



# Family Law Act 1996

## 1996 CHAPTER 27

### PART III

#### LEGAL AID FOR MEDIATION IN FAMILY MATTERS

#### **26 Legal aid for mediation in family matters**

(1) In the Legal Aid Act 1988 insert, after section 13—

#### **“PART IIIA**

#### **MEDIATION**

#### **13A Scope of this Part**

- (1) This Part applies to mediation in disputes relating to family matters.
- (2) “Family matters” means matters which are governed by English law and in relation to which any question has arisen, or may arise—
  - (a) under any provision of—
    - (i) the 1973 Act;
    - (ii) the Domestic Proceedings and Magistrates' Courts Act 1978;
    - (iii) Parts I to V of the Children Act 1989;
    - (iv) Parts II and IV of the Family Law Act 1996; or
    - (v) any other enactment prescribed;
  - (b) under any prescribed jurisdiction of a prescribed court or tribunal; or
  - (c) under any prescribed rule of law.
- (3) Regulations may restrict this Part to mediation in disputes of any prescribed description.
- (4) The power to—

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- (a) make regulations under subsection (2), or
  - (b) revoke any regulations made under subsection (3),
- is exercisable only with the consent of the Treasury.”

(2) In section 2 of the 1988 Act, after subsection (3), insert—

“(3A) “Mediation” means mediation to which Part IIIA of this Act applies; and includes steps taken by a mediator in any case—

- (a) in determining whether to embark on mediation;
- (b) in preparing for mediation; and
- (c) in making any assessment under that Part.”

(3) In section 43 of the 1988 Act, after the definition of “legal representative” insert—

““mediator” means a person with whom the Board contracts for the provision of mediation by any person.”

## 27 **Provision and availability of mediation**

After section 13A of the 1988 Act, insert—

### **“13B Provision and availability of mediation**

- (1) The Board may secure the provision of mediation under this Part.
- (2) If mediation is provided under this Part, it is to be available to any person whose financial resources are such as, under regulations, make him eligible for mediation.
- (3) A person is not to be granted mediation in relation to any dispute unless mediation appears to the mediator suitable to the dispute and the parties and all the circumstances.
- (4) A grant of mediation under this Part may be amended, withdrawn or revoked.
- (5) The power conferred by subsection (1) shall be exercised in accordance with any directions given by the Lord Chancellor.
- (6) Any contract entered into by the Board for the provision of mediation under this Part must require the mediator to comply with a code of practice.
- (7) The code must require the mediator to have arrangements designed to ensure—
  - (a) that parties participate in mediation only if willing and not influenced by fear of violence or other harm;
  - (b) that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible;
  - (c) that the possibility of reconciliation is kept under review throughout mediation; and
  - (d) that each party is informed about the availability of independent legal advice.
- (8) Where there are one or more children of the family, the code must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider—

- (a) the welfare, wishes and feelings of each child; and
  - (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.
- (9) A contract entered into by the Board for the provision of mediation under this Part must also include such other provision as the Lord Chancellor may direct the Board to include.
- (10) Directions under this section may apply generally to contracts, or to contracts of any description, entered into by the Board, but shall not be made with respect to any particular contract.”

