

Guidance on the Promotion and Use of Mediation in the Scottish Planning System

Child Rights and Wellbeing Impact Assessment

July 2021



Scottish Government
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Executive summary	<p>Mediation is one of a range of techniques sometimes labelled as ‘alternative dispute resolution’ (ADR) which can include facilitation, conciliation and arbitration as well as mediation. These techniques can be used to help to build bridges between stakeholders and resolve issues of dispute. Generally, mediation is a process involving an independent third party, whose role is to help parties to identify the real issues between them, their concerns and needs, the options for resolving matters and, where possible, a solution which is acceptable to all concerned.</p> <p>Section 40¹ of the Planning (Scotland) Act 2019 (the 2019 Act) inserted section 268A into the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). The provision states that Scottish Ministers may issue guidance on the promotion and use of mediation in the Scottish planning system.</p> <p>Although not aimed at planning and the built environment, Children and Young People may already have some experience of mediation through Scottish Mediation’s peer mediation project. Additionally, the evidence shows that children and young people are keen to engage and shape the places where they live, go to school and play.</p> <p>We consider that of the eight wellbeing indicators (Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included (known by the acronym SHANARRI)), the policy relates to:</p> <ul style="list-style-type: none"> • Included: Having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn. • Respected: Given a voice and involved in the decisions that affect their wellbeing. • Responsible: Taking an active role in their schools and community. <p>We consider that Article 12 of the United Nation Convention on the Rights of the Child (UNCRC) is specifically relevant – where every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.</p> <p>Other Articles of the UNCRC may indirectly be relevant such as: Article 3 - Every decision and action taken relating to a child must be in their best interests; Article 15 – a right to gather and use</p>

¹ [Planning \(Scotland\) Act 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

	<p>public space, providing no laws are broken; and Article 31 – a right to play, rest, leisure and access cultural life appropriate to their age.</p> <p>The results of this assessment demonstrate that there are likely to be no potentially negative impacts of the policy.</p>
Background	<p>Mediation is a voluntary process, generally between two parties, which can be facilitated by a third, independent party. The thrust of the guidance is therefore aimed at promoting the use of mediation rather than requiring its use and, as set in the definition of mediation in the 2019 Act, as a means of exploring, resolving or reducing disagreement between persons.</p> <p>The intention of the guidance is to support one of the overarching themes of the review of planning - collaboration over conflict.</p>
Scope of the CRWIA	<p>The likely effects of the policy were informed by a range of evidence, including public consultation. Scottish Government officials also examined evidence from a range of studies, reports and surveys, including:</p> <ul style="list-style-type: none"> • YoungScot Survey² (2017) • Hard to Reach, Easy to Ignore³ (2017) • Young Gypsy/Travellers Discuss the United Nations Convention on the Rights of the Child - Children and Young People's Evidence Bank⁴ (2018) • Children and parents: media use and attitudes report⁵ (2019) • Young people's participation in decision making: attitudes and perceptions⁶ (2020) • Health Inequalities: Peer research into the role of communities⁷ (2020) • Democracy Matters to Children⁸ (2020) • If not now, when? - Social Renewal Advisory Board report⁹ (2021) <p>We envisage that the guidance will potentially provide an additional opportunity for children and young people to become more actively engaged in the planning system. However, there is the potential for intersectional issues to affect the perception of certain groups of children and young people of engagement. Research relating to out of school groups and activities suggests</p>

² [Planning Review Young Scot survey results.pdf \(www.gov.scot\)](http://www.gov.scot)

³ ['Hard to reach' or 'easy to ignore'? Promoting equality in community engagement – Evidence review | What Works Scotland](#)

⁴ [Young Gypsy/Travellers Discuss the United Nations Convention on the Rights of the Child - Children and Young People's Evidence Bank](#)

⁵ [Children and parents: media use and attitudes report 2019 - Ofcom](#)

⁶ [Young people's participation in decision making: attitudes and perceptions - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁷ [Health Inequalities-Report-Chris-Ross.pdf \(childreninScotland.org.uk\)](http://childreninScotland.org.uk)

⁸ [Democracy Matters Consultation - Children's Parliament \(childrensParliament.org.uk\)](http://childrensParliament.org.uk)

⁹ [If not now, when? - Social Renewal Advisory Board report: January 2021 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

	<p>this may particularly be an issue for both disabled children and older children.</p> <p>Revisions arising from the Planning (Scotland) Act 2019 will also enhance the opportunities for children and young people’s voices to be heard at the local development plan stage.</p> <p>It should be noted that many children and young people may never come across Pre-Application Consultation. We understand that there have been in the region of 330 such applications per year over the past three years with an uneven geographical spread across Scotland.</p>
<p>Children and young people’s views and experiences</p>	<p>There is a lack of research directly on children’s experiences of engaging in the planning system. However, more widely, evidence would suggest that children want to be involved in shaping the places they live, go to school and play.</p>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p>A survey undertaken by YoungScot (2017) to accompany Places, People and Planning concluded that the majority of young people feel they should be involved in planning in their local area and that their local councils should look at ways to support children and young people to do this.</p> <p>This view is supported in Young Gypsy/Travellers Discuss the United Nations Convention on the Rights of the Child - Children and Young People’s Evidence Bank (2018) where recommendations include that there should be more opportunities for young Gypsy / Travellers to take part in decision making and have their voices heard.</p> <p>This is also reflected in Health Inequalities: Peer research into the role of communities (2020) which noted that children and young people want to be involved in decisions about the places they live.</p> <p>However, this desire may be frustrated. For example, Hard to Reach, Easy to Ignore (2017) noted that language barriers lack of confidence and dominant characters can discriminate against some people during community engagement, specifically including young people. The nature of mediation is likely to mitigate against some of these barriers.</p> <p>Democracy matters to Children (2020) also noted that ‘children’s paths to meaningful involvement in decision-making are currently limited and many children have limited or no experience of participation in democratic processes’. It identified a number of local issues as ones which children wanted to have a say in – this included planning and the built environment.</p> <p>The Scottish Government has found that the proposals do not impinge negatively upon articles on the UNCRC or the indicators</p>

	<p>of wellbeing (SHANARRI) and that we do not consider there are issues that will impact negatively upon children and young people.</p> <p>The Scottish Government is seeking to enhance engagement with communities across the whole of the planning system.</p> <p>We recognise that the data available does not allow a complete picture of the experiences and views of children and young people. However the CRWIA has provided the opportunity to consider the potential impact of the policy on them.</p>
Monitoring and review	<p>The Scottish Government will conduct a review of the first 24 months of the operation of the guidance. As well as approaching planning authorities and the development industry, a survey of public views will also be carried out.</p>
CRWIA Declaration	
Authorisation	
<p>Policy lead Graham Robinson Policy Manager</p>	<p>Date 18/06/2021</p>
<p>John McNairney Chief Planner</p>	<p>Date 21/06/2021</p>



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