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*Number 27 of 2017*

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**Mediation Act 2017**

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**MEDIATION ACT 2017**

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CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement
2. Interpretation
3. Scope
4. Regulations
5. Expenses

PART 2

MEDIATION IN GENERAL

6. Mediation
7. Agreement to mediate
8. Role of mediator
9. Codes of practice
10. Confidentiality
11. Enforceability of mediation settlements
12. Council
13. Reports of Council

PART 3

OBLIGATIONS OF PRACTISING SOLICITORS AND BARRISTERS AS REGARDS MEDIATION

14. Practising solicitor and mediation
15. Practising barrister and mediation

PART 4

ROLE OF COURT IN MEDIATION, ETC.

16. Court inviting parties to consider mediation

17. Mediator report to court
18. Effect of mediation on limitation and prescription periods
19. Adjourning court proceedings to facilitate mediation
20. Fees and costs
21. Factors to be considered by court in awarding costs
22. Amendment of Civil Liability and Courts Act 2004

PART 5

MEDIATION INFORMATION SESSIONS

23. Mediation information sessions in family law and succession proceedings

PART 6

AMENDMENT OF OTHER ACTS

24. Amendment of Guardianship of Infants Act 1964
25. Amendment of Judicial Separation and Family Law Reform Act 1989
26. Amendment of Family Law (Divorce) Act 1996

SCHEDULE

MINIMUM REQUIREMENTS IN RELATION TO COUNCIL

## ACTS REFERRED TO

Arbitration Act 2010 (No. 1)  
Child Abduction and Enforcement of Custody Orders Act 1991 (No. 6)  
Child Care Acts 1991 to 2015  
Children and Family Relationships Act 2015 (No. 9)  
Civil Liability and Courts Act 2004 (No. 31)  
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)  
Customs Act 2015 (No. 18)  
Domestic Violence Acts 1996 to 2011  
Enforcement of Court Orders Act 1940 (No. 23)  
Family Home Protection Act 1976 (No. 27)  
Family Law (Divorce) Act 1996 (No. 33)  
Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11)  
Family Law Act 1981 (No. 22)  
Family Law Act 1995 (No. 26)  
Finance (Tax Appeals) Act 2015 (No. 59)  
Finance Act 2001 (No. 7)  
Guardianship of Infants Act 1964 (No. 7)  
Judicial Separation and Family Law Reform Act 1989 (No. 6)  
Legal Services Regulation Act 2015 (No. 65)  
Maintenance Act 1994 (No. 28)  
Property Values (Arbitrations and Appeals) Act 1960 (No. 45)  
Protection of Children (Hague Convention) Act 2000 (No. 37)  
Status of Children Act 1987 (No. 26)  
Succession Act 1965 (No. 27)  
Taxes Consolidation Act 1997 (No. 39)  
Workplace Relations Act 2015 (No. 16)





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*Number 27 of 2017*

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## **MEDIATION ACT 2017**

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An Act to facilitate the settlement of disputes by mediation, to specify the principles applicable to mediation, to specify arrangements for mediation as an alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted; to provide for codes of practice to which mediators may subscribe; to provide for the recognition of a body as the Mediation Council of Ireland for the purposes of this Act and to require that Council to make reports to the Minister for Justice and Equality as regards mediation in the State; to provide, by means of a scheme, an opportunity for parties to family law proceedings or proceedings under section 67A(3) or 117 of the Succession Act 1965 to attend mediation information sessions; to amend the Guardianship of Infants Act 1964, the Judicial Separation and Family Law Reform Act 1989 and the Family Law (Divorce) Act 1996; and to provide for related matters.

[2nd October, 2017]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title and commencement**

1. (1) This Act may be cited as the Mediation Act 2017.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

##### **Interpretation**

2. (1) In this Act—
  - “agreement to mediate” has the meaning assigned to it by *section 7*;
  - “Council” has the meaning assigned to it by *section 12(1)*;
  - “dispute” includes a complaint;

“family law proceedings” means proceedings before a court of competent jurisdiction under any of the following enactments:

