

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

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

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).

The Society of Chief Officers of Trading Standards in Scotland is a Scottish Charitable Incorporated

Please select the category which best describes your organisation

Organisation (SC047951), and is the professional body representing the heads of service for trading standards services in Scottish local authorities.

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).

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

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?

Partially supportive

Please explain the reasons for your response.

Although very supportive of the increased use and effectiveness of mediation without seeing the detail of the legislation it is not possible to confirm full support. Research has shown that mandatory schemes are less effective so care would need to be taken to adopt a persuasive model rather than a compulsory one.

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 supportive

Please explain the reasons for your response.

There can be circumstances where the parties are so entrenched in their opposing views that a mandatory information session might be seen as a further obstacle to the resolution of the dispute. However the self

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?

test questionnaire could be used to identify these cases and take cognisance of that in setting up the information session/s.

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

other cases (please specify)

Please explain the reason for your response.

Each of the exemptions makes good sense indeed any requirement for the parties to these types of actions would be at least counter productive and add to the difficulties faced by the individuals involved. As highlighted in response to question 2 there may be circumstances where the self-test questionnaire could identify situations in which the parties should not subsequently be required to attend the information sessions, these could include ones where one or other of the parties feels intimidated / threatened by the other.

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

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

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.

Although very supportive of the concept of mediation and therefore the ability to extend the scope of the process it would be prudent to consult on the detail of these prior to implementation.

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 expectation and theory is that mediation should be less expensive than court proceedings for the potential litigants however it is perhaps possible that businesses will continue to use legal professionals even during the mediation processes. Therefore the potential savings may be limited for some businesses. The assumption is that the costs of the processes and the take up by parties would be reviewed as the scheme was introduced to ensure that it was at worst cost neutral.

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

The potential cost savings in the legal aid system could be re-directed to the expense of establishing and operating a duty mediator scheme.

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.

The nature of mediation processes may enable "vulnerable" people to pursue a resolution who may not have had access to traditional court based remedies. For example people with conditions that made it difficult for them to attend court might under the mediation scheme be able to participate through the use of technological solutions.

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

No Response

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

General

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

It is worth noting that in consumer disputes, businesses are required to provide information about Alternative Dispute Resolution (ADR), in contractual obligations, following the requirements of the Alternative Dispute Resolution Directive which was implemented in the UK by the Alternative Dispute Resolution for Consumer Disputes (Competent and Information) Regulations 2015.