A Guide to Mediation

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CONTENTS

WHAT DOES ALTERNATIVE DISPUTE RESOLUTION MEAN?

Before going down the court route, ADR (Alternative Dispute Resolution) should be considered. Basically, alternative dispute resolution is an alternative to litigation / court.

In sensitive matters – in either business or personal life - ADR does not add to the conflict in question, where a Court situation can. It is a less stressful method for the individuals who are already involved in stressful situation.

There are many forms of ADR:

- Structured Negotiation
- Collaborative Law
- Mediation
- Arbitration

WHAT IS STRUCTURED NEGOTIATION?

In Family Law Disputes the traditional method used is by way of negotiation between the parties resulting in a Separation Agreement or when Proceedings are issued negotiation again between the parties and their Solicitors resulting in a settlement of the case and that settlement being made an order of the courts.

Collaborative law may not always be suitable for all clients and other models of alternative dispute resolution are more suitable for particular cases.

One of the criticisms made of the family law system is that there is no system or process for trying to negotiate solutions to problems other than in the context of court proceedings.

At Lynch Solicitors we recognise this and we offer structured negotiations as an option for our clients.

WHAT IS INVOLVED IN STRUCTURED NEGOTIATIONS?

What the structured negotiation process seeks to do is to establish ground rules for negotiation to enable parties to be clear about what they can expect from the process and also what is expected of them.

It differs from collaborative law and practice in that the lawyer doesn't make a commitment not to go court on behalf of the client and also the four-way meetings that are an intrinsic part of the collaborative process are an optional part of the structured negotiation process.

Structured Negotiation is very similar to the collaborative law model without the need to agree to discharge our services to our client in the event that negotiations break down and we have to resort to litigation.

COLLABORATIVE LAW

With collaborative law both parties to the dispute have separate specifically trained solicitors whose only task is to help the parties to resolve the disagreements that they have. Each of the parties must have a solicitor who is committed to the ideals of collaborative law.

The people are at the centre of the process and actively involved in the negotiating process. Each of the parties is represented by their lawyer rather than choosing another party to act as go-between.

The aim of collaborative law is that as amicable a solution as possible is sought, reducing the legal expense and court time. All people in a Collaborative Law case undertake to be absolutely truthful with each other about the finances. Collaborative law is not suited to everyone who is involved in a dispute; a degree of trust is necessary and the parties must have a reasonably civil relationship.

HOW IS IT DIFFERENT FROM MEDIATION?

It differs from mediation because each of the parties is represented by their lawyer rather than choosing another party to act as go-between.

Negotiations take place in a number of four-way settlement meetings that are attended by both clients and solicitors. The number of meetings required differs with each situation, depending on how complex the issues are. The agenda for each meeting is agreed between the clients and

solicitors beforehand. Each solicitor is there to guide their clients towards a reasonable resolution.

The aim of collaborative law is that as amicable a solution as possible is sought, reducing the legal expense and court time. All people in a Collaborative Law case undertake to be absolutely truthful with each other about the finances.

Collaborative law is not suited to everyone who is involved in a dispute; a degree of trust is necessary and the parties must have a reasonably civil relationship.

ARE THERE CERTAIN GROUND RULES THAT APPLY?

Yes there are usually certain rules that would apply so that the partied know what is expected I advance – examples would include:

1. Full Disclosure would be expected of all parties;
2. Commitment to engaging fully in the process;
3. Negotiations would be on a without prejudice basis;
4. If experts are to be required preference would be to appoint joint experts;
5. Parties would agree to exchange a list of options each;
6. Commitment by both sides to address any behavioural issues.

WHAT IS MEDIATION?

Mediation is a private and confidential dispute resolution process in which an independent and neutral third party, the Mediator, seeks to help the parties to reach a mutually acceptable negotiated agreement.

The process usually involves some level of briefing of the Mediator before the Mediation itself, which typically lasts a day. The Mediation is attended by a 'decision maker' for each party as well as their legal advisors, relevant experts and insurers (if any).

