



# Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### CHAPTER 4

#### AVOIDING AND RESOLVING DISAGREEMENTS

##### *Local authority arrangements*

#### **68 Arrangements for the avoidance and resolution of disagreements**

- (1) A local authority must make arrangements with a view both to avoiding and to resolving disagreements between—
  - (a) education bodies, and
  - (b) children or young people for whom the authority is responsible, or in the case of such children, their parents,about the exercise by education bodies of their functions under this Part.
- (2) A local authority must make arrangements with a view both to avoiding and to resolving disagreements between—
  - (a) proprietors of relevant institutions, and
  - (b) children or young people who have additional learning needs for whom the authority is responsible and, in the case of such children, their parents,about the additional learning provision made for children or young people.
- (3) The arrangements under subsections (1) and (2) must include provision for parties to a disagreement to access help in resolving it from persons who are independent of the parties.

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- (4) A local authority must promote the use of the arrangements made under this section.
- (5) A local authority must take reasonable steps to inform children, their parents and young people that arrangements made under this section do not affect any rights they may have to appeal to the Education Tribunal for Wales.
- (6) In this section, an “education body” means any of the following—
  - (a) the governing body of a maintained school;
  - (b) the governing body of an institution in the further education sector;
  - (c) a local authority.
- (7) In this section, “relevant institution” means—
  - (a) a maintained school in Wales or England;
  - (b) an institution in the further education sector in Wales or England;
  - (c) an independent special post-16 institution on the list maintained under section 56;
  - (d) an independent school in Wales or England;
  - (e) a non-maintained special school;
  - (f) an Academy.
- (8) For the purposes of this section and section 69 a local authority is also responsible for children it looks after who are not in its area.

## **69 Independent advocacy services**

- (1) A local authority must—
  - (a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible;
  - (b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider;
  - (c) refer any person who is a case friend for a child for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.
- (2) In this section “independent advocacy services” means advice and assistance (by way of representation or otherwise) to a child, a young person or a case friend—
  - (a) making, or intending to make, an appeal to the Education Tribunal for Wales under this Part,
  - (b) considering whether to appeal to the Tribunal, or
  - (c) taking part in or intending to take part in arrangements made under section 68.
- (3) In making arrangements under this section, a local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—
  - (a) the subject of an appeal to the Tribunal, or
  - (b) involved in investigating or adjudicating on such an appeal.
- (4) The arrangements may include provision for the local authority to make payments to, or in relation to, any person carrying out functions in accordance with the arrangements made under this section.

### *Appeals and applications to the Tribunal*

## **70 Appeal and application rights**

- (1) Subsection (2) applies to—
  - (a) decisions of the governing body of an institution in the further education sector in Wales or a local authority;
  - (b) individual development plans prepared or maintained by the governing body of an institution in the further education sector in Wales or a local authority;
  - (c) individual development plans revised by a local authority under section 27(6).
- (2) A child or young person and, in the case of a child, the child’s parent, may appeal to the Education Tribunal for Wales against the following matters—
  - (a) a decision by the governing body of an institution in the further education sector in Wales under section 11 or a local authority under section 13, 18 or 26 as to whether a person has additional learning needs;
  - (b) in the case of a young person, a decision by a local authority under section 14(1)(c)(ii) as to whether it is necessary to prepare and maintain an individual development plan;
  - (c) the description of a person’s additional learning needs in an individual development plan;
  - (d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);
  - (e) the provision included in an individual development plan under section 14(6) or 19(4) or the fact that provision under those sections is not in the plan;
  - (f) the school named in an individual development plan for the purpose of section 48;
  - (g) if no school is named in an individual development plan for the purpose of section 48, that fact;
  - (h) a decision under section 27 not to revise an individual development plan;
  - (i) a decision under section 28 not to take over responsibility for an individual development plan following a request to consider doing so;
  - (j) a decision to cease to maintain an individual development plan under section 31(5) or 31(6);
  - (k) a decision under section 32(2) that a governing body of a maintained school should cease to maintain a plan;
  - (l) a refusal to decide a matter on the basis that section 11(3)(b), 13(2)(b), 18(2)(b) or 29(2)(a) applies (no material change in needs and no new information that materially affects the decision).
- (3) A child or a child’s parent may apply to the Education Tribunal for Wales for a declaration that the child either does or does not have the capacity to understand—
  - (a) information or documents that must be given to a child under this Part, or
  - (b) what it means to exercise the rights conferred on a child by this Part.
- (4) The exercise of rights under this section is subject to—
  - (a) provision made by regulations under sections 74, 75, 83 and 85(8);
  - (b) section 85(4).

