

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 2 – Additional Learning Needs

Chapter 4 – Avoiding and Resolving Disagreements

Local authority arrangements

Section 68 - Arrangements for the avoidance and resolution of disagreements

151. **Section 68** requires local authorities to make arrangements for both avoiding and resolving the following
- a. disagreements between local authorities or governing bodies on the one hand, and children, their parents and young people on the other in relation to functions under the Act (subsection (1)); and
 - b. disagreements between proprietors (as defined in section 579(1) of the 1996 Act and section 99(1)) of various types of school and other institutions in Wales or England (see the list in subsection (7)) on the one hand and on the other hand, children, their parents and young people about the ALP made for children or young people.
152. This requirement includes providing access to help from an independent person to resolve a disagreement. Under section 9 local authorities must take reasonable steps to make the arrangements known to various people, including children and their parents, young people and governing bodies in their area. Local authorities must also promote their use (section 68(4)). The code may impose further requirements on local authorities in respect of the arrangements under section 4(5). Local authorities are also under a duty to inform children, their parents and young people that these arrangements do not affect their rights to appeal to the Tribunal (subsection (5)). Subsection (8) provides that local authorities' arrangements under this section will also apply to children they look after, but are not in their area.

Section 69 - Independent advocacy services

153. **Section 69** requires local authorities to make arrangements for independent advocacy services providing advice and assistance to a child, a young person or a case friend (see section 85) who is making, intending to make, or considering making, an appeal to the Tribunal or taking part in, or intending to take part in, arrangements for the resolution of disagreements made under section 68. There is also a duty to refer such children, young people and case friends (where the local authority is responsible for the particular child or young person - see section 85) to the advocacy service provider. A local authority is responsible for a child or young person if the person is in the authority's area (see section 99(4)) and by virtue of section 68(8), local authorities' arrangements under this

section will also apply to children it looks after, but who are not in its area. This allows such looked after children to access the advocacy arrangements of the local authority that looks after them, or those of the local authority in whose area they are.

154. Local authorities must have regard to the principle that the independent advocacy service arrangements should be independent of any person who is the subject of appeal or involved in the appeal (subsection (3)).
155. Local authorities are also required, under section 9, to take reasonable steps to ensure that various people, including children (and their parents), young people and governing bodies in their area, are made aware of these arrangements.

Appeals and applications to the Tribunal

Section 70 - Appeal and application rights

156. **Section 70** provides children, parents of children and young people with rights of appeal to the Tribunal against decisions of governing bodies of FEIs and decisions of local authorities and in relation to IDPs prepared or maintained by such a body or authority or revised by an authority under section 27(6). It does not allow for appeals to be brought against actions of governing bodies of maintained schools, but their actions can be referred to local authorities for reconsideration (see sections 26, 27 and 32) and there are appeal rights against the authorities' actions in reconsidering matters (as set out in subsection (2)).
157. Subsection (2) sets out the matters against which a child, child's parent or young person may appeal to the Tribunal, for example about a decision that a child or young person has or does not have ALN.
158. By virtue of section 85, in particular circumstances, case friends can be appointed on behalf of a child who does not have sufficient understanding and intelligence to understand some of the matters covered by this Act and they can exercise specific rights of the child under the Act, including the right to bring an appeal under section 70(2). The child's lack of understanding could be because of their young age, or for other reasons, such as a learning disability. Section 84 provides for who determines whether a child lacks understanding.
159. This section also enables a child or a child's parent to apply to the Tribunal for a declaration that the child either does or does not have the capacity (level of understanding necessary) to make decisions or understand information in relation to their ALN (subsection (3)).

Section 71 - Decisions on appeals and applications under section 70

160. **Section 71** sets out the orders or other decisions that the Tribunal may make on an appeal under section 70(2) (Appeal and application rights). It also provides for the Tribunal, on an application under section 70(3) as to whether or not a child has capacity, to make a declaration upon the matter.

