



## 2016 CHAPTER 8

PROSPECTIVE

### *Appeals*

#### **Appeal following decision not to amend statement following review**

**8.—**(1) Part 2 of the 1996 Order is amended as follows.

(2) In Article 18(1)(c) (appeal against contents of statement) after “Article 15” insert “ or after conducting a review under Article 19 ”.

(3) In Article 19 (reviews of statements)—

(a) after paragraph (1) insert—

“(1A) If after conducting a review of a statement maintained under Article 16 the Authority does not propose to amend the statement, it shall give notice in writing of its decision and the reasons for making it to—

(a) the child concerned, if the child is over compulsory school age,  
or

(b) the parent of the child concerned in any other case.

(1B) In such a case the person to whom the notice is given shall have the right to receive, on request, a copy of any advice given to the Authority on which the decision is based.

(1C) A notice under paragraph (1A) shall provide information as to the right of appeal under Article 18(1) and contain such other information as may be prescribed.”;

(b) in paragraph (2)—

(i) at the end of sub-paragraph (b) omit the word “and”;

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(ii) after sub-paragraph (b) insert—

“(ba) that where the Authority is under a duty under this Article to serve any notice, the duty must be performed within the prescribed period; and”.

### **Child under 2: appeals against contents of statement or failure to make statement**

9.—(1) Part 2 of the 1996 Order is amended as follows.

(2) In Article 21 (assessment of educational needs of children under 2) at the end add—

“(5) If, after making an assessment under this Article, the Authority decides not to make a statement of the child's special educational needs, it shall give written notice to the child's parent—

- (a) of its decision and of the reasons for making it; and
- (b) of the right of appeal under Article 21ZA(1)(a).

(6) In such a case the child's parent shall have a right to receive on request a copy of any advice given to the Authority on which the decision was based.

(7) Where the Authority makes or amends a statement under this Article it shall serve a copy of the statement, or the amended statement, on the parent of the child concerned.

(8) It shall, at the same time, give the parent written notice of the right to appeal under Article 21ZA(1)(b).

(9) A notice under paragraph (5) or (8) must contain such other information as may be prescribed.

(10) Regulations shall provide that where the Authority is under a duty to serve a notice under paragraph (5) or (8), the duty must be performed within the prescribed period.”.

(3) After Article 21 insert—

#### **“Appeals against decisions under Article 21**

**21ZA.**—(1) The parent of a child may appeal to the Tribunal against—

- (a) a decision of the Authority, following an assessment under Article 21, not to make a statement under that Article;
- (b) where the Authority does make such a statement—
  - (i) the description in the statement of the Authority's assessment of the child's special educational needs, or
  - (ii) the special educational provision specified in the statement.

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- (2) On an appeal under paragraph (1)(a) the Tribunal may—
- (a) dismiss the appeal;
  - (b) order the Authority to make and maintain a statement under Article 21; or
  - (c) remit the case to the Authority for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the Authority to determine the special educational provision which any learning difficulty the child has may call for.
- (3) On an appeal under paragraph (1)(b) the Tribunal may—
- (a) dismiss the appeal; or
  - (b) order the Authority to amend the statement, so far as it describes the Authority's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal thinks fit.”.
- (4) In Article 18A (unopposed appeals)—
- (a) in paragraph (1)(a) for “or 20A” substitute “, 20A or 21ZA(1)(a)”; and
  - (b) in paragraph (4) after sub-paragraph (b) insert—
    - “(ba) in the case of an appeal under Article 21ZA(1)(a), make a statement under Article 2”;
  - (c) in paragraph (5) for “required by paragraph (4)(a) to make a statement under Article 16” substitute “ required by paragraph (4) to make a statement ” and omit “under that Article”.

### **Mediation in connection with appeals**

- 10.—**(1) Part 2 of the 1996 Order is amended as follows.
- (2) In Article 21B (resolution of disputes) for paragraph (4) substitute—
- (3A) The Authority shall make arrangements for the provision of mediation to a person who intends to appeal to the Tribunal.
  - (3B) Where a person requests mediation in accordance with such arrangements, the Authority must arrange for and participate in the mediation.
  - (4) Arrangements made by the Authority under this Article shall provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of disputes or (as the case may be) of acting as mediator; and for the purposes of this paragraph a person is not independent if he or she is employed by the Authority.”.
- (3) In Article 21B(7) at the beginning insert “ Except as provided by Article 21C(3), ”.

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(4) After Article 21B insert—

**“Information and advice as to mediation in connection with certain appeals**

**21C.**—(1) Subject to paragraph (2), this Article applies where a person intends to appeal to the Tribunal under—

- (a) Article 17(2)(b);
- (b) Article 18(1);
- (c) Article 20(3)(b);
- (d) Article 20A(8)(b);
- (e) Article 21ZA(1);
- (f) paragraph 13(2)(b) of Schedule 2.

(2) But this Article does not apply in relation to an appeal which relates only to—

- (a) the school or other institution named in a statement maintained under Article 16;
- (b) the type of school or other institution named in a statement under that Article;
- (c) the fact that a statement does not name a school or other institution.

(3) The person may appeal only if a mediation adviser has issued to that person a certificate under paragraph (4); and any provision of this Part enabling a person to appeal has effect subject to this paragraph.

(4) A mediation adviser must issue a certificate under this paragraph to a person if the mediation adviser has provided that person with information and advice about pursuing mediation with the Authority.

(5) If the person has informed the mediation adviser that he or she wishes (or, as the case may be, does not wish) to pursue mediation, the certificate under paragraph (4) must state that fact.

(6) In this Article—

- (a) reference to mediation with the Authority is a reference to mediation in accordance with arrangements made under Article 21B(3A); and
- (b) “mediation adviser” means an independent person who can provide information and advice about pursuing mediation with the Authority;

and for the purposes of this Article a person is not independent if he or she is employed by the Authority.

(7) Regulations may make provision in relation to mediation with the Authority and in particular—

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- (a) about giving notice;
- (b) imposing time limits;
- (c) about who may attend mediation;
- (d) where a child's parent is a party to mediation, requiring the mediator to take reasonable steps to ascertain the views of the child;
- (e) about the provision of advocacy and other support services for a person pursuing mediation with the Authority;
- (f) enabling the Authority to take prescribed steps following the conclusion of mediation;
- (g) about the training, qualifications and experience of mediation advisers and mediators.”.

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