**71 Decisions on appeals and applications under section 70**

- (1) On appeal under section 70(2), the Education Tribunal for Wales may—
- (a) dismiss the appeal;
  - (b) order that a person has, or does not have, additional learning needs of a kind specified in the order;
  - (c) order the governing body of an institution in the further education sector in Wales or a local authority to prepare an individual development plan;
  - (d) order the governing body of an institution in the further education sector in Wales or a local authority to revise an individual development plan as specified in the order;
  - (e) order a governing body of a maintained school in Wales or an institution in the further education sector in Wales or local authority to continue to maintain an individual development plan (with or without revisions);
  - (f) order a local authority to take over responsibility for maintaining an individual development plan;
  - (g) order a governing body of an institution in the further education sector in Wales or local authority to review an individual development plan;
  - (h) remit the case to the governing body of an institution in the further education sector in Wales or local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.
- (2) On application under section 70(3) in respect of a child, the Education Tribunal for Wales may declare that the child either does or does not have the capacity to understand—
- (a) information or documents that must be given to a child under this Part, or
  - (b) what it means to exercise the rights conferred on a child by this Part.

**72 Appeal rights: detained persons**

- (1) Subsection (2) applies to—
- (a) decisions of a home authority in Wales under section 40;
  - (b) individual development plans kept by a home authority under section 42.
- (2) A detained person and, in the case of a detained person who is a child, the detained person's parent, may appeal to the Education Tribunal for Wales against the following matters—
- (a) a decision of the home authority as to whether a detained person has additional learning needs;
  - (b) a decision of the home authority as to whether it will be necessary for an individual development plan to be maintained for a detained person when he or she is released from detention;
  - (c) the description of a person's additional learning needs in an individual development plan;
  - (d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);
  - (e) the provision included in an individual development plan under section 40(7) or the fact that provision under that section is not in the plan;

- (f) the school named in an individual development plan for the purpose of section 48;
  - (g) if no school is named in an individual development plan for the purpose of section 48, that fact;
  - (h) a refusal to make a decision under section 40(2) on the basis that section 41(2)(b) applies (no material change in needs and no new information that materially affects the decision).
- (3) The exercise of rights under this section is subject to—
- (a) provision made by regulations under sections 74, 75, 83 and 85(8);
  - (b) section 85(4).

### **73 Decisions on appeals under section 72**

On appeal under section 72, the Education Tribunal for Wales may—

- (a) dismiss the appeal;
- (b) order that a detained person has or does not have additional learning needs of a kind specified in the order;
- (c) order a home authority to prepare an individual development plan;
- (d) order a home authority to revise an individual development plan as specified in the order;
- (e) remit the case to the home authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.

### **74 Regulations about appeals and applications**

- (1) Regulations may make further provision about appeals and applications to the Education Tribunal for Wales under this Part, including, for example, provision—
- (a) about other matters relating to an individual development plan against which appeals may be brought;
  - (b) about making and determining appeals or applications;
  - (c) conferring further powers on the Tribunal on determining appeals or applications;
  - (d) for unopposed appeals or applications.
- (2) Regulations under subsection (1)(c) may include provision conferring power on the Tribunal, on determining an appeal against a matter or an application, to make recommendations in respect of other matters (including matters against which no appeal or application may be brought).

