

DRAFT CONSULTATION REGULATIONS

CLAUSE 51

The Special Educational Needs (Appeal) Regulations

Citation, commencement and application

1.—(1) These Regulations may be cited as the Special Educational Needs (Appeals) Regulations and come into force on 1 September 2014.

(2) These Regulations apply in relation to England.

Notices

2.—(1) Where a local authority makes a decision which may be appealed to the First-tier Tribunal, it shall provide the child's parent or the young person with a notice.

(2) The notice must be in writing and contain the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) information about the parent or young person's right to appeal to the First-tier Tribunal;
- (d) the time limits within which any appeal must be submitted to the First-tier Tribunal;
- (e) confirmation that the parent or young person that he or she may only make an appeal (other than an appeal falling within section 51(2) of the Act) if a mediation adviser has issued a certificate under section 51(4) or (5) of the Act.
- (f) the timescales for mediation
- (g) information on how to contact a mediation adviser to receive information about mediation and the provision of advocacy services which are available in the area of the local authority;
- (h) the telephone number, address and email address of at least one mediation adviser; and
- (i) details of the arrangements which the local authority has available for resolving disagreements under section 53.

3.—(1) The local authority must send the notice to the parent or young person as soon as reasonably practicable but no later than 7 days from the date on which the decision was taken.

(2) Where the decision concerns a request for an assessment under section 36 or a request for a reassessment under section 44(2), the notice must be sent to the parent or young person within [6] weeks from the date which the original request was received.

(3) A local authority does not need to comply with the time limit in paragraph (2) where any of the circumstances listed in [Regulation 5(4) of the indicative Assessment and Plan Regulations] apply.

Powers of the First-tier Tribunal

4. Before determining any appeal the First-tier Tribunal may, with the agreement of the parties correct any deficiencies in the EHC Plan which relate to the special educational needs or special educational provision for the child or young person.

5.—(1) When determining an appeal the powers of the First-tier Tribunal include the power to—

- (a) dismiss the appeal;

- (b) order the local authority to arrange an assessment of the child or young person under section 36 or a reassessment under section 44(2) where the local authority has refused to do so, where the appeal made under section 51(2)(a) or (d);
- (c) order the local authority to make and maintain an EHC Plan where the local authority has refused to do so, where the appeal is made under section 51(2)(b));
- (d) refer the case back to the local authority for them to reconsider whether, having regard to any observations made by the First-tier Tribunal, it is necessary for the local authority to determine the special educational provision for the child or young person, where the appeal is made under section 51(2)(b);
- (e) order the local authority to continue to maintain the EHC Plan in its existing form where the local authority has refused to do so, where the appeal is made under section 51(2)(c), (e) or (f);
- (f) order the local authority to continue to maintain the EHC Plan with amendments where the appeal is made under section 51(2)(c) or (e) so far as that relates to either the assessment of special educational needs or the special educational provision [and make any other consequential amendments as the First-tier Tribunal thinks fit];
- (g) order the local authority to substitute in the EHC Plan the school or other institution or the type of school or other institution, that is preferred by the parent or young person, where the appeal concerns, the specific school or other institution, or the type of school or other institution named in the EHC Plan, where the appeal is made under section 51(2)(c)(iii) or (iv);
- (h) where appropriate when making an order in accordance with paragraph (g) this may include naming—
 - (i) a special school or institution approved under section 41 where a mainstream school or mainstream post-16 institution is specified in the EHC Plan; or
 - (ii) a mainstream school or mainstream post-16 institution where a special school or institution approved under section 41 is specified in the EHC Plan.

Compliance with First-tier Tribunal Orders

6.—(1) Subject to paragraph (3), if the First-tier Tribunal makes an order following an appeal from a parent or young person requiring a local authority to perform an action, the authority shall perform that action within the period specified in paragraph (2).

(2) In the case of an order —

- (a) to dismiss an appeal against a determination to cease an EHC Plan, the local authority may cease to maintain the EHC Plan immediately.
- (b) to make an assessment or reassessment, the local authority shall within [2] weeks of the order being made notify the parent or young person that they will make the assessment or reassessment and shall—
 - (i) where, following the assessment or reassessment, it decides that it is not necessary for special educational provision to be made for a child or young person in accordance with an EHC plan, notify the child’s parent or the young person of its decision, giving the reasons for it as soon as practicable, and in any event within [10] weeks of the date of the First-tier Tribunal’s order; or
 - (ii) where, following the assessment or reassessment, it decides that it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan, it must send the finalised plan as soon as practicable, and in any event within [14] weeks of the date of the First-tier Tribunal’s order;
- (c) to make and maintain an EHC Plan, the local authority shall issue a draft EHC Plan within [5] weeks of the order being made;
- (d) to refer the case back to the local authority for them to reconsider, the local authority shall take the action within [2] weeks of the order being made to either serve a copy of the

proposed EHC Plan [under Regulation 13 of the indicative Assessment and Plan regulations] or give notice [under Regulation 2 of the indicative Appeal Regulations] of any decision not to maintain an EHC Plan;

- (e) (i) to amend an EHC Plan, the local authority shall amend the EHC Plan within 5 weeks of the order being made,
- (ii) to amend the name of the school or other institution or the type of school or other institution, the local authority shall make this amendment within [2] weeks of the order being made;
- (f) to continue an EHC Plan in its existing form, the local authority shall continue to maintain the EHC Plan with immediate effect; and,
- (g) to continue and amend an EHC Plan, the local authority shall continue to maintain the EHC Plan with immediate effect and amend the EHC Plan within [5] weeks of the order being made.

(3) The local authority need not comply with the time limits specified in paragraph (2)(b) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the child or their parent, or the young person during the relevant period;
- (b) the child or their parent or the young person is absent from the area of the authority for a continuous period of 2 weeks or more during the relevant period; and
- (c) the parent or the young person indicate that they wish to make representations to the authority about the Special Educational Provision in the EHC plan outside of the time specified in [Regulation 13(3) of the indicative Assessment and Plan regulations]

Unopposed Appeals

7.—(1) This regulation applies where the parent or young person has appealed to the First-tier Tribunal and the local authority notifies the First-tier Tribunal that it will not oppose the appeal.

(2) The appeal is to be treated as determined in favour of the appellant.

(3) Where an appeal is treated as determined in favour of the appellant under paragraph (2) the First-tier Tribunal is not required to make any order.

(4) Where the appeal concerns a request for a local authority to make an assessment under clause 36 or a review or reassessment under clause 44, then the local authority shall carry out the assessment or review or reassessment within [4] weeks of the local authority's notification to the First-tier Tribunal.

(5) Where the appeal concerns the contents of the EHC Plan, then the local authority shall amend the EHC Plan so far as that relates to either the assessment of special educational needs or the special educational provision within [4] weeks of the local authority's notification to the First-tier Tribunal.

(6) Where the appeal concerns the refusal of the local authority to make an EHC Plan, then the local authority will arrange to make an EHC Plan within [5] weeks of the local authority's notification to the First-tier Tribunal.

(7) For the purposes of paragraphs (4) to (6), the period shall begin on the day on which the local authority notifies the First-tier Tribunal that they have determined that they will not oppose the appeal.

(8) The local authority need not comply with the time limits specified in paragraphs (4) to (6) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the child or their parent or the young person during the relevant period;
- (b) the child or their parent or the young person are absent from the area of the local authority for a continuous period of not less than 2 weeks during the relevant period;

(c) any of the exceptions listed in [Regulation 13(3) of the indicative Assessment and Plan Regulations] apply.