



Children (Scotland) Act 2020

2020 asp 16

Alternative dispute resolution

23 Funding for alternative dispute resolution

- (1) The Scottish Ministers must—
 - (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 of the kind described in subsection (2), or
 - (b) arrange for assistance to be made available from the Scottish Legal Aid Fund so that individuals can meet those costs.
- (2) The kind of dispute referred to in subsection (1) is a dispute that—
 - (a) is about any of the matters mentioned in section 11(1) of the Children (Scotland) Act 1995, and
 - (b) either—
 - (i) has resulted in an order being sought under that section, or
 - (ii) is likely to do so if it is not resolved through an alternative dispute resolution procedure.
- (3) Entitlement to the assistance that is to be made available by virtue of subsection (1) may be made to depend on an individual satisfying any eligibility conditions that the Scottish Ministers consider appropriate.
- (4) But any eligibility conditions relating to an individual's financial circumstances may not render an individual ineligible for assistance if the individual's circumstances are such that the individual could not be refused civil legal aid under section 15 of the Legal Aid (Scotland) Act 1986.
- (5) Any scheme set up, or arrangement made, in accordance with subsection (1), must be framed so that assistance under it is only available to meet the costs of alternative dispute resolution procedures that ensure regard is had to children's views to at least the same extent as a court would be required to have regard to them by section 11ZB of the Children (Scotland) Act 1995.
- (6) Having fulfilled their duty under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement explaining how they have done so.

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- (7) If, at the end of a period described by subsection (8), the Scottish Ministers have not fulfilled their duty under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating when they expect to fulfil it.
- (8) For the purposes of subsection (7)—
- (a) the first period begins on Royal Assent,
 - (b) after that, a new period begins with the last day of the previous period,
 - (c) each period ends with the day falling 6 months after it began,
 - (d) if the previous period ended on the 29th, 30th or 31st of a month and the month falling 6 months later has no such day, the period ends on the last day of that month.
- (9) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of fulfilling their duty under subsection (1).
- (10) Regulations under subsection (9) may—
- (a) make different provision for different purposes or areas,
 - (b) modify any enactment.
- (11) Regulations under subsection (9) are subject to the affirmative procedure.

24 Pilot scheme for mandatory alternative dispute resolution meetings

- (1) The Scottish Ministers must 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 Children (Scotland) Act 1995—
- (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.
- (2) The terms of the pilot scheme are to be determined by the Scottish Ministers, but the scheme—
- (a) must be time limited, and
 - (b) must not apply to proceedings in which there is a proven or alleged history of abuse between some or all of the parties.
- (3) Having fulfilled their duty under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement—
- (a) describing the pilot scheme,
 - (b) if the application of the scheme is subject to exceptions (other than an exception required by subsection (2)(b)), an explanation of why the Scottish Ministers consider those exceptions to be appropriate, and
 - (c) how the Scottish Ministers intend to evaluate—
 - (i) the scheme's outcomes for—
 - (A) the children in respect of whom the making of an order under section 11(1) of the Children (Scotland) Act 1995 was considered in proceedings to which the scheme applies,
 - (B) the parties to proceedings to which the scheme applies, and

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- (ii) where the scheme has led to a dispute being resolved without an order under section 11(1) of the Children (Scotland) Act 1995 being made, whether regard was had to the child's views in the resolution of the dispute to at least the same extent as a court would have had regard to the child's views when making such an order.
- (4) If, at the end of a period described by subsection (5), the Scottish Ministers have not fulfilled their duty under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating when they expect to fulfil it.
- (5) For the purposes of subsection (4)—
 - (a) the first period begins on Royal Assent,
 - (b) after that, a new period begins with the last day of the previous period,
 - (c) each period ends with the day falling 6 months after it began,
 - (d) if the previous period ended on the 29th, 30th or 31st of a month and the month falling 6 months later has no such day, the period ends on the last day of that month.
- (6) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of fulfilling their duty under subsection (1).
- (7) Regulations under subsection (6) may—
 - (a) make different provision for different purposes or areas,
 - (b) modify any enactment.
- (8) Regulations under subsection (6) are subject to the affirmative procedure.
- (9) As soon as practicable after the pilot scheme ends, the Scottish Ministers must lay before the Scottish Parliament a report setting out—
 - (a) their findings about—
 - (i) the scheme's outcomes for the persons mentioned in subsection (3)(c)(i),
 - (ii) whether, in cases where the scheme has led to a dispute being resolved without an order under section 11(1) of the Children (Scotland) Act 1995 being made, regard was had to children's views in the resolution of those disputes to at least the same extent as a court would have had regard to their views when making such an order, and
 - (b) what (if anything) they intend to do in light of those findings.