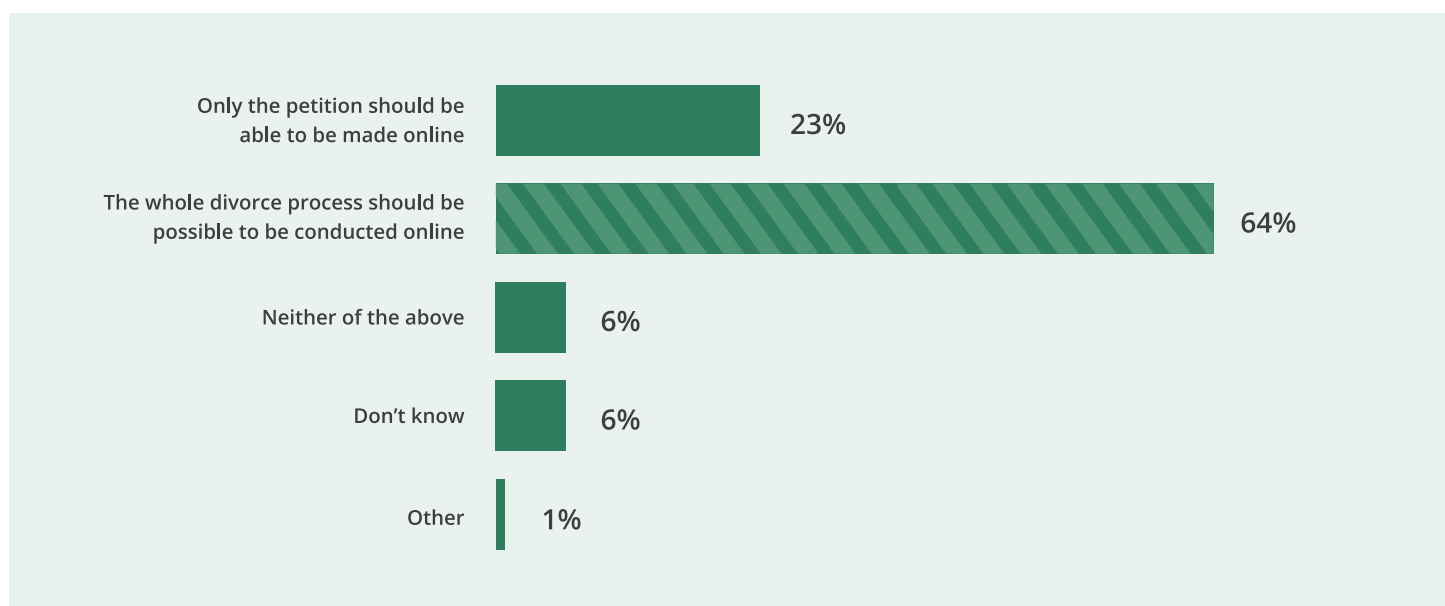
"Let's get out of the dark ages!"



## Question 23 - Which of the following would you most prefer in relation to digitalisation of the process?

There were 111 responses to this question. 71 (64%) respondents thought the whole divorce process should be possible to be conducted online, 26 (23%) answered only the petition should be able to be made online. There were seven (6%) responses for neither of the above and equally seven (6%) respondents did not know. There were eight further comments.

On the whole comments were supportive of the digitalisation process so long as there were necessary precautions and safeguards in place, in particular for when children are involved or in cases of coercion.



### Comments:

"Once a Final Order is granted it is not unusual for parties to represent themselves when seeking child contact or maintenance and those applications are no more simple than the application for a divorce."

"If no children are involved, allow all online."

"With guidance."

"I would support the whole divorce process being able to be conducted online, but only if safeguarding is considered in case of coercion."

“Assuming that provisions are put in place where someone can’t divorce someone without them knowing.”

“contested divorces will need more.”

“The whole process should be done online.”

“Although I think there should be a phase of face to face (if possible) mediation, discussion and counselling as part of the process.”

## Question 24 - Do you have any comments on the proposal to publish clear, simple guidance in one accessible place, such as on the Royal Court website?

There were 109 responses to this question and the majority were supportive of the proposal. 32 (29%) comments were not applicable to the question. 50 (48%) comments were supportive of guidance being provided.