Section 72 - Appeal rights: detained persons

161. **Section 72** lists the matters against which a detained person (whether a child or young person) and a detained child's parent may appeal to the Tribunal. These are broadly equivalent in substance to the appeal rights for children and young persons who are not detained (section 70), but reflect the different duties owed to detained persons.

Section 73 - Decisions on appeals under section 72

162. **Section 73** sets out the orders or other decisions that the Education Tribunal for Wales may make on an appeal under 72 (Appeal rights: detained persons).

Section 74 - Regulations about appeals and applications

163. This section enables the Welsh Ministers to make regulations containing further provision about appeals and applications to the Tribunal under Part 2, including, for example, about other matters relating to an IDP against which appeals may be brought, about making and determining appeals or applications, conferring further powers on the Tribunal on determining an appeal or application, and unopposed appeals or applications.

Section 75 - Regulations about procedure

164. This section enables the Welsh Ministers to make regulations about the initiation of an appeal or application under Part 2 and the proceedings of the Tribunal on such an appeal or application. Subsection (2) lists provisions which may be included in the regulations and subsection (3) provides that proceedings before the Tribunal must be held in private, except in circumstances prescribed in regulations.

Section 76 – NHS Bodies: evidence and Tribunal recommendations

165. **Section 76** provides that the Tribunal may exercise its functions to: require an NHS body to give evidence about the exercise of the body's functions; and make recommendations to an NHS body about the exercise of the body's functions, in both cases in relation to an appeal under Part 2. It also requires the NHS body to which a recommendation has been made, to report to the Tribunal, within any period prescribed in regulations, on either: the actions it has taken or proposes to take in response to the recommendation; or if it has not and does not intend to take any action, why that is.
166. 'NHS body' is defined in section 99(1) as a Local Health Board or an NHS trust (see also the power in section 99(8)).

Section 77 - Compliance with orders

167. Under this section if the Tribunal makes an order under Part 2 (e.g. requiring a local authority to revise an IDP), the governing body or the local authority concerned must comply with the order before the end of the period (if any) prescribed in regulations, beginning with the date on which it is made. Subsection (2) requires the body or authority concerned to report to the Tribunal on compliance with the order within the 14 day period starting on the day after the date by which it must have complied with the order (under subsection (1)).

Section 78 – Power to share documents and other information with the Welsh Ministers

168. This section gives the Tribunal power to share with the Welsh Ministers information about compliance with a Tribunal order or recommendation made under Part 2. However, this does not necessarily mean that it can share all information in any particular instance, as it will depend upon all the circumstances, whether it would be compatible with rights under the European Convention on Human Rights and would be subject to any other restrictions in law (for example under legislation on data protection).
169. This may assist the Welsh Ministers in monitoring the operation of the system provided for in the Act and inform consideration of whether to take action under other powers (e.g. under Part 2 of the School Standards and Organisation (Wales) Act 2013) in response to apparent non-compliance.

Section 79 - Offence

170. This section provides that those who fail, without reasonable excuse, to comply with a requirement (imposed by regulations under section 74 or 75) related to the disclosure

These notes refer to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (c.2) which received Royal Assent on 24 January 2018

or inspection of documents or to attend the tribunal to give evidence and produce documents, is guilty of an offence punishable by a fine not exceeding level 3 on the standard scale.

Section 80 - Allowances for attendance at the Education Tribunal for Wales

171. This section provides a power for Welsh Ministers to pay allowances in relation to attendance at the Tribunal.

Section 81 - Appeals from the Education Tribunal for Wales to the Upper Tribunal

172. [Section 81](#) allows a party to any proceedings about ALN before the Education Tribunal for Wales to appeal (with permission – see subsection (2)) to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal for Wales in those proceedings.
173. Section 12 of the Tribunals, Courts and Enforcement Act 2007 sets out what the Upper Tribunal can do where it finds that a decision involved an error of law in an appeal under section 11 of that Act: it may set aside the decision and if so, section 11 sets out the further options as to how to proceed. In effect section 81(3) applies this to appeals to the Upper Tribunal from the Education Tribunal under section 81.