The process is voluntary and either party can withdraw at any time. However, if a settlement is reached it is legally binding.

WHAT IS THE ROLE OF THE MEDIATOR?

The Mediator is a facilitator appointed by the parties. The Mediator does not decide who is right or wrong or issue a judgment in favour of one party or the other or validate the viewpoint of one side or the other.

The Mediator's function is to support the Parties in the process, gather information and assist in problem-solving. The Mediator seeks to isolate the real issues, help the parties to evaluate the strengths and weaknesses of each other's case and encourage the parties to work co-operatively towards settlement.

This is done in private meetings between the Mediator and each party and as appropriate in joint meetings where both. Parties (or some of their representatives) attend with the Mediator. The Mediator will assist the parties to negotiate a settlement in the same way, through the use of private and joint meetings.

WHAT ARE THE KEY ADVANTAGES OF MEDIATION?

CONTROL - Mediation is based on both parties taking control. 'Ownership' of the dispute and the outcome remains with the parties. They are actively involved and can express their own points of view throughout the entire process. By taking control and finding a solution that works for them, both parties avoid the risk of having a less satisfactory solution imposed on them by the Court.

CONFIDENTIALITY - The process is confidential and without prejudice to any proceedings. Information and documentation shared privately with the Mediator cannot be passed to the other party during the Mediation without express permission. Furthermore, the outcome of the Mediation is only published if the parties so agree.

FLEXIBILITY & COMMERCIALITY - Mediation concentrates on commercially based settlements and focuses parties' minds on the realistic resolution of problems. Parties are encouraged to make non-binding concessions and to propose their own formulae for resolving the dispute. Mediation provides parties with an opportunity to negotiate a tailored solution that will suit their mutual needs; often the solution will deliver more for both parties than any Court judgment could. It is a particularly valuable process where there is an ongoing commercial relationship, which parties wish to preserve.

TIME SAVING - Mediation offers a speedy alternative to running a case to full trial in litigation. Typically the Mediation will take place within four

to six weeks of the Mediation Agreement being signed and in urgent situations even more quickly.

FINANCIAL SAVING - Commercial Mediation provides a very economic alternative to running a case to full trial in litigation. Given the speed of the process it enables parties to move on with their businesses more quickly and the resulting saving in terms of management time can be very significant. Equally the legal costs and expenses associated with the process are significantly less than the costs of litigating a dispute to trial. The expenses include the Mediator's fee, the cost of preparatory work undertaken and overheads for the day. The Mediator's fee and overheads are usually shared between the parties. Each party bears its own costs and expenses.

WHAT IS INVOLVED IN THE MEDIATION PROCESS?

Mediation typically involves five phases, one in advance of the Mediation and the others on the day of the Mediation.

(1) THE PREPARATION PHASE - This involves selection of the Mediator and agreeing the terms of the Mediation, which are set out in a mediation agreement (typically 3 or 4 pages long). The terms will include time and venue for the Mediation, details of the Mediator's fees, the nature of information or documentation (such as short case summaries) to be exchanged by the parties In advance of the Mediation, details of who will attend the Mediation on each side, the role of the Mediator as facilitator rather than decision maker and confirmation that the process is confidential and without prejudice to any proceedings. Preparation is the key to successful mediation and the intensity of preparation will usually - be no less than that which is put in immediately before a trial. For both parties a risk analysis is crucial and the best and worst case outcomes ought to be identified in advance of the Mediation. The Mediator will use this preparation stage to build the confidence of all parties in the mediation process and in him/her.

(2) THE OPENING PHASE - Many mediations start with the parties meeting in a joint ("plenary") session at which everyone is introduced, the Mediator outlines the procedure for the day and the parties typically make a short opening statement to each other setting out their position and objectives. Mediators decide on a case by case basis whether it is appropriate to have an opening joint meeting and if so what form it should take.

