

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:

Previously I was a litigation partner in a large law firm in Edinburgh and qualified as a mediator in 2000. Thereafter I was employed by Core solutions as Director of Mediation Services and then went out on my own as self-employed (Pamela Lyall Mediator and Facilitator) about 5 years ago. I have mediated in over 200 cases covering a wide range of disputes.

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).

Pamela Lyall Mediator and Facilitator

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.

I am fully supportive of using legislation to increase the use of and consistency of mediation services - but I remain unsure as to the suggested proposals and whether they will have the required impact.

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?

Partially opposed

Please explain the reasons for your response.

i do not feel that this goes far enough - I think that the recommendation contained in the Scottish Mediation report published in June 2019 entitled "Bringing Mediation into the Mainstream in Civil Justice in Scotland" of having an Early Dispute Resolution Office (EDRO) has more bite to it as the EDRO can "identify and direct appropriate cases towards mediation..." rather than just provide information about the process.

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

proceedings under the Arbitration (Scotland) Act

Please explain the reason for your response.

I do think any cases which deal with alleged violence should not be included nor cases where the parties have already selected the process under the Arbitration (Scotland) Act.

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?

Unsure

Please explain the reasons for this response.

It certainly would be good to have more cases referred to mediation - just not sure about the process involved to get there.

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?

Unsure

Please explain the reasons for your response.

I am unsure how in practice the parties who have not as yet gone to court will be identified

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		

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

(c) Third Sector organisations				X		
(d) Mediators and mediation organisations			X			
(e) Individuals				X		

Please explain the reasons for your response.

I suspect that there may some savings for those who normally might have taken there disputes through the courts - be that businesses, third sector organisations or individuals- but I do think there will be certainly initially increases in costs in providing the service of the Government. I do not consider that there will be any marked increase in costs for mediator organisations or individuals such as myself.

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

Using existing staff by training them rather than having a whole additional layer of staff might help. I think it is inevitable that here will be costs initially - the cost savings will be experienced further down the line.

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?

Neutral (neither positive nor negative)

Please explain the reasons for your response.

I cannot envisage the proposed legislation having any effect on equality.

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

I am afraid that given my response to the last question this is not a question that I can answer.

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 do not envisage that there would be much impact environmentally - the need is for shift in cultural thinking.

General

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

I suspect that overall whilst I welcome what is proposed in the legislation I think more than just information is needed and there is a need for a genuine cultural shift and a robust approach being taken.