
STATUTORY INSTRUMENTS

2015 No. 62

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

PART 4

Appeals

Powers of the First-tier Tribunal

28.—(1) Before determining any appeal brought under section 73 of the Act, 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 detained person.

- (2) When determining an appeal the powers of the First-tier Tribunal include the power to—
- (a) dismiss the appeal;
 - (b) order the home authority to arrange a detained person's EHC needs assessment under section 71 of the Act where the home authority has refused to do so, where the appeal is made under section 73(2)(a) of the Act;
 - (c) order the home authority to make and keep an EHC plan where the home authority has refused to do so, where the appeal is made under section 73(2)(b) of the Act;
 - (d) refer the case back to the home authority for them to reconsider whether, having regard to any observations made by the First-tier Tribunal, it is necessary for the home authority to determine the special educational provision for the detained person, where the appeal is made under section 73(2)(b) of the Act;
 - (e) order the home authority to substitute in the EHC plan the school or other institution or the type of school or other institution specified in the EHC plan, 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 73(2)(c)(i) or (ii) of the Act;
 - (f) where appropriate, when making an order in accordance with paragraph (e) this may include naming—
 - (i) a special school or institution approved under section 41 of the Act 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 of the Act is specified in the EHC plan.

Compliance with the orders of the First-tier Tribunal

29.—(1) This regulation applies if the First-tier Tribunal makes an order requiring a home authority to take any action.

(2) If the order requires a home authority to make a detained person's EHC needs assessment, the home authority within 2 weeks of the order being made must notify the appropriate person that it must make the assessment.

(3) If following a detained person's EHC needs assessment, the home authority—

- (a) decides it is not necessary for special educational provision to be made for the detained person, in accordance with an EHC plan, the home authority must notify the appropriate person of its decision, giving 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
- (b) decides that it is necessary for special educational provision to be made for the detained person, in accordance with an EHC plan, the home authority must send the finalised plan to the appropriate person under regulation 14 and those specified in regulation 13(2) as soon as practicable and in any event within 14 weeks of the date of the First-tier Tribunal's order.

(4) If the order requires a home authority to make and maintain an EHC plan, the home authority must—

- (a) issue a draft EHC plan within 5 weeks of the order being made, and
- (b) send a copy of the finalised EHC plan to the appropriate person under regulation 14(2) and those specified in regulation 13(2) as soon as practicable and in any event within 11 weeks of the date of the First-tier Tribunal's order.

(5) If the order refers the case back to the home authority for it to reconsider, the home authority must do so within 2 weeks of the order being made and must either send a copy of the draft EHC plan as required under regulation 12 or give notice as required under regulation 5 of any decision not to maintain an EHC plan.

(6) If the order requires the home authority to amend the name of the school or other institution or the type of school or other institution specified in the EHC plan, the home authority must issue the amended EHC plan within 2 weeks of the order being made.

(7) The home authority need not comply with the time limits specified in paragraph (4) and (5) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during that period of time;
- (b) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of 2 weeks or more during that period of time; or
- (c) the circumstances referred to in regulation 10(4)(a) apply.

(8) The time-limits for action by the home authority specified by this regulation may be varied by direction of the First-tier Tribunal.

Unopposed appeals

30.—(1) This regulation applies where the detained person has appealed to the First-tier Tribunal and the home authority notifies the First-tier Tribunal that it does not oppose the appeal before it submits a response.

(2) The appeal is to be treated as if it was determined in favour of the appellant and the First-tier Tribunal is not required to make an order.

(3) Where the appeal is made under section 73(2)(a) of the Act, the home authority must, within 2 weeks of the date it notified the First-tier Tribunal under paragraph (1), notify the appropriate person that it must make a detained person's EHC needs assessment.

(4) If following a detained person's EHC needs assessment, the home authority—

- (a) decides that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan, the home authority must notify the appropriate person of its decision, giving reasons for it as soon as practicable, and in any event within 10 weeks of the date it notified the First-tier Tribunal under paragraph (1), or
 - (b) decides that it is necessary for special educational provision to be made for the detained person in accordance with an EHC plan, it must send the finalised plan to the appropriate person under regulation 14(2) and those specified in regulation 13(2) as soon as practicable and in any event within 14 weeks of the date it notified the First-tier Tribunal under paragraph (1).
- (5) Where the appeal is made under section 73(2)(b) of the Act, the home authority must—
- (a) issue a draft EHC plan within 5 weeks of the date it notified the First-tier Tribunal under paragraph (1), and
 - (b) send a copy of the finalised EHC plan to the appropriate person under regulation 14(2) and those specified in regulation 13(2) within 11 weeks of the date it notified the First-tier Tribunal under paragraph (1).
- (6) Where the appeal is made under section 73(2)(c) of the Act, the home authority must issue the amended EHC plan within 2 weeks of the date it notified the First-tier Tribunal under paragraph (1).
- (7) The home authority need not comply with the time limits specified in paragraphs (4) or (5) if it is impractical to do so because—
- (a) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during the relevant period,
 - (b) where the detained person is a child, the child's parent is absent from the area of the home authority for a continuous period of not less than 2 weeks during the relevant period, or
 - (c) the circumstances referred to in regulation 10(4)(a) apply.