(3) THE EXPLORATION PHASE - Private meetings take place between each party and the Mediator. The Mediator will seek to explore

the nature of each party's case, their aims and objectives and engage in "shuttle diplomacy". Mediation often needs to deal with the challenge of parties' desire for revenge or vindication of their position. The Mediator will tackle this challenge by exploring what each side's true motivation is and will use this exploratory phase to build trust and help each party to hear what the other is really saying. In this way the ground is prepared for settlement negotiations between the parties by clarification of their respective issues and agendas.

(4) THE NEGOTIATION PHASE - Direct and indirect negotiations begin with the assistance of the Mediator who challenges each party, in order to explore the strengths and weaknesses of their position The Mediator will use his/her skills to present, re-frame and help settlement possibilities. Working groups of experts or lawyers may be established as parties discuss the issues in an attempt to break the deadlock.

(5) THE CONCLUDING PHASE – The Parties and/or Lawyers representing both sides draw up the agreement recording the settlement. The mediator will seek to ensure that a Settlement Agreement is both viable and sustainable. The objectives are that the Settlement Agreement satisfies the parties, deals with all the issues, is workable and practical and minimises the possibility of future dispute. Once the settlement is reached, it becomes legally binding.

WHAT IF NO SETTLEMENT IS REACHED?

If a settlement is not reached at the Mediation it is often reached shortly afterwards.

At worst the Mediation will usually assist in a streamlining of the issues in any subsequent litigation. Nothing is lost by exploring possible settlement of a case at Mediation.

The cost of preparing for the process stands to each party's benefit in any subsequent litigation and as the process is confidential and without prejudice, concessions made cannot be relied upon or referred to in the litigation.

THE MEDIATION PROCESS.

Mediation is a process where a neutral third party facilitates a negotiation between parties to a dispute. The mediator is not aligned with a party,

favors neither side and is uncommitted to any particular outcome or result.

The mediator:

- Helps the parties identify and appreciate the risks presented by their dispute
- Manages the negotiation process
- Acts as a reality check
- Facilitates communication
- Assists in the search for options
- Asks questions to clarify conflicts
- Intervenes to keep everyone focused and on track

If a facilitative, joint session process is selected, the parties will at least start in the same room, moving to private meetings with the mediator only for specific purposes.

When those purposes have been accomplished, the mediation may return to joint sessions.

In a facilitative mediation, the mediator takes the following steps:

- Initiates a pre-mediation conference call with the lawyers to work out logistical issues of timing, location, style of mediation and so forth
- Convenes the mediation at the agreed upon location
- The mediator begins the process by making an opening statement to describe the process, explain how the day will go and express his understanding of the dispute
- The plaintiff and plaintiff's counsel provide opening remarks to explain what's on their mind and why they brought the claim. Plaintiff goes first as the party who initiated the complaint

- Defendant and defense counsel provide their opening remarks and explain what's on their mind and how they see the dispute

- The mediator sets an agenda or list of topics to be discussed if the dispute is to be resolved

- The mediator proceeds to manage discussion of the issues listed on the agenda so long as it seems fruitful and worthwhile

- From time to time, the mediator will move to private sessions, called caucus, where he meets privately with each side to discuss issues the parties may not be ready or comfortable discussing in front of each other

- Once the issues have been discussed and everyone has had their say, the mediator will initiate discussions to explore settlement options

- If the parties are ready to make offers, the mediator will work with them to convey the offers in the best possible way

- If a resolution is achieved, the mediator will oversee the drafting of documents and signing of releases and written agreements

The facilitative process of mediation is:

- Confidential. The mediator will not disclose to the judge what happened in mediation; cannot be called as a witness; and will not reveal anything said in confidence to him

- Voluntary. You need not stay, though I would appreciate your cooperation in remaining and giving the process a chance to succeed and if you do intend to leave, please do not do so without discussing this with me beforehand

- Offers an opportunity to step back from the litigation process

- Mediation is a chance for everyone to act as joint problem solvers rather than sworn adversaries

- Mediation is a safe place to brainstorm options and explore possible resolution without risk

- If the case does not settle, nothing has been lost, the trail date has not been changed and everyone can return to zealous pursuit of their litigation ends

If an evaluative, caucus or private session mediation process is selected, the parties typically start in the same room for the mediators opening statement but generally then move to separate rooms.