- (a) section 8 of the Enforcement of Court Orders Act 1940 in so far as that section relates to the enforcement of maintenance orders;
- (b) the Guardianship of Infants Act 1964;
- (c) the Family Home Protection Act 1976;
- (d) the Family Law (Maintenance of Spouses and Children) Act 1976;
- (e) the Family Law Act 1981;
- (f) the Status of Children Act 1987;
- (g) the Judicial Separation and Family Law Reform Act 1989;
- (h) the Child Abduction and Enforcement of Custody Orders Act 1991;
- (i) the Maintenance Act 1994;
- (j) the Family Law Act 1995;
- (k) the Family Law (Divorce) Act 1996;
- (l) the Protection of Children (Hague Convention) Act 2000;
- (m) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;
- (n) the Children and Family Relationships Act 2015;
- (o) subject to *subsection (2)*, any other enactment which may be prescribed for the purposes of this definition;

“mediation” means a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute;

“mediation information session” has the meaning assigned to it by *section 23(1)*;

“mediation settlement” means an agreement in writing reached by the parties to a dispute during the course of a mediation and signed by the parties and the mediator;

“mediator” means a person appointed under an agreement to mediate to assist the parties to the agreement to reach a mutually acceptable agreement to resolve the dispute the subject of the agreement;

“Minister” means Minister for Justice and Equality;

“party” means a party to a mediation;

“practising barrister” has the same meaning as it has in section 2 of the Legal Services Regulation Act 2015;

“practising solicitor” has the same meaning as it has in section 2 of the Legal Services Regulation Act 2015;



“prescribed” means prescribed by regulations made under *section 4*;

“proceedings” means civil proceedings that may be instituted before a court.

- (2) In prescribing an enactment for the purposes of the definition of “family law proceedings”, the Minister shall have regard to—
- (a) the desirability of resolving, in so far as is practicable, disputes, within a family, that the enactment relates to in a manner that is non-adversarial, and
  - (b) the need for the expeditious resolution of such disputes in a manner that minimises the costs of resolving those disputes for the parties concerned.

### Scope

3. (1) This Act shall not apply to:
- (a) an arbitration within the meaning of the Arbitration Act 2010;
  - (b) a dispute that falls under the functions of, or is being investigated by, the Workplace Relations Commission, including a dispute being dealt with under Part 4 of the Workplace Relations Act 2015, whether by a mediation officer appointed under section 38 of that Act or otherwise;
  - (c) a matter that may be determined by—
    - (i) an Appeal Commissioner appointed under section 8 of the Finance (Tax Appeals) Act 2015,
    - (ii) the High Court under section 949AR of the Taxes Consolidation Act 1997, or
    - (iii) a property arbitrator appointed under section 2 of the Property Values (Arbitrations and Appeals) Act 1960 in relation to a decision of the Revenue Commissioners as to the market value of any real property;
  - (d) an application under section 901, 902A, 907, 907A, 908, 908B or 1077B of the Taxes Consolidation Act 1997;
  - (e) proceedings under—
    - (i) sections 960I, 960M, 960N, 1061, 1062 or 1077D of the Taxes Consolidation Act 1997,
    - (ii) section 20 of the Customs Act 2015, or
    - (iii) section 127 of the Finance Act 2001;
  - (f) proceedings in the High Court by way of judicial review or of seeking leave to apply for judicial review;
  - (g) proceedings against the State in respect of alleged infringements of the fundamental rights and freedoms of a person;
  - (h) proceedings under the Domestic Violence Acts 1996 to 2011;
  - (i) proceedings under the Child Care Acts 1991 to 2015;

- (j) subject to *subsection (3)*, any other dispute or proceedings relating to a dispute which may be prescribed for the purposes of this subsection.
- (2) Nothing in this Act shall be construed as replacing a mediation or other dispute resolution process provided for in any—
  - (a) other enactment or instrument made under any other enactment, or
  - (b) contract or agreement.
- (3) In prescribing, under *paragraph (j)* of *subsection (1)*, a dispute or proceedings relating to a dispute for the purposes of that subsection, the Minister shall have regard to—
  - (a) the unsuitability of mediation as a means of resolving the dispute or proceedings relating to a dispute,
  - (b) the availability and suitability of means, other than mediation, of resolving the dispute or proceedings relating to a dispute, and
  - (c) the rights (if any) of the parties to the dispute or proceedings relating to a dispute to engage in proceedings before a court to resolve the dispute or proceedings relating to a dispute.

