
STATUTORY INSTRUMENTS

2015 No. 62

The Special Educational Needs and Disability
(Detained Persons) Regulations 2015

PART 3

Mediation

Information to be included in notices sent by a home authority

18. Where a notice sent by a home authority must include the information set out in this regulation, that information is—

- (a) any requirement to obtain a certificate in accordance with section 55(4) or (5) of the Act ^{M1} (“a mediation certificate”) before an appeal can be made to the First-tier Tribunal ^{M2};
- (b) contact details for the mediation adviser that the appropriate person should contact to obtain that certificate;
- (c) the timescales for requesting mediation;
- (d) the requirement to inform the home authority if the appropriate person wishes to pursue mediation; and
- (e) contact details for any person acting on behalf of the home authority whom the appropriate person should contact if they wish to pursue mediation.

Marginal Citations

M1 As applied by section 73(7) of the Act.

M2 The First-tier Tribunal was established under section 3 of the Tribunals, Courts and Enforcement Act 2007 c.15.

Requirement to consider mediation

19. Where an appropriate person is required to obtain a mediation certificate, he or she must contact the mediation adviser within 2 months of the date that written notice of the home authority's decision was sent, and inform the mediation adviser that he or she wishes to appeal and inform the mediation adviser whether they wish to pursue mediation.

Where the appropriate person does not wish to or fails to pursue mediation

20.—(1) Where an appropriate person who is required to obtain a mediation certificate informs the mediation adviser that he or she does not wish to pursue mediation, the mediation adviser must issue a mediation certificate under section 55(4) of the Act within 3 working days of being informed by the appropriate person.

(2) The mediation adviser may not issue such a certificate if the appropriate person did not contact the mediation adviser within 2 months of the date of the notice issued by the home authority.

(3) An appropriate person may seek leave to appeal to the First-tier Tribunal notwithstanding that he or she is required to obtain a mediation certificate and a mediation adviser has not issued a certificate to him or her, where the appropriate person has failed to comply with regulation 18 and the time for doing so has elapsed.

Mediation

21. Where the appropriate person has informed the mediation adviser that he or she wishes to pursue mediation, the home authority must arrange for mediation between it and the appropriate person, within 30 days from the date on which the mediation adviser was informed by the appropriate person that he or she wishes to pursue mediation.

Arrangements for mediation

22.—(1) The home authority must ensure that the mediation is attended by persons who have authority to resolve the mediation issues.

(2) The home authority must inform the appropriate person of the date and place of the mediation at least 5 working days prior to the mediation unless the appropriate person consents to this period of time being reduced.

Attendance at the mediation

23.—(1) The following persons may attend the mediation—

- (a) the parties to the mediation;
- (b) any advocate or other supporter that the appropriate person wishes to attend the mediation;
- (c) where the child's parent is a party to the mediation, the child (with the agreement of the child's parent, the mediator and the person in charge of the relevant youth accommodation where the child is detained);
- (d) where the detained person's alternative person ^{M3} is a party to the mediation, the young person (with the agreement of the alternative person and the mediator); and
- (e) any other person, with the consent of the parties to the mediation, or where there is no such agreement, with the consent of the mediator.

(2) Where the child's parent is a party to the mediation, the mediator must take reasonable steps to ascertain the views of the child about the issues being considered by the mediation.

(3) Where the young person's alternative person is a party to the mediation, the mediator must take reasonable steps to ascertain the views of the young person about the issues being considered by the mediation.

Marginal Citations

M3 Alternative person has the meaning given in regulation 32(3) of these Regulations.

Mediation certificate under section 55(5) of the Act

24.—(1) Where mediation is pursued before making an appeal to the First-tier Tribunal, the mediation adviser must issue a certificate under section 55(5) of the Act to the appropriate person within 3 working days of the conclusion of the mediation.

(2) Where mediation is pursued before making an appeal to the First-tier Tribunal and the home authority is unable to arrange for mediation within the period specified in regulation 21, the home authority must notify the mediation adviser of this fact as soon as possible after it realises that it is unable to arrange for mediation within that period.

(3) Where paragraph (2) applies, it is deemed that the appropriate person has participated in mediation, and the mediation adviser will issue a certificate under section 55(5) of the Act within 3 working days of being notified of this by the home authority, whether or not the appropriate person later participates in mediation.

Training, qualifications and experience of mediators

25. Mediators must have sufficient knowledge of the legislation relating to special educational needs, health and social care to be able to conduct the mediation.

Expenses

26.—(1) Subject to paragraph (2), the home authority when arranging the mediation must pay the expenses as described in the table below, to —

- (a) the child's parent, or
- (b) where the detained person has an alternative person, the alternative person attending the mediation—

Table

<i>Item</i>	<i>Description</i>
Travel Costs	Standard class public transport fares. A mileage rate of 25p per mile for travel by car or motorcycle. Taxi fares.
Repayment for loss of earnings	Loss of earnings up to £45.
Registered child or young person care expenses	Engagement of a registered child or adult carer at £5.35 per hour, per child or young person.
Overnight expenses	Expenses up to £81 per night for inner London or £71 per night for elsewhere or £21 per night if the stay is with family or friends.

(2) The home authority when arranging the mediation may require either or both of the following conditions before making payment of a claim for expenses under paragraph (1)—

- (a) payment is made with the prior agreement of the home authority;
- (b) payment is made upon receipt of satisfactory supporting evidence of the expenses claimed.

Steps to be taken by a home authority

27.—(1) This regulation applies where mediation has taken place and the parties to the mediation reach an agreement, such an agreement is to be recorded in writing (“the mediation agreement”).

(2) Where the issues in the mediation agreement are those on which the appropriate person has a right to appeal to the First-tier Tribunal, the home authority must comply with the time limits set out in regulation 29, as if the mediation agreement were an order of the First-tier Tribunal.

(3) Where the mediation agreement requires the home authority to do something in relation to which the appropriate person has no right of appeal to the First-tier Tribunal, the home authority must do that thing within two weeks of the date of the mediation agreement.

(4) The timescales referred to in paragraphs (2) and (3) do not apply where the parties to the mediation agree in writing to a different timescale.

Changes to legislation:

There are currently no known outstanding effects for the The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Cross Heading: Mediation.