
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

MEDIATION

The Cross-Border Mediation (Scotland) Regulations 2011

Made - - - -

Coming into force - -

6th April 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Cross-Border Mediation (Scotland) Regulations 2011 and come into force on 6th April 2011.

(2) They do not apply to disputes in relation to which mediation starts before 6th April 2011.

(3) For the purposes of paragraph (2), mediation starts on the date when all the parties to the dispute agree to participate in the mediation.

Interpretation

2.—(1) In these Regulations—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters(b); and

“relevant cross-border dispute” means a cross-border dispute to which the Directive applies.

(2) Expressions used in the Directive have the same meaning for the purposes of these Regulations as in the Directive, unless the context otherwise requires.

(a) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”)) and section 27(1)(a) of the 2006 Act and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) O.J. L 136, 24.5.2008, p.3.

Confidentiality of Mediation

3.—(1) A mediator of, or a person involved in the administration of mediation in relation to, a relevant cross-border dispute 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) in the circumstances set out in paragraph (a) or (b) of Article 7.1 of the Directive.

Extensions to prescription and limitation periods under the Prescription and Limitation (Scotland) Act 1973

4. The Prescription and Limitation (Scotland) Act 1973^(a) is amended in accordance with regulations 5 and 6.

5.—(1) Section 14 (computation of prescriptive periods)^(b) is amended as follows.

(2) After subsection (1) insert—

“(1A) The prescriptive period calculated in relation to a relevant cross-border dispute for the purposes of any provision of this Part of this Act is extended where the last day of the period would, apart from this subsection, fall—

- (a) in the 8 weeks after the date that a mediation in relation to the dispute ends;
- (b) on the date that a mediation in relation to the dispute ends; or
- (c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.

(1B) Where subsection (1A) applies, the prescriptive period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(1C) For the purposes of subsections (1A) and (1B), a mediation ends on the date that any of the following occurs—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party withdraws from the mediation, which is the date on which—
 - (i) a party informs all of the other parties of that party’s withdrawal,
 - (ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or
 - (iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or
- (d) a period of 14 days expires after the date on which the mediator’s tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.”.

^(a) 1973 c.52.

^(b) Section 14 was amended by section 6(1) and paragraph 6 of Schedule 1 to the Prescription and Limitation (Scotland) Act 1984 (c.45).

(3) In subsection (2)—

(a) after “In this section” insert—

“—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;” and

(b) after “1971” insert—

“;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and
“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive—

(a) which is about a right or obligation to which a prescriptive period applies by virtue of this Part of this Act; and

(b) to which the Directive applies.”.

6. After section 19D(a), insert—

“19F. Extension of limitation periods: cross-border mediation

(1) The limitation period calculated in relation to a relevant cross-border dispute for the purposes of sections 17, 18, 18A or 18B of this Act is extended where the last day of the period would, apart from this subsection, fall—

(a) in the 8 weeks after the date that a mediation in relation to the dispute ends;

(b) on the date that a mediation in relation to the dispute ends; or

(c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.

(2) Where subsection (1) applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purpose of this section, mediation in relation to a relevant cross-border dispute ends when any of the following occurs—

(a) all of the parties reach an agreement in resolution of the dispute;

(b) all of the parties agree to end the mediation;

(c) a party withdraws from the mediation, which is the date on which—

(i) a party informs all of the other parties of that party’s withdrawal,

(ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or

(iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or

(d) a period of 14 days expires after the date on which the mediator’s tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.

(a) A section 19D was inserted by section 171(3) of the Coroners and Justice Act 2009 (c. 25) and another by section 23(4) of the Arbitration (Scotland) Act 2010 (asp 1).

(4) In this section—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive—

- (a) which is about a matter to which a limitation period applies by virtue of sections 17 to 18B; and
- (b) to which the Directive applies.”.

Amendments to prescription period in the Civic Government (Scotland) Act 1982

7.—(1) Section 71 of the Civic Government (Scotland) Act 1982(a) is amended in accordance with paragraphs (2) and (3).

(2) In subsection (2), after “shall” insert “subject to subsection (3) below”.

(3) After subsection (2), insert—

“(3) The one year period calculated in relation to a relevant cross-border dispute for the purposes of subsection (2) above is extended where it would, apart from this subsection, expire—

- (a) in the 8 weeks after the date that a mediation in relation to the dispute ends;
- (b) on the date that a mediation in relation to the dispute ends; or
- (c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.

(4) Where subsection (3) applies, the period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(5) For the purpose of this section, mediation in relation to a relevant cross-border dispute ends when any of the following occurs—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party withdraws from the mediation, which is the date on which—
 - (i) a party informs all of the other parties of that party’s withdrawal,
 - (ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or
 - (iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or
- (d) a period of 14 days expires after the date on which the mediator’s tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.

(a) 1982 c.45. Section 71 applies to the disposal of lost and abandoned property under Part VI of the 1982 Act, and by virtue of sections 83 and 86E, to the disposal of certain property in possession of persons taken into policy custody. Section 86E was inserted by section 6(4) of the Police (Property) Act 1997 (c.30).

(6) In this section—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive which is about the recovery of property to which this section applies.”

Amendments to limitation period in the Rent (Scotland) Act 1984

8.—(1) The Rent (Scotland) Act 1984(a) is amended in accordance with paragraphs (2) and (3).

(2) In section 37(3), at the beginning, insert “Subject to section 37A(1) below”.

(3) After section 37 insert—

“Extension of time limits for recovery from landlord: cross-border mediation

37A.—(1) The two year period calculated in relation to a relevant cross-border dispute for the purposes of section 37(3) above is extended where it would, apart from this subsection, expire—

- (a) in the 8 weeks after the date that a mediation in relation to the dispute ends;
- (b) on the date that a mediation in relation to the dispute ends; or
- (c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.

(2) Where subsection (1) applies, the period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purpose of this section, mediation in relation to a relevant cross-border dispute ends when any of the following occurs—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party withdraws from the mediation, which is the date on which—
 - (i) a party informs all of the other parties of that party’s withdrawal,
 - (ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or
 - (iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or
- (d) a period of 14 days expires after the date on which the mediator’s tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.

(4) In this section—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

(a) 1984 c.58.

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive which is about an amount referred to in section 37(1) above.”.

Amendments to limitation periods in the Family Law (Scotland) Act 2006

9.—(1) The Family Law (Scotland) Act 2006(a) is amended in accordance with paragraphs (2) to (4).

(2) In section 28(8), at the beginning, insert “Subject to section 29A,”.

(3) In section 29(6), at the beginning, insert “Subject to section 29A,”.

(4) After section 29 insert—

“Extension of time limits for applications under sections 28 and 29: cross-border mediation

29A.—(1) This section applies to the calculation of—

- (a) the one year period for the purposes of section 28(8) in relation to a relevant cross-border dispute; and
- (b) the 6 month period for the purposes of section 29(6) in relation to a relevant cross-border dispute.

(2) A period referred to in subsection (1) is extended where it would, apart from this subsection, expire—

- (a) in the 8 weeks after the date that a mediation in relation to the dispute ends;
- (b) on the date that a mediation in relation to the dispute ends; or
- (c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.

(3) Where subsection (2) applies, the period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(4) For the purposes of this section, mediation in relation to a relevant cross-border dispute ends when any of the following occurs—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party withdraws from the mediation, which is the date on which—
 - (i) a party informs all of the other parties of that party’s withdrawal,
 - (ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or
 - (iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or
- (d) a period of 14 days expires after the date on which the mediator’s tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.

(5) In this section—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

(a) 2006 asp 2.

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and “relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive which is about—

- (a) a sum which a court may order to be paid under section 28(2);
- (b) a sum which a court may or to be paid under section 29(2); or
- (c) property which a court may order to be transferred under section 29(2).”.

St Andrew’s House,
Edinburgh

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters. The Regulations apply to “cross-border disputes” about such matters. A cross-border dispute is defined in Article 2 of the Directive as a dispute in which at least one party is domiciled or habitually resident in a Member State other than that of another party. These Regulations accordingly do not cover disputes between parties resident in different jurisdictions in the UK.

Regulation 3 provides that mediators and those involved in the administration of mediation are not compelled to give evidence in civil and commercial judicial proceedings or arbitration.

Regulations 4 to 9 provide for the extension of prescription and limitation periods so that these do not expire during the mediation process. Regulations 4 to 6 amend general prescription and limitation provisions in the Prescription and Limitation (Scotland) Act 1973.

Regulation 7 amends section 71 of the Civic Government (Scotland) Act 1982, which sets a one year time limit for recovery by the original owner of property transferred to someone else by the police.

Regulation 8 amends section 37 of the Rent (Scotland) Act 1984, which sets a two year time limit for recovery by a tenant from a landlord, certain sums paid on account of rent.

Regulation 9 amends sections 28 and 29 of the Family Law (Scotland) Act 2006. Section 28 sets a one year time limit for a cohabitant to apply for payment of an amount by the other cohabitant after they have split up. Section 29 sets a six month time limit for a cohabitant to apply for payment or transfer of property out of an intestate estate after the other cohabitant has died.

In each case, the amendments provide that in cross-border cases, where a period would otherwise have expired while mediation is ongoing or within 8 weeks of it ending, the period will be extended so that it will expire 8 weeks after the end of mediation.

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