
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 and come into force on exit day.

(2) Any amendment, revocation or modification made by these Regulations has the same extent as the provision amended, revoked or modified.

Revocation and saving of the Cross-Border Mediation (EU Directive) Regulations 2011

2.—(1) The Cross-Border Mediation (EU Directive) Regulations 2011⁽¹⁾ are revoked.

(2) Regulations 8, 9 and 10 of the Cross-Border Mediation (EU Directive) Regulations 2011 continue to apply to the mediation of a dispute to which those Regulations applied immediately before exit day, but with the following modifications.

(3) In regulation 8 (interpretation)—

(a) paragraph (b) is to be read as if for it there were substituted—

““cross-border dispute” has the meaning given by Article 2 of the Mediation Directive⁽²⁾ except that—

(a) paragraph 1 is to be read as if for “in a Member State other than that of any other party” there were substituted “in the United Kingdom, and at least one other party is domiciled or habitually resident in a Member State”;

(b) paragraph 2 is to be read as if for “in a Member State” there were substituted “in a country (“country” for these purposes being limited to the United Kingdom or a Member State)”; and

(c) paragraph 3 is to be read as if for it there were substituted—

“3. For the purposes of paragraphs 1 and 2, domicile is to be determined in accordance with paragraphs 4 to 8.

4. In order to determine whether a party is domiciled in the country (“country” for these purposes being limited to the United Kingdom or a Member State) whose courts are seised of a matter, the court shall apply its internal law.

5. If a party is not domiciled in the country whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another country, the court shall apply the law of that country.

(1) [S.I. 2011/1133](#).

(2) Any reference in these Regulations to “the Directive” or to “the Mediation Directive” is a reference 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. O.J. L 136, 24.05.2008, p.3.

6. For the purposes of paragraphs 1 and 2, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its—

- (a) statutory seat;
- (b) central administration; or
- (c) principal place of business.

7. For the purposes of Ireland, Cyprus and the United Kingdom, “statutory seat” means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

8. In order to determine whether a trust is domiciled in the country whose courts are seised of the matter, the court shall apply its rules of private international law.”;

(b) paragraph (c) is to be read as if for it there were substituted—

“(c) “mediation” has the meaning given by Article 3(a) of the Mediation Directive except that for the purpose of construing that expression—

- (i) Article 3(a) of the Mediation Directive is to be read as if for “the law of a Member State” there were substituted “law”;
- (ii) Article 3(b) of the Mediation Directive is to be read as if for “Member State concerned” there were substituted “United Kingdom or the Member State concerned”;

(c) paragraph (h) is to be read as if for it there were substituted—

“(h) “mediator” has the meaning given by Article 3(b) of the Mediation Directive, except that for the purpose of construing that expression—

- (i) Article 3(a) of the Mediation Directive is to be read as if for “the law of a Member State” there were substituted “law”;
- (i) Article 3(b) of the Mediation Directive is to be read as if for “Member State concerned” there were substituted “United Kingdom or the Member State concerned”;

(d) paragraph (i) is to be read as if, in the definition of “relevant dispute”, for “that is subject” to the end there were substituted “to which the Mediation Directive applied immediately before exit day”.

(4) Regulation 10(b) is to be read as if for “in accordance with Article 7(1)(a) of the Mediation Directive” there were substituted—

“in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person”.

Revocation and saving of the Cross-Border Mediation Regulations (Northern Ireland) 2011

3.—(1) The Cross-Border Mediation Regulations (Northern Ireland) 2011(3) (“the Northern Ireland 2011 Regulations”) are revoked.

(2) Regulations 2 and 3 of the Northern Ireland 2011 Regulations continue to apply to the mediation of a dispute to which those Regulations applied immediately before exit day, but with the following modifications.

- (3) Regulation 2 (interpretation) is to be read—
- (a) as if in paragraph (1)—
- (i) after the definition of “the Directive” there were inserted—
- “mediation” and “mediator” have the meanings given by Article 3 of the Directive, except that for the purpose of construing those expressions—
- (a) Article 3(a) is to be read as if for “the law of a Member State” there were substituted “law”;
- (b) Article 3(b) is to be read as if for “Member State concerned” there were substituted “United Kingdom or the Member State concerned”;
- (ii) for the definition of “relevant cross-border dispute” there were substituted—
- “relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive except that—
- (a) paragraph 1 is to be read as if for “in a Member State other than that of any other party” there were substituted “in the United Kingdom, and at least one other party is domiciled or habitually resident in a Member State”;
- (b) paragraph 2 is to be read as if for “in a Member State” there were substituted “in a country (“country” for these purposes being limited to the United Kingdom or a Member State)”; and
- (c) paragraph 3 is to be read as if for it there were substituted—
- 3.** For the purposes of paragraphs 1 and 2, domicile is to be determined in accordance with paragraphs 4 to 8.
- 4.** In order to determine whether a party is domiciled in the country (“country” for these purposes being limited to the United Kingdom or a Member State) whose courts are seised of a matter, the court shall apply its internal law.
- 5.** If a party is not domiciled in the country whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another country, the court shall apply the law of that country.
- 6.** For the purposes of paragraphs 1 and 2, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its—
- (a) statutory seat;
- (b) central administration; or
- (c) principal place of business.
- 7.** For the purposes of Ireland, Cyprus and the United Kingdom, “statutory seat” means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
- 8.** In order to determine whether a trust is domiciled in the country whose courts are seised of the matter, the court shall apply its rules of private international law.”;
- (b) as if paragraph (2) were omitted.

(4) Regulation 3 (confidentiality of mediation) is to be read as if for it there substituted—

“3.—(1) A mediator of, or a person involved in the administration of mediation in relation to a relevant cross-border dispute to which these Regulations applied immediately before exit day is not to be compelled in any civil proceedings or arbitration to give evidence, or produce anything, regarding any information arising out of or in connection with that mediation.

(2) Paragraph (1) does not apply—

(a) where all the parties to the mediation agree otherwise; or

(b) where—

(i) compelling the person as mentioned in paragraph (1) is necessary for overriding considerations of public policy, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(ii) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.”.

Amendment of enactments specified in Schedule 1

4. Schedule 1 contains amendments to enactments.

Mediations begun before exit day: saving and transitional provision

5.—(1) This regulation applies to a mediation in respect of which any enactment which is amended by Schedule 1 applied immediately before exit day.

(2) The enactments amended by Schedule 1 apply to that mediation, on and after exit day—

(a) as if the amendments made by that Schedule do not have effect; and

(b) with the modifications specified in Schedule 2.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice