

SCHEDULE 2

Rule 12(d)

“SECTION III

MEDIATION DIRECTIVE

Scope of this Section and interpretation

78.23.—(1) This Section applies to mediated cross-border disputes that are subject to Directive [2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

(2) In this Section—

“Mediation Directive” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. A copy of the Directive can be found at Annex 3;

“cross-border dispute” has the meaning given by article 2 of the Mediation Directive;

“mediation” has the meaning given by article 3(a) of the Mediation Directive;

“mediation administrator” means a person involved in the administration of the mediation process;

“mediation evidence” means evidence arising out of or in connection with a mediation process;

“mediation settlement” means the content of a written agreement resulting from mediation of a relevant dispute;

“mediation settlement agreement” means a written agreement resulting from mediation of a relevant dispute;

“mediation settlement enforcement order” means an order made under rule 78.24(5);

“mediator” has the meaning given by article 3(b) of the Mediation Directive; and

“relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

Making a mediation settlement enforceable (mediation settlement enforcement orders)

78.24.—(1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, the parties or party may apply—

(a) where there are existing proceedings in England and Wales, by an application made in accordance with Part 23; or

(b) where there are no existing proceedings in England and Wales, by the Part 8 procedure as modified by this rule and Practice Direction 78 – European Procedures.

(2) Where rule 78.24(1)(b) applies, rules 8.3 to 8.8 will not apply.

(3) The mediation settlement agreement must be annexed to the application notice or claim form when it is filed.

(4) Except to the extent that paragraph (7) applies, the parties must file any evidence of explicit consent to the application under paragraph (1) when the parties file the application or claim form.

(5) Subject to paragraph (6), where an application is made under paragraph (1), the court will make an order making the mediation settlement enforceable.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) The court will not make an order under paragraph (5) unless the court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.

(7) Where a party to the mediation settlement agreement—

(a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;

(b) is a party to the application under paragraph (1); or

(c) has written to the court consenting to the application for the mediation settlement enforcement order,

that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.

(8) An application under paragraph (1) will be dealt with without a hearing, unless the court otherwise directs.

Mediation settlement enforcement orders: foreign currency

78.25.—(1) Where a person applies to enforce a mediation settlement enforcement order which is expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the sum remaining due under the order at the close of business on the day before the date of the application.

(Parts 70 to 74 contain further rules about enforcement.)

Mediation evidence: disclosure or inspection

78.26.—(1) Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person must apply—

(a) where there are existing proceedings in England and Wales, by an application made in accordance with Part 23; and

(b) where there are no existing proceedings in England and Wales, by the Part 8 procedure.

(2) Where the application is made—

(a) under paragraph (1)(a), the mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application notice; and

(b) under paragraph (1)(b), the mediator or mediation administrator who has control of the mediation evidence must be made a party to the claim.

(3) Evidence in support of the application under paragraph (1)(a) or (1)(b) must include evidence that—

(a) all parties to the mediation agree to the disclosure or inspection of the mediation evidence;

(b) disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or

(c) disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(4) This rule does not apply to proceedings in England and Wales that have been allocated to the small claims track.

(5) Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

Mediation evidence: witnesses and depositions

78.27.—(1) This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by—

- (a) a witness summons;
- (b) cross-examination with permission of the court under rule 32.7 or 33.4;
- (c) an order under rule 34.8 (evidence by deposition);
- (d) an order under rule 34.10 (enforcing attendance of witness);
- (e) an order under rule 34.11(4) (deponent’s evidence to be given orally); or
- (f) an order under rule 34.13(1A) (order for the issue of a letter of request).

(2) When applying for a witness summons, permission under rule 32.7 or 33.4 or an order under rule 34.8, 34.10, 34.11(4) or 34.13(1A), the party must provide the court with evidence that—

- (a) all parties to the mediation agree to the obtaining of the mediation evidence;
- (b) obtaining the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) the disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(3) When considering a request for a witness summons, permission under rule 32.7 or 33.4 or an order under rule 34.8, 34.10, 34.11(4) or 34.13(1A), the court may invite any person, whether or not a party, to make representations.

(4) This rule does not apply to proceedings in England and Wales that have been allocated to the small claims track.

(5) Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

Mediation evidence: small claims

78.28. Where a party wishes to rely on mediation evidence in proceedings that are allocated to the small claims track, that party must inform the court immediately.”