#### **Regulations**

- 4. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

#### **Expenses**

- 5. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

## PART 2

## MEDIATION IN GENERAL

**Mediation**

6. (1) The parties to a dispute may engage in mediation as a means of attempting to resolve the dispute.
- (2) Participation in mediation shall be voluntary at all times.
- (3) The fact that proceedings have been issued in relation to the dispute shall not prevent the parties engaging in mediation at any time prior to the resolution of the dispute.
- (4) A party may—
  - (a) withdraw from the mediation at any time during the mediation,
  - (b) be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party, or
  - (c) obtain independent legal advice at any time during the mediation.
- (5) Subject to *subsection (4)(a)*, the mediator and the parties shall, having regard to the nature of the dispute, make every reasonable effort to conclude the mediation in an expeditious manner which is likely to minimise costs.
- (6) Subject to *subsections (7) and (8)* and subject to the confidentiality of the mediation, the mediator may withdraw from the mediation at any time during the mediation by notice in writing given to the parties stating the mediator's general reasons for the withdrawal.
- (7) A withdrawal under *subsection (6)* by the mediator from the mediation shall not of itself prevent the mediator from again becoming the mediator in that mediation.
- (8) Where the mediator withdraws from the mediation under *subsection (6)*, the mediator shall return the fees and costs paid in respect of that portion of time during which the mediator was paid to act as the mediator and for which he or she will no longer act as the mediator.
- (9) It is for the parties to determine the outcome of the mediation.
- (10) The fees and costs of the mediation shall not be contingent on its outcome.

**Agreement to mediate**

7. Prior to the commencement of the mediation, the parties and the proposed mediator shall prepare and sign a document (in this Act referred to as an “agreement to mediate”) appointing the mediator and containing the following information:
  - (a) the manner in which the mediation is to be conducted;
  - (b) the manner in which the fees and costs of the mediation will be paid;
  - (c) the place and time at which the mediation is to be conducted;

- (d) the fact that the mediation is to be conducted in a confidential manner;
- (e) the right of each of the parties to seek legal advice;
- (f) subject to *section 6(6)*, the manner in which the mediation may be terminated;
- (g) such other terms (if any) as may be agreed between the parties and the mediator.

### **Role of mediator**

8. (1) The mediator shall, prior to the commencement of the mediation—
- (a) (i) make such enquiry as is reasonable in the circumstances to determine whether he or she may have any actual or potential conflict of interest, and
  - (ii) not act as mediator in that mediation if, following such enquiry, he or she determines that such conflict exists,
- (b) furnish to the parties the following details of the mediator that are relevant to mediation in general or that particular mediation:
- (i) qualifications;
  - (ii) training and experience;
  - (iii) continuing professional development training,
- and
- (c) furnish to the parties a copy of any code of practice published or approved under *section 9* to which he or she subscribes in so far as mediation is concerned.
- (2) The mediator shall—
- (a) during the course of the mediation, declare to the parties any actual or potential conflict of interest of which he or she becomes aware or ought reasonably to be aware as such conflict arises and, having so declared, shall, unless the parties agree to him or her continuing to act as the mediator, cease to act as the mediator,
  - (b) act with impartiality and integrity and treat the parties fairly,
  - (c) complete the mediation as expeditiously as is practicable having regard to the nature of the dispute and the need for the parties to have sufficient time to consider the issues, and
  - (d) ensure that the parties are aware of their rights to each obtain independent advice (including legal advice) prior to signing any mediation settlement.
- (3) Subject to *subsection (4)*, the outcome of the mediation shall be determined by the mutual agreement of the parties and the mediator shall not make proposals to the parties to resolve the dispute.
- (4) The mediator may, at the request of all the parties, make proposals to resolve the dispute, but it shall be for the parties to determine whether to accept such proposals.

**Codes of practice**

9. (1) The Minister shall, as soon as practicable after the coming into operation of this section and having had regard to the matters specified in *subsection (2)*—
- (a) prepare and publish a code or codes of practice to set standards for the conduct of mediations, or
  - (b) approve a code or codes of practice prepared by a person other than the Minister which purports to set standards for the conduct of mediations.
- (2) A code of practice referred to in *subsection (1)* may include provisions in relation to any of the following:
- (a) continuing professional development training requirements for mediators;
  - (b) procedures to be followed by mediators in the conduct of a mediation;
  - (c) procedures to be followed by mediators in the conduct of a mediation requiring consultation, by a mediator, with a child;
  - (d) ethical standards to be observed by mediators during a mediation;
  - (e) confidentiality of a mediation;
  - (f) procedures to be followed by a party for redress in the event of dissatisfaction with the conduct of a mediation;
  - (g) determination of the fees and costs of a mediation;
  - (h) any other matters relevant to the conduct of mediation.
- (3) Before publishing or approving a code of practice under this section, the Minister shall—
- (a) publish a notice on the website of the Department of Justice and Equality and in at least one daily newspaper circulating generally in the State—
    - (i) indicating that he or she proposes to publish or approve a code under this section,
    - (ii) indicating that a draft of the code is available for inspection on that website for a period specified in the notice (being not less than 30 days from the date of the publication of the notice in the newspaper), and
    - (iii) stating that submissions in relation to the draft code may be made in writing to the Minister before a date specified in the notice (which shall be not less than 30 days after the end of the period referred to in *subparagraph (ii)*),and
  - (b) have regard to any submissions received pursuant to *paragraph (a)(iii)*.
- (4) Where the Minister prepares or approves a code of practice under this section, he or she shall cause a notice of the preparation or approval to be published in *Iris Oifigiúil* and the notice shall specify the date from which the code shall come into operation.
- (5) Subject to *subsection (6)*, the Minister may—