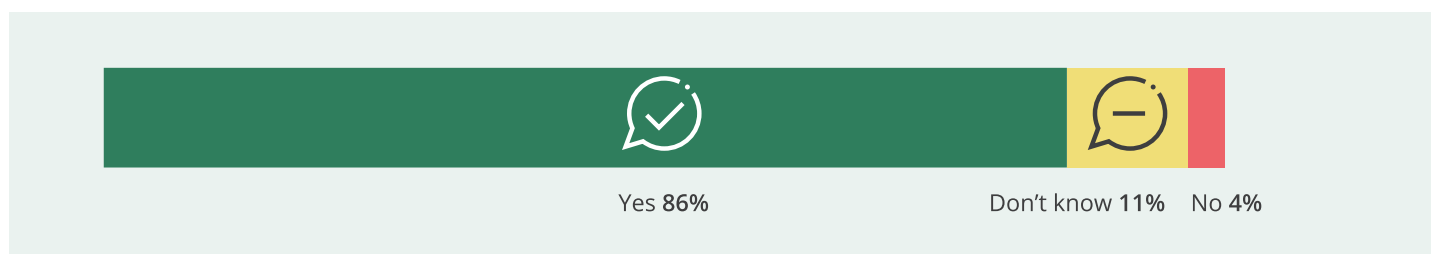
- 19 (17%) comments wanted the guidance made available to be accessible;
- Two (2%) comments were dissatisfied with the current system;
- Three (8%) comments wanted a simplification of the process and one of these wanted more guidance;
- One (1%) comment raised the matter of confidentiality for anyone accessing the information;
- One (1%) comment mentioned necessary safety precautions and measures should be taken; and
- One (1%) comment was supportive of social media being used as an avenue.

# 7

## Different aspects relating to financial orders (ancillary relief)

### Question 25 - Do you agree with the proposal to incorporate the principles to seek 'financial independence' and a 'clean break' within the law?

There were 111 responses to this question of these responses 95 (86%) answered Yes, 12 (11%) answered Don't know. There were five further comments. On the whole comments were supportive of changing the current system as it now stands.



#### Comments:

"Remove the outdated patriarchal system. The treatment of women is antiquated and feudal."

"It would be good for Guernsey to recognise in law prenuptial agreements."

"Money/houses taken into marriage should be considered at the end of marriage, only those monies gained during the length of marriage should be split."

"A published framework for financial settlements is desperately required to reduce conflict and reduce sometime crippling legal fees. Pre-nup agreements should be recognised and other pre-marital financial arrangements should be respected by the Court, even if there is a right for the Court to overturn in special circumstances. "

"Further supports the principles of a no-blame divorce, where an amicable and co-operative approach is essential."

## Question 26 - Do you have any comments on the proposal for further consideration to be given to the development of more easily accessible information and guidance on determining 'financial needs' and 'independence'?

There were 40 responses to this question. 22 (55%) responses were not applicable to the question.

- 11 (28%) respondents were supportive of accessible information being made available, four of these comments noted transparent information and one comment emphasised a need for consideration of children in the information provided;
- One (3%) comment was supportive of accessible information being provided, mentioning section 25 factors, clean break and financial disclosure of needs and contribution;
- Two (5%) comments said there should be increased accessibility and guidance, one comment thought this should be in relation to careers and the other comment said this would help people make informed decisions;
- One (3%) comment was supportive of improving awareness through the availability of information;
- One (3%) comment was supportive of independent information being provided; and
- Two (5%) comments noted a need to recognise pre-nuptial agreements and one of these further added post nuptial agreements.

## Question 27 - Do you have any comments on the proposal to streamline the ancillary relief process?

There were 36 responses to this question. 18 (47%) responses were not applicable to the question. The comments to this question were mainly supportive of streamlining the ancillary relief process.

- 11 (31%) comments agreed with the proposal to streamline the ancillary relief process. Of these responses one noted the need to reduce conflict; another the need to reduce stress and one suggested stating timeframes for disclosure and incorporate Financial Dispute Resolution (FDR) hearing' to shorten the process;
- One (3%) comment questioned if the court had capacity to streamline the ancillary relief process;
- One (3%) comment said that couples should have an understanding of the financial

consequences earlier in the process. If parties do not agree a FDR should be suggested;

- One (3%) comment said parties not agreeing or withholding information would draw out the process;
- One (3%) comment suggested recognition of pre-nuptial agreements;
- Two (6%) comments suggested that necessary precautions should be in place, one of these comments said this would tackle dishonesty in disclosures; and
- One (3%) comment was not sure if the comment was relevant to them.

## **Question 28 - Do you have any comments on the legal recognition of pre- or post- nuptial agreements, excluding children's needs, but including marital property agreements?**

There were 40 responses to this question. Nine (23%) comments were not applicable to the question. There was majority were supportive of the legal recognition of pre or post nuptial agreement.

- 21 (53%) comments were supportive of pre-nuptial and post nuptial agreements, 12 of these suggested safeguards needed to be in place;
- One (3%) comment was supportive of pre and post nuptial agreements and wanted to encourage awareness of this and legal recognition where safeguards were in place;
- Two (5%) comments were supportive of pre and post nuptial agreements and suggested an approach like the French system;
- One (3%) was supportive of pre and post nuptial agreements but thought they should be non-binding, and informative;
- One (3%) comment thought assets gained during marriage should be split, not assets held before marriage;
- One (3%) comment was partially supportive of pre and post nuptial agreements;
- One (3%) respondent said they were satisfied with the current legal recognition;
- Two(5%) comments were not supportive of pre and post nuptial agreements; and
- One (3%) comment was not sure how effective they were.

