

Draft consultation regulations

Clause 54

The Appeals by Children (Special Educational Needs and Disability Claims) (Pilot) (England) Order 2014

Citation and commencement

1. This Order may be cited as the Appeals by Children (Special Educational Needs and Disability Claims) (Pilot) (England) Order 2014, and comes into force on [INSERT DATE].

Pilot Scheme

2. The pilot scheme specified in Schedule 1 by which children may make an appeal or bring a claim as set out in section [54] of the Children and Families Act 2014, has effect.

Pilot Scheme: local authorities

3. Schedule 2 specifies the local authorities where the pilot scheme shall operate and the ages of the children in each pilot local authority area to whom the pilot scheme shall apply.

SCHEDULE 1

Pilot Scheme

Interpretation

1. In this Schedule—

“child” or ‘children’ means a child or children of an age specified in Schedule 2 in relation to the corresponding pilot area;

“pilot area” means the area of a local authority mentioned in Schedule 2;

“pilot local authority” means a local authority specified in Schedule 2;

“the Act” means the [Children and Families Act 2014].

Right of a child to appeal to the First-tier Tribunal

2.—(1) A child may exercise any of the rights of appeal which are conferred to a parent in respect of that child:

(a) under section 51 of the Act; or

(b) any regulations made pursuant to section 51 of the Act.

(2) The child’s right of appeal is exercisable concurrently with the parent’s rights.

Equality Act 2010: Right of a child to make a claim against a School

3.—(1) A child may exercise any of right of appeal which is conferred on a parent in respect of that child under paragraph 3 of Part 2 of Schedule 17 of the Equality Act 2010.

(2) The child’s right of appeal is exercisable concurrently with the parent’s rights.

Mediation

4.—(1) Before being able to exercise any right of appeal under paragraph 2 of this Schedule, the child will be required to participate in mediation to the same extent which the parent of that child is required to participate under section 52 of the Act.

(2) There shall be no requirement for the pilot local authority to arrange mediation under section 52(6) where [in respect of the same appeal] either:

(a) the child indicates that they do not wish to participate in mediation, and the parent indicates that they would like to participate in mediation; or

(b) the parent indicates that they do not wish to participate in mediation, and the child indicates that they would like to participate in mediation.

(3) Where subparagraph (2) applies, the mediation adviser must issue a certificate under subsection 52(4) of the Act to the child and the parent of that child.

(4) Where a child and the child’s parent appeal on the same matter, and both participate in the mediation

the mediation adviser must issue a certificate pursuant to subsection 52(5) of the Act.

Notice

5.—(1) Where a pilot local authority is required to provide notice to a child’s parents advising them of a right to appeal to the First-tier Tribunal, the pilot local authority must also provide that notice to the child.

Advice and Information for Children

6. The advice and information arranged under section 32 of the Act must also be arranged for a child in the pilot area to the same extent which it would be arranged for the child's parent.

Case friends

7.—(1) A child may choose a case friend to assist them in exercising any of the rights or discharging any of the obligations imposed by paragraphs 2 and 3 of this Schedule.

(2) A case friend is a person who shall—

- (a) make representations on behalf of the child, and;
- (b) exercise the rights of the child, on the child's behalf.

8.—(1) A child will not be allowed to conduct proceedings without a case friend where a First-tier Tribunal has made a finding that the child does not have sufficient understanding to conduct proceedings.

(2) Where subparagraph (1) applies then the First-tier Tribunal must direct the child to appoint a case friend.

Application to be a case friend

9.—(1) A person who wishes to act as a case friend must submit a declaration of suitability to the First-tier Tribunal.

(2) The declaration of suitability must include—

- (a) the contact details for the person who wishes to act as the case friend;
- (b) the full name and date of birth of the child for whom they wish to act as case friend;
- (c) that persons relationship to the child.

(3) The declaration of suitability must also include—

- (a) the views of the child in relation to the person's wish to act as a case friend; or
- (b) an explanation as to why the child's views have not been established.

(4) The declaration of suitability must also include confirmation that the person seeking to be the case friend will ensure that—

- (a) all steps taken by them as case friend will be for the benefit of the child and take account of the child's views;
- (b) that they have no interest adverse to the child;
- (c) they will make representations fairly and competently.

(5) The declaration of suitability must be signed by the person who wishes to act as the case friend.

(6) The person who wishes to act as the case friend must notify, and send a copy of the declaration of suitability to—

- (a) the local authority;
- (b) the child and
- (c) the child's parent.

Appointment of a case friend

10.—(1) Where a person has submitted a declaration of suitability this must be considered by the First-tier Tribunal.

(2) Where the declaration of suitability is approved by the First-tier Tribunal, the Tribunal shall arrange for copies of all documents and notices relating to the appeal to be sent to the case friend.

(3) Where subparagraph (2) applies references in this pilot scheme to sending documents or providing notice to the child must be construed as references to sending documents or giving notice to the case friend instead of to the child where appropriate.

Removing a case friend

11.—(1) The First-tier Tribunal may direct that a person may not continue to act as a case friend.

(2) Where subparagraph (1) applies then the First-tier Tribunal may direct that the child appoint a new case friend.

Independent Advocacy Services

12.—(1) Each pilot local authority must—

- (a) make arrangement for the provision of independent advocacy services in their area;
- (b) refer any child in their area or case friend of a child in their area who requests independent advocacy services to a provider of independent advocacy services.

(2) In this paragraph “independent advocacy services” are services providing advice and assistance (including by way of representation or otherwise) to a child—

- (a) making, or intending to make, or considering an appeal under paragraph (2);
- (b) making, or intending to make, or considering making a claim under paragraph (3);
- (c) taking part or intending to take part in mediation under paragraph (4),

which comply with the requirements of paragraph (3).

(3) The advocacy services provided must be provided by a person who is—

- (a) independent of the subject of an appeal;
- (b) independent of those involved in investigating or adjudicating on such an appeal; and
- (c) not an employee of the pilot local authority.

(4) A pilot local authority must take such steps as they consider appropriate for making the arrangements under this paragraph known to the following persons in their area—

- (a) children;
- (b) head teachers, governing bodies, proprietors and principals of schools and post-16 institutions in the pilot area; and
- (c) such other persons as they consider appropriate.

SCHEDULE 2

Local Authorities

<i>Pilot local authority</i>	<i>Age of children</i>
[INSERT NAME OF LA]	[INSERT AGE OF CHILDREN WITH RESPECT TO WHOM THE PILOT SCHEME APPLIES IN THIS AREA]
[INSERT NAME OF LA]	[INSERT AGE OF CHILDREN WITH RESPECT TO WHOM THE PILOT SCHEME APPLIES IN THIS AREA]
[INSERT NAME OF LA]	[INSERT AGE OF CHILDREN WITH RESPECT TO WHOM THE PILOT SCHEME APPLIES IN THIS AREA]
[INSERT NAME OF LA]	[INSERT AGE OF CHILDREN WITH RESPECT TO WHOM THE PILOT SCHEME APPLIES IN THIS AREA]