The mediator "shuttles" back and forth between rooms, carrying messages, engaging in risk analysis, and conveying offers and counter offers back and forth.

Throughout the process, the mediator openly shares his opinion of the merits including the strengths and weaknesses of each side, and his predictions of the likely outcome if the case goes to trial.

The mediator remains neutral, in the sense that he doesn't take sides, but he does reveal his judgments as to the merits. If the parties are having difficulty coming together as to the value of the case, the mediator may share his views on that issue, as well.

Whenever the mediator meets with one side in private session, or caucus, he has a similar meeting with the other. However, the time spent in each room is rarely equal. In most cases, one side or the other requires more time and effort than the other.

The evaluative mediation process is:

- Confidential. Any information privately shared with the mediator that a party is not ready to disclose or reveal to the other side will be kept in confidence by the mediator. In addition, as with facilitative mediation, nothing said in mediation will be shared with the judge or others by the mediator.

- Voluntary. Same as facilitative mediation

- Offers an opportunity to step back from the mediation process, just as facilitative mediation does

WHAT IS ARBITRATION?

Arbitration as a means of dispute resolution is an option, which is built into most legal agreements. Its main advantages to Court are speed, cost and confidentiality.

However, while it is a more inexpensive, speedy and confidential method of dispute, it remains the second option for most lawyers. It is a model of dispute resolution that we as a firm recommend to our clients and offer a

special expertise. As well as cost and time advantages it carries with it the benefit of confidentiality.

For many years the system of arbitration has been a popular method of dispute resolution for building contracts and consumer contracts such as holiday packages and motor vehicle purchases. Instead of going to Court, the parties can agree to present their case to an arbitrator who will rule on the dispute.

This alternative to Court has many advantages, chief among which are low cost, speedy resolution and confidentiality. Arbitration is used for the following:

- Consumer Contracts
- Building Agreements
- Compulsory Purchases
- Commercial Agreements – especially those valuing confidentiality

IN WHAT KIND OF SITUATIONS IS ARBITRATION USED?

For many years the system of arbitration has been a popular method of dispute resolution for building contracts and consumer contracts such as holiday packages and motor vehicle purchases. Instead of going to Court, the parties can agree to present their case to an arbitrator who will rule on the dispute.

DOES AN ARBITRATOR DECIDE THE OUTCOME IN RESOLVING DISPUTES?

John M. Lynch is also an Arbitrator. Unlike with Mediation, when it is an Arbitrator in a dispute they decide the outcome. The main advantage of Arbitration is that it is in private, takes less time and is less expensive than Court.

It is, by and large, binding on the parties and can be enforced through the courts.

DO SITUATIONS ARISE WHERE A COMBINATION OF DIFFERENT FORMS OF ADR IS USED?

Conciliation, like arbitrations, is an option which is built into most building contract legal agreements. Its main advantages to Court are speed, cost and confidentiality.

As it is a more inexpensive, speedy and confidential method it is a model of dispute resolution that we recommend to our clients and offer a special expertise.

It also carries with it the benefit of confidentiality. Instead of going to Court, the parties can agree to present their case to a conciliator who will commonly offer a recommendation to the parties after a full investigation and presentation by the parties.

It can sometime combine mediation and an arbitration approach – many issues can be mediated or agreed by the parties and those issues that cannot be the subject matter of a recommendation by the Conciliator.

The only drawback of conciliation is that it is not binding on the parties and if unsuccessful you need to proceed to Arbitration.

CODE OF PRACTICE

1. Eligibility of Mediators

1.1 A person is not eligible to act as a mediator unless he or she has undergone such training as required and engages in appropriate continuing education and/or practical experience in mediation.