- (a) amend or revoke a code of practice prepared or approved under this section, or
  - (b) withdraw approval in respect of any code of practice previously approved under this section.
- (6) The requirements of *subsections (3) and (4)* shall, with all necessary modifications, apply to a code of practice that the Minister intends to amend or revoke or in relation to which the Minister intends to withdraw his or her approval.
- (7) Where the Minister amends or revokes, or withdraws his or her approval in respect of, a code of practice under this section, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—
- (a) the code to which the amendment, revocation or withdrawal of approval, as the case may be, relates,
  - (b) whether the code is to be amended or revoked or whether approval in relation to the code is to be withdrawn,
  - (c) if the code is to be amended, particulars of the amendment, and
  - (d) the date from which the amendment, revocation or withdrawal of approval, as the case may be, shall come into operation.
- (8) In this section “code of practice” includes part of a code of practice.

### **Confidentiality**

- 10.** (1) Subject to *subsection (2)* and *section 17*, all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.
- (2) *Subsection (1)* shall not apply to a communication or records or notes, or both, where disclosure—
- (a) is necessary in order to implement or enforce a mediation settlement,
  - (b) is necessary to prevent physical or psychological injury to a party,
  - (c) is required by law,
  - (d) is necessary in the interests of preventing or revealing—
    - (i) the commission of a crime (including an attempt to commit a crime),
    - (ii) the concealment of a crime, or
    - (iii) a threat to a party,
- or
- (e) is sought or offered to prove or disprove a civil claim concerning the negligence or misconduct of the mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct.
- (3) Evidence introduced into or used in mediation that is otherwise admissible or subject to discovery in proceedings shall not be or become inadmissible or protected by

privilege in such proceedings solely because it was introduced into or used in mediation.

### **Enforceability of mediation settlements**

- 11.** (1) The parties shall determine—
- (a) if and when a mediation settlement has been reached between them, and
  - (b) whether the mediation settlement is to be enforceable between them.
- (2) Notwithstanding *subsection (1)* and subject to *subsection (3)*, a mediation settlement shall have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties.
- (3) Without prejudice to sections 8 and 8A (inserted by section 20 of the Status of Children Act 1987) of the Family Law (Maintenance of Spouses and Children) Act 1976 and subject to *subsection (4)*, a court may, on the application of one or more parties to a mediation settlement, enforce its terms except where the court is satisfied that—
- (a) the mediation settlement—
    - (i) does not adequately protect the rights and entitlements of the parties and their dependents (if any),
    - (ii) is not based on full and mutual disclosure of assets, or
    - (iii) is otherwise contrary to public policy,or
  - (b) a party to the mediation settlement has been overborne or unduly influenced by any other party in reaching the mediation settlement.
- (4) Where a mediation settlement relates to a child, a court, in determining any application with regard to the mediation settlement, shall be bound by section 3 (amended by section 45 of the Children and Family Relationships Act 2015) of the Guardianship of Infants Act 1964.

### **Council**

- 12.** (1) Subject to *subsections (2) to (4)* and *(7)*, the Minister may, by order, declare that such body as is specified in the order shall be recognised for the purposes of this Act, and a body standing so recognised for the time being shall be known as the Mediation Council of Ireland (in this Act referred to as the “Council”).
- (2) Not more than one body shall stand recognised under this section for the time being.
- (3) Before making an order under *subsection (1)*, the Minister shall—
- (a) publish a notice on the website of the Department of Justice and Equality and in at least one daily newspaper circulating generally in the State—

