

SCHEDULE 3

Rule 2(6)

“MEDIATION DIRECTIVE

Application and interpretation

8.64.—(1) This rule and rules 8.65 to 8.68 apply 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⁽¹⁾.

(2) In this rule and rules 8.65 to 8.68—

- (a) “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;
- (b) “cross-border dispute” has the meaning given by article 2 of the Mediation Directive;
- (c) “mediation” has the meaning given by article 3(a) of the Mediation Directive;
- (d) “mediation administrator” means a person involved in the administration of the mediation process;
- (e) “mediation evidence” means evidence arising out of or in connection with a mediation process;
- (f) “mediator” has the meaning given by article 3(b) of the Mediation Directive; and
- (g) “relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

Relevant disputes: applications for consent orders in respect of financial remedies

8.65.—(1) This rule applies in relation to proceedings for a financial remedy where the applicant, with the explicit consent of the respondent, wishes to make an application that the content of a written agreement resulting from mediation of a relevant dispute be made enforceable by being made the subject of a consent order.

(2) The court will not include in a consent order any matter which is contrary to the law of Northern Ireland or which is not enforceable under that law.

(3) The applicant must file two copies of a draft of the order in the terms sought.

(4) Subject to paragraph (5), the application must be supported by evidence of the explicit consent of the respondent.

(5) Where the respondent has written to the court consenting to the making of the order sought, the respondent is deemed to have given explicit consent to the order and paragraph (4) does not apply.

(6) Where this rule applies, rule 2.72 shall apply to the extent that it is consistent with this rule.

Relevant disputes: financial remedies expressed in a foreign currency

8.66. Where an application is made under rule 8.65 in respect of a financial remedy which is expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the sums or sums concerned at the close of business on the day before the date of the application.

(1) OJNo. L136, 24.05.2008

Status: This is the original version (as it was originally made).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

Mediation evidence: disclosure or inspection

8.67.—(1) Where a party to proceedings seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person must first apply to the court for permission to seek the disclosure or inspection.

(2) Where an application is made under paragraph (1), 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.

(3) Evidence in support of the application under paragraph (1) 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) Where this rule applies, rules 2.24, 2.25, 2.40 to 2.45, 2.60 to 2.63, 4.18, 4.24, 4B.9, 4C.7, 7.8A, 7.12, 7.13 and 7.13A apply to the extent they are consistent with this rule.

Mediation evidence: witnesses and depositions

8.68.—(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 2.41(5) or (6) or rule 2.45; or
- (c) an order under rule 2.41(4) (order for the examination on oath of any person).

(2) When applying for a witness summons, permission under rule 2.41(5) or (6) or rule 2.45, or an order under rule 2.41(4), 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 2.41(5) or (6) or rule 2.45, or an order under rule 2.41(4), the court may invite any person, whether or not a party, to make representations.

(4) Where this rule applies, rules 2.24, 2.25, 2.40 to 2.45, 2.60 to 2.63, 4.18, 4.24, 4B.9, 4C.7, 7.8A, 7.12, 7.13 and 7.13A apply to the extent they are consistent with this rule.”