

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.

an individual

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".)

Professional with experience in a relevant subject

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

I am currently a Registered Family Mediator with Relationships Scotland. I was also an accredited Community Mediator with Sacro for 11 years

Please select the category which best describes your organisation

No Response

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).

Pam Wardlaw

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.

As a professional mediator I am fully aware of the benefits of ADR. When I became a mediator in 2002, I believed that awareness and subsequent use of mediation to resolve disputes would increase in the coming years. Unfortunately the opposite has happened; mediation services have been badly hit by cutbacks to the degree that few community mediation services are still operating at all in Scotland and family mediation services are operating in ever more difficult financial circumstances. I do not believe this state of affairs will change without intervention by government and legislation to raise awareness, encourage take-up and create consistency across the country.

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.

A consistent system such as this seems the most sensible way to encourage participation in mediation.

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

proceedings under the Arbitration (Scotland) Act

employment disputes which are governed by statutory dispute-resolution processes

judicial review proceedings

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.

This would offer a logical and clear progression which parties could opt out of at any point if they so wished.

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?

Partially supportive

Please explain the reasons for your response.

I am wondering if it would be possible to put this place on a trial basis with a review process built in.

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		X				

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

services, legal aid etc.)						
(b) Businesses					X	
(c) Third Sector organisations					X	
(d) Mediators and mediation organisations						X
(e) Individuals					X	

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

Unsure

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?

Slightly positive

Please explain the reasons for your response.

Mediation is, in most cases, an empowering process so I think it likely that individuals with one or more of the protected characteristics might feel more able to resolve a civil dispute through mediation than they would through the more costly court process.

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

Ensure a way for anyone participating to complain or raise issues about the process itself if they feel their rights are being infringed.

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

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?

Please explain the reasons for your response.

I cant think of any reason why it should not be sustainable.

General

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

Long overdue.