1.2 If a mediator or a partner or employee of the mediator has represented one of the parties to the mediation during the three years preceding the mediation, the mediator shall not act as a mediator.

1.3 Neither the mediator nor a partner or employee of the mediator shall represent any party to the dispute after the mediation in any matter relating to the subject matter of the mediation.

1.4 The mediator shall not act as mediator if any party to the dispute would reasonably apprehend a bias on the part of that mediator.

2. Introduction of the Mediator

2.1 After appointment, the mediator should introduce himself or herself to the parties and the parties shall have an obligation to satisfy themselves as to his or her suitability as mediator.

2.2 The mediator should outline the principles of mediation as a voluntary and confidential dispute resolution process in which an impartial mediator facilitates negotiations between the parties with the object of concluding a voluntary and mutually acceptable settlement.

2.3 The mediator should establish with the parties the amount of disclosure which will be required for the mediation and that the parties are aware of the possible admissibility or inadmissibility in subsequent proceedings of information disclosed in the mediation.

2.4 The mediator should advise the parties of the desirability of their being able to present a brief outline of their case at the start of mediation.

2.5 The mediator should advise the parties that they are not legally required to make concessions or to reach an argument.

2.6 The mediator should discuss any possible conflict of interests and disclose to the parties any facts which may be reasonably regarded as having a bearing upon his or her impartiality.

2.7 The mediator should discuss the costs of the mediation with the parties.

2.8 The mediator should ensure that each of the parties is aware of their right to legal representation during the mediation.

2.9 The mediator should ensure that the parties at the mediation hearing have authority to settle the matter.

3. Conduct of the Mediation

3.1 The mediator has a duty of impartiality to the parties and should not behave in any way which displays partiality or bias to either party.

3.2 The mediator should adopt an approach which is entirely free of any discrimination on the basis of race, gender, religion or political belief.

3.3 In discussing settlement proposals with the parties, the mediator should be sensitive to the fact that one of the parties may be under pressure to settle the dispute.

3.4 The mediator has no authority to impose a solution on the parties.

3.5 The mediator may attempt to define or to assist the parties to define the issues involved and to enable the parties to focus upon the underlying issues, interests and needs.

3.6 The mediator may propose possible solutions but it is desirable that the parties should first be encouraged to generate their own solutions.

3.7 Any proposals made by the mediator as possible solutions should be put forward as a suggestion for the parties' consideration and not as the mediator's preferred settlement.

3.8 The mediator has a duty to the parties not to breach confidences entrusted to him.

3.9 The parties are free to have legal representation at each part of the mediation process.

3.10 The mediator may adjourn the mediation if he or she reasonably considers it to be appropriate.

3.11 The mediator shall be under an obligation not to use any information gained from the mediation for personal gain.

4. Termination

4.1 Each party has the right to withdraw from the mediation at any time.

4.2 The mediator should terminate the mediation if at any time he or she believes that the parties are abusing the process, that there is no reasonable prospect of reaching a settlement or if a miscarriage of justice is likely to arise.

4.3 If the mediation results in a settlement, the mediator should seek to ensure that the terms of the settlement are put into writing and that the parties are advised as to the legal effects thereof.

MEDIATORS IN MUNSTER

Name	County	Qualified	Areas	Qualifications
Eamon G. Harrington	Cork	1988	Employment, Partnership, Personal Injuries, Property	CEDR
Bill Holohan	Cork	1983	Commercial, Company, Construction, Employment, Partnership, Personal Injuries, Probate, Property	CEDR, Chartered Institute of Arbitrators, The Mediators' Institute of Ireland (MII)
St. John Donovan	Kilkenny	1982	Family	The Mediators' Institute of Ireland (MII)
Ronan P. Kennedy	Tipperary	2000	Commercial, Employment, Family	CEDR
John Maurice Lynch	Tipperary	1980	Commercial, Company, Construction, Employment, Family, Partnership	Chartered Institute of Arbitrators

Number 27 *of* 2017

MEDIATION ACT 2017

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.

[2*nd 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.

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.

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".

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