

Section 70 complaints

The law¹ allows a parent or other interested party to make a complaint to Scottish Ministers if a responsible body has failed to carry out a legal duty under education law. This is called a section 70 complaint. This factsheet explains the process and when and how you can make a section 70 complaint.

What is a section 70 complaint?

Section 70 of the **Education (Scotland) Act 1980**, referred to in this factsheet as the **1980 Education Act**, allows a parent or other interested party to make a complaint to Scottish Ministers if a responsible body, such as an local authority, has not carried out their duties under the 1980 Education Act or any other Act relating to education.

Section 70 applies only to statutory duties that must be carried out under an Act of Parliament. It does not apply to common-law duties, such as a duty of care, that have come from previous court-case decisions. It is not about questioning the decisions of responsible bodies. For example, Scottish Ministers cannot overturn a local authority's decision just because they disagree with it.

The Scottish Ministers have a power to make an order under section 70 to require a duty to be carried out. To find out if there has been a failure to carry out a duty, the responsible body and the person making the complaint will be asked for evidence. If it seems there has been a failure, Education Scotland will investigate the case and act as advisers to the Scottish Ministers. After this investigation, if the Scottish Ministers think the responsible body has not carried out a duty, they may make an order requiring it to do so under section 70.

What disputes can be resolved through a section 70 complaint?

You can use section 70 if you think a local authority (or other responsible body such as the managers of a grant-aided or independent school) has failed to carry out a statutory duty relating to education.

¹ Education (Scotland) Act 1980

What disputes can be resolved in other ways?

- Exclusions or the refusal to place a child in a mainstream school (called a 'placing request')

Appeal to the local Education Appeal Committee.

- Decisions that a local authority has made about a co-ordinated support plan (CSP), a placing request for a special school, or its duties for post-school transition (for example, about the planning that must happen before leaving school for young people with additional support needs)

Complain to the Additional Support Needs Tribunals for Scotland.

- Decisions by grant-aided or independent schools

Usually you should complain to the school managers or governors.

For more information, see **Enquire factsheet: Resolving disagreements**.

Who can complain under section 70?

A parent, legal representative or any other interested party can make a complaint under section 70 of the 1980 Education Act. Your child may also be able to make a section 70 complaint. For more information, see **Enquire factsheet: Children's rights to education and additional support in school**.

When should I complain under section 70?

Schools and local authorities should do all they can to work with and involve parents. The use of formal complaint procedures should be rare. However, ways of resolving disagreements were introduced by the ASL Act². You should try the following procedures before complaining under section 70:

Mediation

Mediation is a voluntary process where a neutral third person (a mediator) helps those involved in a disagreement to find a shared solution. Disagreements about the education of children with additional support needs can be referred to an independent mediation service. You can use mediation at any time during a disagreement. Local authorities must provide independent mediation services free of charge for parents and young people. For more information, see **Enquire factsheet: Mediation**.

Resolving disputes using independent adjudication

Independent adjudication is a way of resolving disputes about additional support needs. An independent adjudicator, outside the local authority, formally reviews your case. They will consider what has led to the dispute and make a report with recommendations. If your child attends a school that is not in your local authority area as a result of a placing request, the independent adjudicator will review your case with the local authority responsible for the school.

²The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

Independent adjudication will normally deal with issues that cannot go to the Additional Support Needs Tribunal. For more information, see **Enquire factsheet: Resolving disputes using independent adjudication.**

A step-by-step guide to complaining under section 70

An application form for a section 70 complaint is available from the Scottish Government or you can obtain a copy from Enquire.

In the application you need to put the statutory duties you think the responsible body (usually the local authority) has not met. You should say what your complaint is and when the failure you are complaining about took place. You should provide evidence to support your complaint. If you have more than one complaint, you should say clearly which failed duty your evidence relates to.

After receiving your application, Scottish Government officials will contact the responsible body concerned to inform them of your complaint and request a response.

The responsible body's response will be shared with you. You will be asked if you wish to give any further supporting evidence in light of what the responsible body has said.

Any extra information you give will be shared with the responsible body. It will then have an opportunity to comment.

To make sure your case is resolved as quickly as it can be, Scottish Government officials will try to exchange information with you and the responsible body twice at most before deciding whether further investigation is needed.

Scottish Government officials will examine the evidence supplied by both sides.

They will decide whether:

- they need more information from you or the responsible body, or
- Her Majesty's Inspectors from Education Scotland should investigate further.

If Education Scotland thinks more investigation is needed and its inspectors find that the responsible body has failed to carry out a duty under education law, the Scottish Ministers may make an order. The order will instruct the responsible body to carry out the duty within a set time limit.

There are no time limits in law on how long the section 70 complaint process can take. The process can be long if difficult issues are involved.

Where to get more information

To make a section 70 complaint about additional support for learning you can download an application form from the Scottish Government website at www.gov.scot/Resource/0041/00418795.pdf or, you can ask Enquire to send you a copy.

You can also write to:

Section 70 Complaints
Scottish Government
Support and Wellbeing Unit
Area 2-C South
Victoria Quay
Edinburgh
EH6 6QQ

Publications

Enquire factsheet: Children's rights to education and additional support in school (2018)

Enquire factsheet: Resolving Disagreements (2018)

Enquire factsheet: Mediation (2018)

Enquire factsheet: Resolving disputes using independent adjudication (2018)

Enquire information sheet: Steps to avoid and resolve disagreements about additional support for learning (2018)

ENQUIRE

Helping you understand additional support for learning

Enquire is the Scottish advice service for additional support for learning. We provide independent and impartial advice to parents and carers, to practitioners in education, social work and health services, and to children and young people themselves.

www.reach.scot offers advice to young people struggling at school. With practical tips on what can help and young people sharing their views and experiences on all sorts of life issues, Reach offers the 'go-to' source of advice to help pupils make the most out of their education.

This factsheet has been awarded the Clear English Standard.



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Enquire factsheet: Section 70 complaints © Enquire January 2018



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and funded by the Scottish Government