### **75 Regulations about procedure**

- (1) Regulations may make provision about—
- (a) the initiation of an appeal or application under this Part;
  - (b) the proceedings of the Education Tribunal for Wales on an appeal or application under this Part.
- (2) Regulations under subsection (1) may include provision—

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- (a) as to the period within which, and the manner in which, appeals or applications are to be commenced;
  - (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any appeal or application is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another;
  - (c) for enabling any functions relating to matters preliminary or incidental to an appeal or application to be performed by the President or by the legal chair;
  - (d) for hearings to be conducted in the absence of a member other than the legal chair;
  - (e) as to the persons who may appear on behalf of the parties;
  - (f) for granting such rights to disclosure or inspection of documents or to further particulars as may be granted by the county court;
  - (g) requiring persons to attend to give evidence and produce documents;
  - (h) for authorising the administration of oaths to witnesses;
  - (i) for the determination of appeals or applications without a hearing in prescribed circumstances;
  - (j) as to withdrawal of appeals or applications;
  - (k) as to the award of costs or expenses;
  - (l) for assessing or otherwise settling any costs or expenses (and, in particular, for enabling such costs or expenses to be assessed in the county court);
  - (m) for the registration and proof of decisions and orders;
  - (n) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in prescribed circumstances;
  - (o) for enabling the Tribunal to stay proceedings;
  - (p) for adding and substituting parties;
  - (q) for enabling appeals or applications by different persons to be dealt with together;
  - (r) for an appeal or application under this Part to be heard, in circumstances prescribed in the regulations, with a claim under Chapter 1 of Part 6 of the [Equality Act 2010 \(c. 15\)](#).
- (3) Proceedings before the Tribunal must be held in private, except in prescribed circumstances.
- (4) Part 1 of the [Arbitration Act 1996 \(c. 23\)](#) does not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Part.

## 76 NHS Bodies: evidence and Tribunal recommendations

- (1) The Education Tribunal for Wales may, in relation to an appeal under this Part,—
- (a) exercise its functions to require an NHS body to give evidence about the exercise of the body's functions;
  - (b) make recommendations to an NHS body about the exercise of the body's functions.
- (2) Nothing in subsection (1) affects the generality of the powers to make regulations in sections 74 and 75.

- (3) An NHS body to whom a recommendation has been made by the Tribunal must make a report to the Tribunal before the end of any prescribed period beginning with the date on which the recommendation is made.
- (4) The report under subsection (3) must state –
  - (a) the action that the NHS body has taken or proposes to take in response to the recommendation, or
  - (b) why the NHS body has not taken and does not propose to take any action in response to the recommendation.

## **77 Compliance with orders**

- (1) If the Education Tribunal for Wales makes an order under this Part, the governing body or local authority concerned must comply with the order before the end of any prescribed period beginning with the date on which it is made.
- (2) The governing body or local authority concerned must make a report to the Tribunal stating whether and how it has complied with the order before the end of a period of 14 days beginning with the first day after end of the period prescribed under subsection (1).

## **78 Power to share documents and other information with the Welsh Ministers**

The Education Tribunal for Wales may share with the Welsh Ministers any document or other information in its possession that relates to whether or not an order or recommendation made by the Tribunal under this Part has been or will be complied with or followed.

## **79 Offence**

- (1) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—
  - (a) in respect of the disclosure or inspection of documents, or
  - (b) to attend to give evidence and produce documents,where that requirement is imposed by regulations under section 74 or 75 in relation to an appeal or application under section 70 or 72.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **80 Allowances for attendance at the Education Tribunal for Wales**

The Welsh Ministers may pay allowances for the purpose of or in connection with the attendance of persons at the Education Tribunal for Wales.

## **81 Appeals from the Education Tribunal for Wales to the Upper Tribunal**

- (1) A party to any proceedings under section 70 or 72 before the Education Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal for Wales in those proceedings.

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- (2) An appeal may be brought under subsection (1) only if, on an application made by the party concerned, the Education Tribunal for Wales or the Upper Tribunal has given its permission.
- (3) Section 12 of the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#) (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Education Tribunal for Wales.