

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.

Table of contents

Introduction	Page 3
The Reporting Period	Page 4
Scheme for funding of alternative dispute resolution...	Page 5
Pilot of mandatory meetings on alternatives to court ..	Page 7

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 October 2022 to 1 April 2023.
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 \(Third Report\)](#)
 - [1 April 2022 to 1 October 2022 \(Fourth Report\)](#)

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 alternative dispute resolution (ADR).
8. 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.
9. The details 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). Upon conclusion of the pilot, it is likely to take at least another 12 months to put the agreed scheme into place.
10. The position therefore remains the same as stated in the report covering 1 April 2022 to 1 October 2022. For reference, 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 rules¹ need to be proposed. For example, Sheriff Court Ordinary Cause Rule 33.22 provides

¹ The Scottish Civil Justice Council has published information about how court rules are made. You can find this information on their website: [Rule Making](#).

*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’.*²

- Ensuring the scheme is fully evaluated.

11. 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.

² Court rules have recently been made on the case management of family and civil partnership actions. These came 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

12. 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.
13. 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.
14. On why the duty has not been fulfilled, this has been due to business pressures elsewhere within the Justice portfolio. The position therefore remains the same as stated in the report covering 1 April 2022 to 1 October 2022.
15. As part of this work, we are still to consider the following points in respect of the structure and format of the pilot:
 - 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.
16. Once the structure and format have been established, the following additional work will also need to be carried out before the pilot can begin:

- 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.
17. We intend to carry out further work to establish this pilot during 2023. However, the pilot itself is unlikely to commence until at least 2024, though this will depend on the time required for some of the tasks listed above to come into effect (particularly any secondary legislation and changes to court rules).

**Scottish Government
November 2023**



© Crown copyright 2023



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83521-704-7 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1390294 (11/23)

W W W . g o v . s c o t