

Justice Committee
Alternative Dispute Resolution
Written submission from Paul Kirkwood

I have only just been made aware of your Justice Committee hearing today discussing ADR. If I had been aware I would have liked to make my own personal submission both as a Solicitor and Commercial Mediator. I refer you to my article published yesterday in the Scottish Legal News about the Irish Mediation Act which has just come into force in January 2018.

<http://www.scottishlegal.com/2018/02/05/blog-scotland-mediation-act-irish-experience/>

I have read the submissions by Core and the Scottish Mediation Network re Mediation, with which I associate myself and agree with.

It seems to me however that Scotland is ready for a Mediation Act and that there are the mediators already present in Scotland who could facilitate it.

I should point out that the Republic of Ireland as a State does not financially support Mediation per se, but does require parties to litigation to seriously consider it, either pre or during litigation, and provides legal expenses penalties for a failure to reasonably consider it. In England under SEN (special educational needs) procedure, parties are required by legislation to consult with mediators to consider using mediation to resolve education disputes before they can proceed to Tribunal. More than 50% then opt into mediation and the majority of those settle their disputes without going to Tribunal. This sees much earlier resolution of disputes, with resolution reached more consensually where parties retain control of outcome and don't cede that to third party judges or arbitrators, thus maintaining their autonomy. It also reduces unnecessary demand on the overstretched court system.

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