

**Report on the Scottish Ministers' duties under section 23(1) (funding for alternative dispute resolution) and section 24(1) (pilot scheme for mandatory alternative dispute resolution meetings) of the Children (Scotland) Act 2020.**

**Laid before the Scottish Parliament by the Scottish Ministers under sections 23(7) and 24(4) of the Children (Scotland) Act 2020.**

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## Introduction

1. Section 23(1) of the Children (Scotland) Act 2020 (the 2020 Act) requires the Scottish Ministers to—
  - (a) set up a scheme to make assistance available so that individuals can meet the costs of alternative dispute resolution procedures in relation to a dispute involving any of the matters mentioned in section 11(1) of the Children (Scotland) Act 1995 which has either resulted in an order being sought under that section or is likely to do so if it is not resolved through alternative dispute resolution; or
  - (b) arrange assistance to be made available from the Scottish Legal Aid Fund so that individuals can meet those costs.
2. Section 24(1) of the 2020 Act requires the Scottish Ministers to arrange a pilot scheme under which a court, in proceedings to which the scheme applies, may only make an order under section 11(1) of the 1995 Act—
  - (a) where the parties to the proceedings have attended a meeting at which the options available to resolve the dispute giving rise to the proceedings are explained, or
  - (b) if the terms of the scheme allow, where the court has decided on cause shown that it would not be appropriate to require the parties to attend such a meeting.
3. If, at the end of a period described respectively in section 23(8) or 24(5), the Scottish Ministers have not fulfilled the relevant duty, sections 23(7) and 24(4) each require the Scottish Ministers to lay before the Scottish Parliament a statement explaining why not and stating when they expect to do so.

## The Reporting Period

4. Sections 23(7) and 24(4) of the 2020 Act provide that statements must be laid before the Scottish Parliament at the end of a period of 6 months.
5. The 2020 Act received Royal Assent on 1 October 2020. This statement covers the period from 1 April 2022 to 1 October 2022.
6. Previous statements are available for the following periods:
  - [1 October 2020 to 1 April 2021 \(First Report\)](#)
  - [1 April 2021 to 1 October 2021 \(Second Report\)](#)
  - [1 October 2021 to 1 April 2022 \(Third Report\)](#)

## **Scheme for funding for alternative dispute resolution (section 23 of the 2020 Act)**

7. The Scottish Ministers have not fulfilled their duty under section 23(1) of the 2020 Act to establish a scheme for funding for alternative dispute resolution (ADR). However, the Scottish Government has carried out work to progress the setup of such a scheme during the reporting period.
8. As noted at paragraph 8 of the second report (covering 1 April 2021 to 1 October 2021), the Scottish Government is aware of the Family Mediation Voucher Scheme that was established by the UK Government in England & Wales as a response to the Covid-19 pandemic.
9. Scottish Government officials have monitored the implementation of the scheme to see if there are any lessons learned that can apply to Scotland, and have met with the Ministry of Justice during the reporting period to discuss the scheme further (which has been extended beyond its original intended timescale). This knowledge will be taken into account when designing the Scottish scheme, although the duty in section 23 requires assistance to be made available for ADR generally, rather than mediation specifically.
10. Section 23(7) of the 2020 Act requires the Scottish Ministers, if they have not fulfilled their duty under subsection (1), to explain why not and to state when they expect to fulfil it.
11. On why the duty has not been fulfilled, there remains a number of detailed issues that the Scottish Government still needs to consider further. These include the following points:
  - The options for funding the scheme, including options in relation to affordability.
  - The eligibility criteria for assistance.
  - How to ensure the voice of the child is heard in ADR, taking account of information on this provided by current ADR providers.
  - How the new assistance scheme will ensure that proven or alleged domestic abuse victims are not forced to go to any ADR that is covered.