- (i) indicating that he or she intends to make an order under *subsection (1)*,
  - (ii) indicating that a draft of the order is available for inspection on that website for a period specified in the notice (being not less than 30 days from the date of the publication of the notice in the newspaper), and
  - (iii) stating that submissions in relation to the draft order may be made in writing to the Minister before a date specified in the notice (which shall be not less than 30 days after the end of the period referred to in *subparagraph (ii)*),
- and
- (b) have regard to any submissions received pursuant to *paragraph (a)(iii)*.
- (4) The Minister shall not make an order under *subsection (1)* unless he or she is satisfied that the body in respect of which he or she proposes to make the order—
- (a) complies with the minimum requirements specified in the *Schedule*, and
  - (b) is sufficiently representative of mediation interests involved in the mediation sector.
- (5) Subject to *subsection (7)*, if the Minister is of the opinion that the body for the time being standing recognised by order under *subsection (1)* no longer complies with the minimum requirements specified in the *Schedule*, he or she may, by order, revoke that order.
- (6) The Minister shall, before revoking an order under *subsection (5)*, allow the body for the time being standing recognised under this section to make representations to him or her.
- (7) Whenever an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.
- (8) No person, other than a body that stands recognised under this section for the time being, may be known, or describe itself, as the Mediation Council of Ireland (including any variant of that name).

### **Reports of Council**

13. (1) The Council shall, not later than 30 June in each year, make a report to the Minister on the performance of its functions under this Act and on its activities during the preceding year.
- (2) The Minister shall cause copies of the report referred to in *subsection (1)* to be laid before each House of the Oireachtas.
- (3) The report referred to in *subsection (1)* shall be in such form and include information regarding such matters as the Council considers appropriate or as the Minister may from time to time direct, including such information as the Minister may require relating to—
- (a) any matter concerning the policies and activities of the Council, or



- (b) any specific document or account prepared by the Council.
- (4) The Council may from time to time make other reports to the Minister on the performance of its functions.

### PART 3

#### OBLIGATIONS OF PRACTISING SOLICITORS AND BARRISTERS AS REGARDS MEDIATION

##### **Practising solicitor and mediation**

- 14.** (1) A practising solicitor shall, prior to issuing proceedings on behalf of a client—
- (a) advise the client to consider mediation as a means of attempting to resolve the dispute the subject of the proposed proceedings,
  - (b) provide the client with information in respect of mediation services, including the names and addresses of persons who provide mediation services,
  - (c) provide the client with information about—
    - (i) the advantages of resolving the dispute otherwise than by way of the proposed proceedings, and
    - (ii) the benefits of mediation,
  - (d) advise the client that mediation is voluntary and may not be an appropriate means of resolving the dispute where the safety of the client and/or their children is at risk, and
  - (e) inform the client of the matters referred to in *subsections (2) and (3)* and *sections 10 and 11*.
- (2) If a practising solicitor is acting on behalf of a client who intends to institute proceedings, the originating document by which proceedings are instituted shall be accompanied by a statutory declaration made by the solicitor evidencing (if such be the case) that the solicitor has performed the obligations imposed on him or her under *subsection (1)* in relation to the client and the proceedings to which the declaration relates.
- (3) If the originating document referred to in *subsection (2)* is not accompanied by a statutory declaration made in accordance with that subsection, the court concerned shall adjourn the proceedings for such period as it considers reasonable in the circumstances to enable the practising solicitor concerned to comply with *subsection (1)* and provide the court with such declaration or, if the solicitor has already complied with *subsection (1)*, provide the court with such declaration.
- (4) This section shall not apply to any proceedings, including any application, under—
- (a) section 6A, 11 or 11B of the Guardianship of Infants Act 1964,
  - (b) section 2 of the Judicial Separation and Family Law Reform Act 1989, or

(c) section 5 of the Family Law (Divorce) Act 1996.

### **Practising barrister and mediation**

- 15.** (1) *Subsection (2)* applies where, under another enactment or instrument made under another enactment, it is lawful for a practising barrister to issue proceedings on behalf of a client who is not represented by a practising solicitor.
- (2) Subject to *subsections (3) and (4)*, obligations analogous to those imposed under *section 14* on a practising solicitor in relation to a client of the solicitor may be prescribed, subject to such modifications as may be specified in the regulations concerned, to be performed by a practising barrister in relation to a client of the barrister.
- (3) In prescribing, under *subsection (2)*, obligations referred to in that subsection to be performed by a practising barrister in relation to a client of the barrister, the Minister shall have regard to any report under section 34(1) of the Legal Services Regulation Act 2015 to the extent that the report relates to the unification of the solicitors' profession and the barristers' profession.
- (4) The Minister shall not prescribe, under *subsection (2)*, obligations referred to in that subsection to be performed by a practising barrister in relation to a client of the barrister except after consultation with the Law Society of Ireland and the General Council of the Bar of Ireland.

