

Scottish Water welcomes the incorporation of alternative dispute resolution into the Sheriff Court procedure. Our response to the numbered questions is as follows:-

- 1(a) Scottish Water considers that such a rule is desirable.
- 1(b) Scottish Water tries to avoid litigation by resolving issues before they reach that stage. We therefore consider it desirable that this process should continue alongside a litigation.
- 2(a) The rule should encourage rather than compel ADR.
- 2(b) The process is likely to be a waste of resources where one or both parties is unwilling and is therefore unlikely to participate effectively in the process.
- 3(a) The Court should have power to require parties to an action to consider ADR.
- 3(b) There is nothing to be lost by requiring this and it will always have the potential of resolving the dispute.
- 4(a) The parties should be required to give notice as to whether or not they consent to a referral to mediation.
- 4(b) Reference is made to recommendation 2 which Scottish Water supports and which should set out the previous dispute resolution attempts between the parties and the fact that these have been unsuccessful. That in itself should be a sufficient reason. Where no other form of dispute resolution is averred, reasons should be required.
- 5 ADR is to be encouraged but will be most successful where parties enter this voluntarily.
- 6(a) Scottish Water does not consider that it is necessary to have an express reference in the rule relative to the awarding of expenses.
- 6(b) The court has this discretion anyway. It is not flagged in relation to other rules. If inserted, it should not apply where ADR is declined following a previous unsuccessful negotiation between the parties.
- 7(a) It is appropriate to include a reference to ADR in each set of rules.
- 7(b) The principles of ADR are as relevant to the small claim as to the more complex case. Scottish Water has experience of Summary Applications which rarely go to Proof once solicitors are acting for an unrepresented party and sensible negotiations take place. The rule will be particularly useful in bringing unrepresented parties into meaningful discussions at all levels of claims.
- 8(a) Scottish Water has no view in this matter.
- 9(a) Scottish Water welcomes this recommendation.
- 9(b) The provision should be incorporated into all of the Court rules.
- 10 Scottish Water has no view on whether the mediation to be provided is In-Court or reference to an external mediation service. Considerations of cost and practicability should determine this.

11(a) We do not see the need for the additional rules proposed. Where parties wish privacy this can be obtained by accepting the ADR procedure.

13 The form of notice is suitable subject to the words in the narrative "for the reasons given below" being placed in square brackets.

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Scottish Water