- How the new assistance scheme will fit with the legal aid system.
  - If any regulations under section 23(9) of the 2020 Act would be required (under section 23(11), any such regulations are subject to the affirmative procedure).
  - If any changes to court rules<sup>1</sup> need to be proposed. For example, Sheriff Court Ordinary Cause Rule 33.22 provides that *'In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation'*.<sup>2</sup>
  - Ensuring the scheme is fully evaluated.
12. In addition, the Scottish Government will need to discuss the details of the scheme with:
- the providers of the various forms of ADR;
  - the Scottish Courts and Tribunals Service (SCTS). The SCTS will have a strong operational interest in how the scheme will work;
  - bodies such as Scottish Women's Aid and Shared Parenting Scotland who work with users of the family court system; and
  - the Scottish Legal Aid Board.
13. Finally, the architecture of such a funding scheme would be better drawn up following completion of the pilot of mandatory meetings on alternatives to court (section 24(1) of the 2020 Act).
14. Upon conclusion of the pilot, it is likely to take at least another 12 months to put the agreed scheme into place.

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<sup>1</sup> The Scottish Civil Justice Council has [an information page on their website](#) about how court rules are made.

<sup>2</sup> Court rules have recently been made on the case management of family and civil partnership actions. These will come into force on 25 September 2023 (see [this Scottish Civil Justice Council news release](#) for further information). Under these, the rule on mediation has been expanded to include all family actions, not just those seeking orders under section 11 of the Children (Scotland) Act 1995. The new rules provide that the sheriff must have particular regard to any averments of domestic abuse when considering the appropriateness of referring the action, or part thereof, to a mediator.

## **Pilot of mandatory meetings on alternatives to court**

15. The Scottish Ministers have not fulfilled their duty under section 24(1) of the 2020 Act to establish a pilot of mandatory meetings on alternatives to court. However, work is progressing on these provisions.
16. The Scottish Government is proceeding on the basis that:
  - the meetings under section 24 should be individual;
  - if provision to establish a pilot scheme is required, this should be done by regulations made under section 24(6) rather than by way of a Practice Note. Regulations under section 24(6) are subject to the affirmative procedure; and
  - Facilitators of the meetings should ask those attending to consider how the views of the child have been and will be sought. The Scottish Government have engaged with providers of ADR to find out how they currently ensure regard is had to children's views when ADR takes place.
17. Following the session held in January 2022 with ADR providers to discuss how such a pilot could work (see the 1 October 2021 to 1 April 2022 period statement), the Scottish Government has engaged with Relationships Scotland on the possibility of them coordinating certain aspects of the pilot from 2023. The Scottish Government has also engaged with CALM Scotland, another accredited provider of family mediation.
18. Relationships Scotland do not cover all forms of ADR. The Scottish Government will make sure that whoever is put in place to facilitate the information meetings will work with other ADR providers to ensure that a wide variety of forms of ADR are appropriately covered and represented in the pilot.
19. In these discussions, consideration has been given to the following points:
  - how many cases would be required for the pilot;
  - how many facilitators will be needed;
  - what training will be required for the facilitators;

- whether information meetings should be in-person, virtual or both;
  - whether or not geographical locations need to be identified for the pilot (e.g. particular courts or sheriffdoms), or if they are virtual only, whether operating the pilot nationwide would be the best option;
  - what information will be provided to parties who attend, including on costs and benefits of various forms of ADR;
  - how long the pilot should last for;
  - what resources will be needed by the pilot provider to coordinate the work; and
  - how the pilot will be evaluated.
20. Section 24(4) of the 2020 Act requires the Scottish Ministers if they have not fulfilled their duty under subsection (1) to explain why not and to state when they expect to fulfil it.
21. On why the duty has not been fulfilled, the reasons set out in the statement covering the period from 1 October 2021 to 1 April 2022, regarding the up-front work, remain in effect. Work to fulfil the duty will include the following:
- The training of facilitators and time for facilitators to prepare.
  - The development of information for parties, including time to produce the information and seek views on it.
  - The development of any secondary legislation.
  - Any proposals to change court rules.
22. We intend to carry out further work to establish this pilot during 2023. However, the pilot itself is unlikely to commence until at least late 2023, though this will depend on the time required for some of the tasks listed at paragraph 21 to come into effect (particularly any secondary legislation and changes to court rules).





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