## PART 4

### ROLE OF COURT IN MEDIATION, ETC.

### **Court inviting parties to consider mediation**

- 16.** (1) A court may, on the application of a party involved in proceedings, or of its own motion where it considers it appropriate having regard to all the circumstances of the case:
- (a) invite the parties to the proceedings to consider mediation as a means of attempting to resolve the dispute the subject of the proceedings;
- (b) provide the parties to the proceedings with information about the benefits of mediation to settle the dispute the subject of the proceedings.
- (2) Where, following an invitation by the court under *subsection (1)*, the parties decide to engage in mediation, the court may—
- (a) adjourn the proceedings,
- (b) make an order extending the time for compliance by a party with rules of court or with any order of the court in the proceedings, or
- (c) make such other order or give such direction as the court considers necessary to facilitate the effective use of mediation.

- (3) This Act shall apply to any mediation arising from an invitation under *subsection (1)*.
- (4) An application by a party under *subsection (1)* shall be made by motion to the court on notice to all other parties to the proceedings not later than 14 days before the date on which the proceedings are first listed for hearing and shall, unless the court otherwise orders, be grounded upon an affidavit sworn by or on behalf of the party.
- (5) The power conferred by *subsection (1)* is without prejudice to any other discretionary power which the court may exercise at any time during the course of proceedings with a view to facilitating the resolution of a dispute.

### **Mediator report to court**

17. (1) Where, following an invitation by the court under *section 16(1)*, the parties to the proceedings concerned engage in mediation and subsequently apply to the court to re-enter the proceedings, the mediator shall prepare and submit to the court a written report which shall set out—
  - (a) where the mediation did not take place, a statement of the reasons as to why it did not take place, or
  - (b) where the mediation took place—
    - (i) a statement as to whether or not a mediation settlement has been reached between the parties in respect of the dispute the subject of the proceedings, and
    - (ii) if a mediation settlement has been reached on all, or some only of the, matters concerning that dispute, a statement of the terms of the mediation settlement.
- (2) Except where otherwise agreed or directed by the court, a copy of a report prepared under *subsection (1)* shall be given to the parties at least 7 days prior to its submission to the court.

### **Effect of mediation on limitation and prescription periods**

18. (1) In reckoning a period of time for the purposes of a limitation period specified by the Statutes of Limitations, the period beginning on the day on which an agreement to mediate is signed and ending on the day which is 30 days after either—
  - (a) a mediation settlement is signed by the parties and the mediator, or
  - (b) the mediation is terminated,whichever first occurs, shall be disregarded.
- (2) The mediator in a mediation shall inform the parties in writing of the date on which the mediation ends.

### **Adjourning court proceedings to facilitate mediation**

19. (1) Where—

- (a) parties have entered into an agreement to mediate, and
  - (b) one or more of the parties referred to in *paragraph (a)* commences proceedings in respect of the dispute the subject of the agreement to mediate,
- a party to the proceedings may, at any time after an appearance has been entered and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to adjourn the proceedings.
- (2) On application to it being made under *subsection (1)*, the court shall make an order adjourning such proceedings if it is satisfied that—
    - (a) there is not sufficient reason why the dispute in respect of which the proceedings have been commenced should not be dealt with in accordance with the agreement to mediate, and
    - (b) the applicant party was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary for the proper implementation of the agreement to mediate.
  - (3) This section is in addition to and not in substitution for any power of a court to adjourn proceedings before it.

#### **Fees and costs**

- 20.** (1) Unless ordered by a court or otherwise agreed between the parties, the parties shall—
- (a) pay to the mediator the fees and costs agreed in the agreement to mediate, or
  - (b) share equally the fees and costs of the mediation.
- (2) The fees and costs of a mediation shall be reasonable and proportionate to the importance and complexity of the issues at stake and to the amount of work carried out by the mediator.

#### **Factors to be considered by court in awarding costs**

- 21.** In awarding costs in respect of proceedings referred to in *section 16*, a court may, where it considers it just, have regard to—
- (a) any unreasonable refusal or failure by a party to the proceedings to consider using mediation, and
  - (b) any unreasonable refusal or failure by a party to the proceedings to attend mediation,
- following an invitation to do so under *section 16(1)*.

