

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 a 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.

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. In some cases, Scottish Ministers may ask Her Majesty's Inspectors of Education to act as an adviser to the investigation. After the investigation, if 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. Only current alleged failures can be investigated through a section 70 complaint. It cannot be used to investigate past issues.

Who can complain under section 70?

A parent, young person, legal representative or any other interested party can make a complaint under section 70.

¹Education (Scotland) Act 1980

What should I try before complaining 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. Before you complain under section 70, you should try other ways of resolving your disagreement, for example:

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.

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**.

Local authority complaints procedures

All local authorities have their own formal complaints procedures. You can find information about the procedure to use in your area on your local authority's website. Or you can contact them directly and ask for a complaint form.

For more information, see **Enquire information sheet: Steps to avoiding and resolving disagreements**.

What disputes can be resolved in other ways?

Appeal to the local Education Appeal Committee about:

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

Appeal to the Additional Support Needs Tribunal about:

- **a local authority's decision about co-ordinated support plans (CSPs), placing requests for special schools, or children's capacity to use their rights**
- **a local authority's failure to carry out their planning duties for post-school transition**
- **disability discrimination in schools.**

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

For decisions by grant-aided or independent schools, you should complain to the school managers or governors.

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

How do I complain under section 70?

To make a section 70 complaint, you can download an application form from the Scottish Government website at www.gov.scot/Resource/0041/00418795.pdf

You can also write to:

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

Or email: EdSSection70@gov.scot

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

What happens next?

After Scottish Ministers have received your application, they will have a maximum of 15 working days to decide whether they can investigate your complaint under section 70 and whether other ways of resolving the dispute have been tried.

This time will also be used to make sure you and the Scottish Government officials are clear about why you are complaining.

If Scottish Government officials decide an investigation is needed, they will ask you and the responsible body to give written evidence. They may need to make contact more than once. Scottish Ministers may ask Her Majesty's Inspectors of Education to carry out its own investigation and make recommendations to them.

Scottish Ministers will then consider all the evidence and decide whether there has been a failure to carry out a duty. They will inform both parties of the outcome.

If Scottish Ministers decide there has been a failure of duty, they will make an order requiring the responsible body to carry out the duty within a set time. Scottish Ministers will contact the responsible body to make sure it has complied with the order.

How long does the section 70 complaint process take?

There is a maximum of 105 working days, starting from the date the complaint is received until a decision is reached and both parties are informed of the outcome. If Scottish Ministers make an order for a responsible body to carry out a duty, the responsible body will receive this during the 105-working-day limit. After this, the responsible body must carry out the duty within the time limit set by Scottish Ministers.

Where to get more information

The Scottish Government has produced guidance for users of the section 70 complaints process:

www.gov.scot/Publications/2017/12/8601/0

Publications

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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