

SCHEDULES

SCHEDULE 10

Section 43

CIVIL ACTIONS TO WHICH THE 2008 MEDIATION DIRECTIVE APPLIES

Prohibition on continuing or bringing actions which involved prior cross-border mediation

- 1 (1) Section 43(1) and (2) do not apply to any action which involved prior cross-border mediation.
- (2) Accordingly, in relation to such an action, section 43 has effect as if subsections (1) and (2) were replaced with these provisions—
- “(1) An action which involved prior cross-border mediation that was brought on or after the later of—
- (a) the end of the relevant post-mediation period, and
 - (b) the day of the First Reading in the House of Commons of the Bill for this Act,
- may not be continued on or after the day on which section 43 comes into force.
- (2) An action which involved prior cross-border mediation may not be brought on or after the day on which section 43 comes into force, unless the action is brought before the end of the relevant post-mediation period.”
- (3) A reference in section 43(7) or (8) to section 43(1) or (2) accordingly includes a reference to the corresponding provision contained in sub-paragraph (2).

Interpretation

- 2 (1) In this Schedule (including the modification of section 43 made by paragraph 1(2))—
- “action which involved prior cross-border mediation” means a relevant Troubles-related civil action if the matter in dispute in the action has been subject to cross-border mediation in accordance with transitional EU law;
- “relevant post-mediation period”, in relation to such an action, means the period of eight weeks after the cross-border mediation ends;
- “2008 Mediation Directive” means [Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.
- (2) “Relevant Troubles-related civil action” has the same meaning as in section 43.
- (3) The “matter in dispute” in a relevant Troubles-related civil action is the claim (referred to in section 43(4)) which arises out of conduct forming part of the Troubles and which the action is to determine.
- (4) The matter in dispute has been “subject to cross-border mediation in accordance with transitional EU law” if it is within case A or case B below.

Status: This is the original version (as it was originally enacted).

- (5) *Case A*: a case where the 2008 Mediation Directive applies to the matter in dispute by virtue of point (i) or (ii) of Article 69(1)(b) of the EU withdrawal agreement (cases where, before the end of the transition period, the parties had agreed, or been ordered, to use mediation).
- (6) In such a case, the “cross-border mediation ends” when the mediation referred to in point (i) or (ii) of Article 69(1)(b) ends.
- (7) *Case B*: a case where—
- (a) the 2008 Mediation Directive applies to the matter in dispute by virtue of point (iii) of Article 69(1)(b) of the EU withdrawal agreement (cases where, before the end of the transition period, a court had invited the parties to use mediation), and
 - (b) mediation of the matter in dispute starts (whether it starts before, on, or after the day of the First Reading in the House of Commons of the Bill for this Act, including where it starts on or after the day on which section 43 comes into force).
- (8) In such a case, the “cross-border mediation ends” when that mediation ends.
- (9) A mediation—
- (a) “starts” when it would have started for the purposes of the corresponding limitation provision;
 - (b) “ends” when it would have ended for the purposes of the corresponding limitation provision.
- (10) The “corresponding limitation provision” is—
- (a) Article 51A of the Limitation (Northern Ireland) Order 1989 ([S.I. 1989/1339 \(N.I. 11\)](#)) (see, in particular, Article 51A(3) of that Order), if—
 - (i) that Order,
 - (ii) the Foreign Limitation Periods (Northern Ireland) Order 1985 ([S.I. 1985/754 \(N.I. 5\)](#)), or
 - (iii) the Merchant Shipping Act 1995,
 is the limitation legislation that is ordinarily applicable;
 - (b) section 33A of the Limitation Act 1980 (see section 33A(6) to (8) of that Act), if—
 - (i) that Act, or
 - (ii) the Merchant Shipping Act 1995,
 is the limitation legislation that is ordinarily applicable;
 - (c) section 1A of the Foreign Limitation Periods Act 1984 (see section 1A(5) to (7) of that Act), if that Act is the limitation legislation that is ordinarily applicable;
 - (d) section 19F of the Prescription and Limitation (Scotland) Act 1973 (see, in particular, section 19F(3) of that Act), if—
 - (i) that Act, or
 - (ii) the Merchant Shipping Act 1995,
 is the limitation legislation that is ordinarily applicable.
- (11) Accordingly—
- (a) Article 51A of the 1989 Order, section 33A of the 1980 Act, and section 1A of the 1984 Act (which were repealed by Schedule 1 to the 2019 Regulations)

Status: This is the original version (as it was originally enacted).

- continue to have effect for the purposes of this Schedule (in addition to the purposes for which they continue to have effect under regulation 5 of the 2019 Regulations);
- (b) section 19F of the 1973 Act (which was repealed by regulation 2 of the the 2020 Regulations) continues to have effect for the purposes of this Schedule (in addition to the purposes for which it continues to have effect under regulation 7 of the 2020 Regulations).
- (12) An Order or Act is “the limitation legislation that is ordinarily applicable” if the time limit for bringing the action which involved prior cross-border mediation was, or would be (in the absence of section 43), given in that Order or Act (see section 43(6)).
- (13) The “2019 Regulations” are the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469).
- (14) The “2020 Regulations” are the Civil and Family Justice (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (S.S.I. 2020/441).