#### **Amendment of Civil Liability and Courts Act 2004**

- 22.** Section 15(1) of the Civil Liability and Courts Act 2004 is amended by the insertion of “or upon its own initiative” after “party to a personal injuries action”.

## PART 5

## MEDIATION INFORMATION SESSIONS

**Mediation information sessions in family law and succession proceedings**

23. (1) The Minister may, for the purposes of ensuring that information sessions concerning mediation are available (in this Act referred to as a “mediation information session”), at a reasonable cost and in suitable locations, to parties to relevant proceedings and having had regard to the matters specified in *subsection (2)*—
- (a) prepare and publish a scheme for the delivery of such sessions, or
  - (b) approve a scheme for the delivery of such sessions prepared by a person other than the Minister.
- (2) A scheme referred to in *subsection (1)* may include provisions in relation to any of the following:
- (a) the nature and operation of mediation in respect of a relevant dispute;
  - (b) the role of the mediator in a mediation in respect of a relevant dispute;
  - (c) the types of mediation settlements available in a mediation in respect of a relevant dispute;
  - (d) the benefits of mediation over court-based resolutions in respect of a relevant dispute;
  - (e) the costs of mediation;
  - (f) a statement that legal advice may be sought by the parties at any time during the mediation.
- (3) Before publishing or approving a scheme under this section, the Minister shall—
- (a) publish a notice on the website of the Department of Justice and Equality and in at least one daily newspaper circulating generally in the State—
    - (i) indicating that he or she intends to publish or approve a scheme under this section,
    - (ii) indicating that a draft of the scheme is available for inspection on that website for a period specified in the notice (being not less than 30 days from the date of the publication of the notice in the newspaper), and
    - (iii) stating that submissions in relation to the draft scheme may be made in writing to the Minister before a date specified in the notice (which shall be not less than 30 days after the end of the period referred to in *subparagraph (ii)*),and
  - (b) have regard to any submissions received pursuant to *paragraph (a)(iii)*.

- (4) Where the Minister prepares or approves a scheme under this section, he or she shall cause a notice of the preparation or approval to be published in *Iris Oifigiúil* and the notice shall specify the date from which the scheme shall come into operation.
- (5) Subject to *subsection (6)*, the Minister may—
- (a) amend or revoke a scheme prepared or approved under this section, or
  - (b) withdraw approval in respect of any scheme previously approved under this section.
- (6) The requirements of *subsections (3) and (4)* shall, with all necessary modifications, apply to a scheme that the Minister intends to amend or revoke or in relation to which the Minister intends to withdraw his or her approval.
- (7) Where the Minister amends or revokes, or withdraws his or her approval in respect of, a scheme under this section, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—
- (a) the scheme to which the amendment, revocation or withdrawal of approval, as the case may be, relates,
  - (b) whether the scheme is to be amended or revoked or whether approval in relation to the scheme is to be withdrawn,
  - (c) if the scheme is to be amended, particulars of the amendment, and
  - (d) the date from which the amendment, revocation or withdrawal of approval, as the case may be, shall come into operation.
- (8) In this section—
- “relevant dispute” means a dispute the subject of relevant proceedings;
- “relevant proceedings” means—
- (a) family law proceedings, or
  - (b) proceedings under section 67A(3) or 117 of the Succession Act 1965.

## PART 6

### AMENDMENT OF OTHER ACTS

#### **Amendment of Guardianship of Infants Act 1964**

**24.** The Guardianship of Infants Act 1964 is amended—

- (a) in section 20—
  - (i) in subsection (2)(b), by the substitution of “give to the applicant the names and addresses of persons who provide a mediation service and inform the applicant of the matters referred to in *sections 10 and 11* of the *Mediation*

*Act 2017*” for “and give to the applicant the name and addresses of persons qualified to provide an appropriate mediation service”,

- (ii) in subsection (3)(a), by the substitution of “statutory declaration made by the solicitor” for “certificate signed by the solicitor”, and
  - (iii) in subsections (3)(b) and (4), by the substitution of “statutory declaration” for “certificate” in each place,
- (b) in section 21—
- (i) in subsection (2)(b), by the substitution of “, give to the respondent the names and addresses of persons who provide a mediation service and inform the respondent of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*” for “and where appropriate give to the respondent the name and addresses of persons qualified to provide an appropriate mediation service”,
  - (ii) in subsection (3)(a), by the substitution of “statutory declaration made by the solicitor” for “certificate signed by the solicitor”, and
  - (iii) in subsections (3)(b) and (4), by the substitution of “statutory declaration” for “certificate” in each place,
- and
- (c) in section 29, by the deletion of “mediation or”.

