

QUESTIONS

ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - X on behalf of an organisation? – in which case go to Q2B
- 2A 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”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - X Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

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

- 2B Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - X Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

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):

Harper Macleod LLP, a full service law firm with offices in Glasgow, Edinburgh, Inverness and Lerwick; this response is on behalf of the family law team.

3. Please choose one of the following:
- X I am content for this response to be published and attributed to me or my organisation
 - I would like this response to be published anonymously
 - I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. (**Note: your reason will not be published.**)

4. 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 **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name: Harper Macleod LLP

Please provide 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. **(Note: We will not publish these contact details.)**

5. Data protection declaration
 I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. **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
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed
 U n s u r e

Please explain the reasons for your response

Four of our team are accredited by the Law Society as mediators and we have experienced first hand the benefits of successful mediations in a family law context, in terms of cost and stress saving but most importantly minimising the impact of separation/divorce on the family (especially children) and enabling parties to maintain some sort of relationship going forward for the family.

Details of the proposal

2. **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
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed

- Fully opposed
- Unsure

Please explain the reasons for your response.

Whilst we have a duty to tell our clients about different methods of dispute resolution at the outset, incl mediation, it would be helpful for clients to have another prompt from an impartial body just before they embark on court with all its attendant cost, uncertainty, polarization and stress.

3. 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)
- none of the above (no cases should be excluded)

Please explain the reasons for your response.

We can only comment on family law related cases.

4. 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 Commencement Agreement and, where appropriate, a Mediation Settlement Agreement?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

It follows that if parties agree to mediate there needs to be a clear pathway to getting mediation underway, per what is proposed, as otherwise the impetus to mediate will likely be lost. There is also the risk that parties see the exercise as merely a hoop to go through before getting to go to court; this is where the mediators need to be really skilled. Funding pathways will also require to be clear and adequately resourced.

5. 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 applied to potential litigants who are yet to go to court?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

We are not sure how this would work in practice and feel that our own obligations to advise our clients of the various dispute resolution methods covers this.

Financial implications

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

(a) Government (including court services, legal aid etc)

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Businesses

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Third Sector organisations

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(d) Mediators and mediation organisations

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost

X Unsure

(e) Individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- X Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

We would have thought mediation will reduce calls on the legal aid board purse. However, for law firms who offer legal aid, increased mediation will potentially reduce their income, if less cases go to court. For individuals (we take this to mean clients), we consider a mediated outcome as opposed to one ordered by court will likely be cheaper. We would expect mediators to get increased income.

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

Equalities

8. 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, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- X Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

We consider more take-up of mediation will reduce family conflict. We cannot comment on non-family law issues but note that court tends to polarize and alienate which can only have a negative impact on equality issues. Party litigants may not have been told about mediation prior to going to court so this will ensure they are made aware of it.

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

Sustainability

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

- X Yes
- No

U n s u r e

Please explain the reasons for your response.

If family conflict can be reduced, this will impact positively on society, eg reducing the number of children exposed to ACEs and the associated trauma/impact on their childhoods and in turn the effect this has on them into adulthood and the knock on repercussions for society; strain on education sector in trying to support them etc,

General

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

We recognize that some lawyers may be concerned about increased mediation through third party mediation organisations leading to reduced fees for lawyers (eg where case does not proceed to court). It is true that if the project is successful, there will be an increased need for more mediators. However, we are not sure if this will outweigh the loss of income for family lawyers who offer legal aid. Less cases in court will reduce the strain on the court system and the legal aid purse (since mediation will likely generally be cheaper than the cost of a full blown court action). It will allow disputes to be settled more quickly than the present court system allows (9-12 months for a divorce action from start to finish is fairly usual whereas a successful mediation might be concluded in 3 or 4 sessions over say a 3 month period, where parties are committed to the process – which latter we do recognize is crucial). The benefits do seem to outweigh the negatives. How the proposal is to be funded and the anticipated though will be important (ie steps 1-3 of the process as outlined above). We appreciate that at this early stage there cannot be much detail on that aspect.

