

Proposed Mediation (Scotland) Bill

Introduction

A proposal for a Bill to increase the use and consistency of mediation services for certain civil cases by establishing a new process of court-initiated mediation that includes an initial mandatory process involving a statutory duty mediator. The consultation runs from 29 May 2019 to 20 August 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Cyrenians has been stopping homelessness and supporting people excluded from family, home, work or community on their life journey, for over 50 years. Although the Mediation (Scotland) Bill may have limited impact on the work of Cyrenians, as an organisation we have significant experience in delivering mediation

Please select the category which best describes your organisation

services and how mediation and conflict resolution training can positively impact lives. One of Cyrenians projects, our award winning Mediation & Support Service, has been established for 13 years. Last year 397 young people and families received mediation and support, and 246 young people attended conflict resolution workshops for young people. 98% of young people we worked with remained at home, returned home or moved out in a planned way. Another of Cyrenians projects, the government funded Scottish Centre for Conflict Resolution, which works nationally across Scotland, last year delivered conflict resolution training to 1582 young people, parents/carers and professionals, from 230 organisations across 28 local authorities. The views expressed in this response are the collective views of the organisation.

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Cyrenians

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Aim and approach

Q1. Which of the following best expresses your view of legislating to increase the use and consistency of mediation services for civil cases in Scotland?

Fully supportive

Please explain the reasons for your response.

Cyrenians is supportive of the use of mediation to help conflict resolution across a range of disputes. As an organisation which delivers mediation to young people and families, we see the benefits that mediation offers to those in conflict. Legislation, while still respecting the voluntary nature of mediation, is one way of increasing the use and consistency of mediation, which includes civil cases.

Details of the proposal

Q2. Which of the following best expresses your view of requiring the parties to a civil court case (unless it is an excluded case) to complete a self-test questionnaire and attend a mandatory Mediation Information Session with a duty mediator?

Fully supportive

Please explain the reasons for your response.

The self-test questionnaire along with attending mandatory a Mediation Information Session, will aid appropriate cases to progress using mediation and enable parties to make informed decisions regarding whether they wish to progress with mediation. In particular, a Mediation Information Session will allow parties to be fully informed about the benefits of mediation and what is expected of both the parties and the mediator.

Q3. Which of the following cases (if any) do you agree should be excluded from the requirement to complete a self-test questionnaire and attend a Mediation Information Session (tick all that apply)?

proceedings relating to the Abusive Behaviour and Sexual Harm (Scotland) Act, the Domestic Abuse (Scotland) Act and any other proceedings relating to domestic abuse and sexual harassment cases

any proceedings relating to civil actions for rape and other sexual offences

certain proceedings under the Family Law (Scotland) Act 2006, such as declarations of validity or dissolution of marriages

employment disputes which are governed by statutory dispute-resolution processes

Please explain the reason for your response.

Although we have noted the above cases which we think would be best excluded from completing a self-test questionnaire and attending a Mediation Information Session, perhaps there should also be the possibility of each case being judged individually. A broad brush approach may exclude parties who with appropriate support could benefit from mediation.

Q4. Which of the following best expresses your view of giving parties who agree to mediate access to a process that can lead to a Mediation Agreement and, where appropriate, a Mediation Settlement Agreement?

Fully supportive

Please explain the reasons for this response.

The two agreements will give clarity to all parties taking part in mediation and are likely to reduce any potential disputes in relation to the details of the how the mediation will be conducted and also disputes in relation to the agreements reached.

Q5. Which of the following best expresses your view of giving the Scottish Ministers power to extend the mandatory part of the process (the self-test questionnaire and Mediation Information Session) so that it applies to potential litigants who are yet to go to court?

Fully supportive

Q5. Which of the following best expresses your view of giving the Scottish Ministers power to extend the mandatory part of the process (the self-test questionnaire and Mediation Information Session) so that it applies to potential litigants who are yet to go to court?

Please explain the reasons for your response.

It would be beneficial for potential litigants to access mediation at the earliest possible opportunity, which apart from minimising court costs, would help to minimise the significant stresses of the court process for all parties.

Financial implications

Q6. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) Government (including court services, legal aid etc.)					X	
(b) Businesses				X		
(c) Third Sector organisations			X			
(d) Mediators and mediation organisations			X			
(e) Individuals				X		

Please explain the reasons for your response.

The reduction in government costs would be as a direct result of decreased court costs. Businesses would benefit from the lower costs of mediation compared with any potential legal costs, with third sector organisations being broadly cost-neutral. It is likely that the increase in available work would financially benefit mediators and mediation organisations. Individuals could potentially benefit from some reduction in costs, should legal costs be avoided and would also not have the additional costs of going to court eg days off work, additional childcare expenses, travel expenses etc

Q7. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

The reduced costs of mediation, compared with a court/legal process are well established. We have some concerns about the situation where mediation is unsuccessful and parties then have to finance both mediation and legal costs and how parties limited financial resources may compromise their access to justice.

Equalities

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Positive

Please explain the reasons for your response.

Mediation could potentially give parties the opportunity to address some of the issues that the court process may not be able to undertake. Disputes where the protected characteristics play a part, may be managed more appropriately and effectively using mediation, than by a legal route. Mediation agreements may also give the parties involved, if they agreed, the opportunity to change process and procedure within organisations.

Q9. In what ways could any negative impact of the proposed Bill on equality be minimised or avoided?

Clarity about costs to parties.

Sustainability

Q10. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Yes

Please explain the reasons for your response.

The benefits of mediation have already been detailed and it is likely the impact of the bill will have a positive economic, social and environmental impact.

General

Q11. Do you have any other comments or suggestions on the proposal?

The proposal states that 'legal aid is available for mediation', however absolute clarity about the availability of legal aid for individual cases is necessary, to avoid a situations where parties have to decide on whether to engage with mediation from a financial standpoint.