## **28 Payment for mediation**

- (1) After section 13B of the 1988 Act, insert—

### **“13C Payment for mediation under this Part**

- (1) Except as provided by this section, the legally assisted person is not to be required to pay for mediation provided under this Part.
- (2) Subsection (3) applies if the financial resources of a legally assisted person are such as, under regulations, make him liable to make a contribution.
- (3) The legally assisted person is to pay to the Board in respect of the costs of providing the mediation, a contribution of such amount as is determined or fixed by or under the regulations.
- (4) If the total contribution made by a person in respect of any mediation exceeds the Board’s liability on his account, the excess shall be repaid to him.
- (5) Regulations may provide that, where—
- (a) mediation under this Part is made available to a legally assisted person, and
  - (b) property is recovered or preserved for the legally assisted person as a result of the mediation,
- a sum equal to the Board’s liability on the legally assisted person’s account is, except so far as the regulations otherwise provide, to be a first charge on the property in favour of the Board.
- (6) Regulations under subsection (5) may, in particular, make provision—
- (a) as to circumstances in which property is to be taken to have been, or not to have been, recovered or preserved; and
  - (b) as to circumstances in which the recovery or preservation of property is to be taken to be, or not to be, the result of any mediation.
- (7) For the purposes of subsection (5), the nature of the property and where it is situated is immaterial.
- (8) The power to make regulations under section 34(2)(f) and (8) is exercisable in relation to any charge created under subsection (5) as it is exercisable in relation to the charge created by section 16.
- (9) For the purposes of subsections (4) and (5), the Board’s liability on any person’s account in relation to any mediation is the aggregate amount of—

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- (a) the sums paid or payable by the Board on his account for the mediation, determined in accordance with subsection (10);
  - (b) any sums paid or payable in respect of its net liability on his account, determined in accordance with subsection (11) and the regulations—
    - (i) in respect of any proceedings, and
    - (ii) for any advice or assistance under Part III in connection with the proceedings or any matter to which the proceedings relate, so far as the proceedings relate to any matter to which the mediation relates; and
  - (c) any sums paid or payable in respect of its net liability on his account, determined in accordance with the regulations, for any other advice or assistance under Part III in connection with the mediation or any matter to which the mediation relates.
- (10) For the purposes of subsection (9)(a), the sums paid or payable by the Board on any person’s account for any mediation are—
- (a) sums determined under the contract between the Board and the mediator as payable by the Board on that person’s account for the mediation; or
  - (b) if the contract does not differentiate between such sums and sums payable on any other person’s account or for any other mediation, such part of the remuneration payable under the contract as may be specified in writing by the Board.
- (11) For the purposes of subsection (9)(b), the Board’s net liability on any person’s account in relation to any proceedings is its net liability on his account under section 16(9)(a) and (b) in relation to the proceedings.”
- (2) In section 16(9), after paragraph (b) insert
- “and
- (c) if and to the extent that regulations so provide, any sums paid or payable in respect of the Board’s liability on the legally assisted person’s account in relation to any mediation in connection with any matter to which those proceedings relate.”
- (3) At the end of section 16, insert—
- “(11) For the purposes of subsection (9)(c) above, the Board’s liability on any person’s account in relation to any mediation is its liability on his account under section 13C(9)(a) and (c) above in relation to the mediation.”

## **29 Mediation and civil legal aid**

In section 15 of the 1988 Act, after subsection (3E) insert—

- “(3F) A person shall not be granted representation for the purposes of proceedings relating to family matters, unless he has attended a meeting with a mediator—
- (a) to determine—
    - (i) whether mediation appears suitable to the dispute and the parties and all the circumstances, and

- (ii) in particular, whether mediation could take place without either party being influenced by fear of violence or other harm; and
  - (b) if mediation does appear suitable, to help the person applying for representation to decide whether instead to apply for mediation.
- (3G) Subsection (3F) does not apply—
  - (a) in relation to proceedings under—
    - (i) Part IV of the Family Law Act 1996;
    - (ii) section 37 of the Matrimonial Causes Act 1973;
    - (iii) Part IV or V of the Children Act 1989;
  - (b) in relation to proceedings of any other description that may be prescribed; or
  - (c) in such circumstances as may be prescribed.
- (3H) So far as proceedings relate to family matters, the Board, in determining under subsection (3)(a) whether, in relation to the proceedings, it is reasonable that a person should be granted representation under this Part—
  - (a) must have regard to whether and to what extent recourse to mediation would be a suitable alternative to taking the proceedings; and
  - (b) must for that purpose have regard to the outcome of the meeting held under subsection (3F) and to any assessment made for the purposes of section 13B(3).”