#### **Amendment of Judicial Separation and Family Law Reform Act 1989**

**25.** The Judicial Separation and Family Law Reform Act 1989 is amended:

- (a) in section 5—
    - (i) in subsection (1)(b), by the substitution of “, give to the applicant the names and addresses of persons who provide a mediation service and inform the applicant of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*” for “and give to him the names and addresses of persons and organisations qualified to provide a mediation service”,
    - (ii) in subsection (2), by—
      - (I) the substitution of “statutory declaration made by the solicitor” for “certificate signed by the solicitor”, and
      - (II) the substitution of “not so declare,” for “not so certify,”
- and
- (iii) by the deletion of subsection (3),
- and
- (b) in section 6—

- (i) in subsection (1)(b), by the substitution of “, give to the respondent the names and addresses of persons who provide a mediation service and inform the respondent of the matters referred to in *sections 10 and 11* of the *Mediation Act 2017*” for “and give to him the names and addresses of persons and organisations qualified to provide a mediation service”,
- (ii) in subsection (2), by—
  - (I) the substitution of “statutory declaration made by the solicitor” for “certificate signed by the solicitor”, and
  - (II) the substitution of “not so declare,” for “not so certify,”and
- (iii) by the deletion of subsection (3).

### **Amendment of Family Law (Divorce) Act 1996**

**26.** The Family Law (Divorce) Act 1996 is amended—

- (a) in section 6—
  - (i) in subsection (2)(b), by the substitution of “, give to the applicant the names and addresses of persons who provide a mediation service for spouses who have become estranged and inform the applicant of the matters referred to in *sections 10 and 11* of the *Mediation Act 2017*” for “and give to the applicant the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged”,
  - (ii) in subsection (4)(a), by the substitution of “statutory declaration made by the solicitor” for “certificate signed by the solicitor”,
  - (iii) in subsection (4)(b), by the substitution of “statutory declaration” for “certificate”, and
  - (iv) by the deletion of subsection (5),
- (b) in section 7—
  - (i) in subsection (2)(b), by the substitution of “, give to the respondent the names and addresses of persons who provide a mediation service for spouses who have become estranged and inform the respondent of the matters referred to in *sections 10 and 11* of the *Mediation Act 2017*” for “and give to the respondent the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged”,
  - (ii) in subsection (4)(a), by the substitution of “statutory declaration made by the solicitor” for “certificate signed by the solicitor”,
  - (iii) in subsection (4)(b), by the substitution of “statutory declaration” for “certificate”, and
  - (iv) by the deletion of subsection (5),



and

(c) in section 43, by the deletion of “mediation services or”.

## SCHEDULE

## Section 12(4)

## MINIMUM REQUIREMENTS IN RELATION TO COUNCIL

1. The general functions of the Council shall be to do the following:
  - (a) promote public awareness of, and provide information to the public, on the availability and operation of mediation in the State;
  - (b) maintain and develop standards in the provision of mediation, including the establishment of a system of continuing professional development training;
  - (c) prepare codes of practice for mediators for approval by the Minister under *section 9* and oversee the implementation of any code of practice published or approved under that section;
  - (d) establish and maintain a register of mediators who have subscribed to a code of practice published or approved under *section 9*;
  - (e) advise the Minister on the preparation or approval of a scheme under *section 23* and on the delivery of mediation information sessions in family law cases.
2. The Council shall be independent in the performance of its functions.
3. The Council shall consist of not less than 11 members, of whom—
  - (a) 5 shall be members who are representative of bodies promoting mediation services or representing the interests of mediators, and
  - (b) 6 shall be members who represent the public interest (in this Schedule referred to as “public interest members”).
4. (1) The Council may regulate, by standing orders or otherwise—
  - (a) the term of office and re-appointment of members of the Council,
  - (b) the procedures to be followed at meetings of the Council, and
  - (c) any other business of the Council.(2) One of the public interest members of the Council shall be appointed as chairperson.
5. (1) The public interest members shall—
  - (a) be persons who are independent of the interests of mediators, and
  - (b) be selected for appointment as members in accordance with a selection process that is advertised to members of the public in a manner that the Minister considers to be sufficient.(2) The criteria for selecting persons for appointment as public interest members shall be published in such manner as will enable them to be inspected by members of the public.
6. The Council shall be funded from fees calculated in accordance with such rules as it shall make for that purpose.