## Question 29 - Do you have any views on how couples might have greater clarity, at an earlier stage in the process, of the legal costs for all matters including ancillary?

There were 107 responses to this question. Of those responses there was unanimous support for greater clarity of legal cost. 39 (36%) comments were not applicable.

- 34 (32%) comments were supportive of greater clarity around costs, one comment mentioned this being put in a form;
- 12 (11.2%) comments noted implementing a fixed fee structure;
- Five (5%) comments noted a need to have greater clarity around information;
- Four (4%) comments said there was no reason for legal fees;
- Five (5%) comments noted difficulty setting a fixed fee structure, one comment added there needed to be necessary precautions to prevent bias;
- One (1%) comment was supportive of free information provision;
- One (1%) comment supported greater clarity of service provision;
- One (1%) comment was supportive of more legal provision for those who cannot afford legal representation;
- One (1%) comment was supportive of an independent review of charges;
- Two (2%) comments were supportive of the current system and provision; and
- Two (2%) comments suggested an alternative process.

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## Views on other related matters

### Question 30 - Are there any other comments you would like to make in relation to this review?

There were 36 responses to this question, these comments varied in content but were generally supportive of the suggested changes to reform the matrimonial causes law that sets out how couples can legally divorce, separate or annul a marriage in the Bailiwick. 18 (47%) responses were not applicable to the question.

#### Supportive of matrimonial causes reform:

- Three (8%) comments were supportive of the Matrimonial Causes reform in general;
- Two (6%) comments were supportive of equal treatment for co-habitees;
- Four (11%) comments were supportive of simplifying the process;
- One (3%) comment was supportive of no fault;
- One (3%) comment was supportive of greater clarity around legal costs;
- One (3%) comment wanted support services to be offered during divorce; and
- One (3%) respondent suggested the process should be flexible, adding that one size does not fit all.

#### Other comments:

- One (3%) respondent said a fixed legal fee structure should be in place;
- Two (6%) comments noted the high costs of divorce, one of these said simplification would improve this;
- One (3%) respondent indicated an alternative process should be implemented; and
- One (3%) respondent did not think parties of Judicial separation should attend court.

## Question 31 - Please provide any additional information that would help evidence your responses to this consultation

- Nine (36%) comments were not applicable to this question;
- Three (12%) comments were dissatisfied with current cost;
- Three (12%) comments were supportive of no fault;
- Two (8%) comments were supportive of simplifying the process;
- Two (8%) comments noted dissatisfaction with the current system;
- Two (8%) comments were supportive of greater clarity around costs;
- One (4%) comment was dissatisfied with the Safeguarder service, it was noted that courts do not enforce orders such as child maintenance;
- One (4%) comment maintained that finances caused the most disputes and children are used as leverage. The current process was said to enable this to happen; and
- One (4%) comment requested that their comments were not dismissed.

## Next steps

This report will be published on [www.gov.gg/matrimonialcauses](http://www.gov.gg/matrimonialcauses) and the findings from the consultation will be used to refine the proposals. Following which a policy letter will be prepared for the States of Deliberation to consider later in 2019.



# Final Decree of Divorce

A hearing took place today, and the following people were present. There was no jury as neither the husband nor wife asked for one.

## • Appearances

### Petitioner

The Petitioner's name is: \_\_\_\_\_

First

The Petitioner represented him/herself and is the (check one):

Middle

Husband

Wife

Last

### Respondent

The Respondent's name is: \_\_\_\_\_

First

The Respondent was present, representing him/herself, and agrees to the terms of this Decree, or s/he has signed below, agreeing to the terms in this Decree.

Husband

Wife

Last

## • Record

A Court reporter recorded today's hearing. The Respondent was present, representing him/herself, and agrees to the terms of this Decree, or s/he has signed below, agreeing to the terms in this Decree.

Waiver of

Terms in this Decree

has signed below, agreeing to the terms in this Decree.

The Respondent was present, representing him/herself, and agrees to the terms of this Decree, or s/he has signed below, agreeing to the terms in this Decree.

The Respondent is the (check one):

Middle

Husband

Wife

Last

The Respondent represented him/herself and is the (check one):

Middle

Husband

Wife

Last

The Respondent was present, representing him/herself, and agrees to the terms of this Decree, or s/he has signed below, agreeing to the terms in this Decree.

The Respondent is the (check one):

Middle

Husband

Wife

Last





States of  
Guernsey