

Consultation on Section 70 of the Education (Scotland) Act 1980 – A guidance document for users of the section 70 process

Analysis of Responses

December 2017

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Background

1. The Scottish Government opened a consultation¹ on Section 70 of the Education (Scotland) Act 1980 – a guidance document for users of the section 70 process on 28 August 2017. The purpose of the consultation was to seek views from the public and interested stakeholders on the draft guidance prior to the publication of the final guidance.
2. The guidance on section 70 complaints to Scottish Ministers is intended to provide support to all those involved in the section 70 process, including those who are considering or who have made a section 70 complaint. The guidance document explains the changes made by section 24 of the Education (Scotland) Act 2016 and the Section 70 (Procedure) (Scotland) Regulations 2017 to the section 70 process.
3. The guidance seeks to set out in detail what can be considered within a section 70 complaint, what cannot be considered, and in those circumstances how a complaint relating to certain matters may be made. The guidance is also intended to provide information on the way in which complaints are considered and provide advice and guidance on how to make a complaint.
4. The draft guidance document was developed in partnership with a range of key stakeholders including representatives from the Advisory Group for Additional Support for Learning.

Overview of consultation responses

5. The consultation questionnaire contained 11 questions. All questions with the exception of question 13, sought a yes or no answer with additional text fields allowing respondents to provide comments to explain their selection.
6. Fourteen responses from individuals and organisations were received following the consultation. Responses were received from two individuals, six local authorities, Bord na Gaidhlig, Scottish Independent Advocacy Alliance, Children and Young People Commissioner Scotland, Scottish Public Service Ombudsman, Centre for excellence for looked after children in Scotland and National Parent Forum Scotland.
7. All respondents were given the opportunity to submit their responses anonymously, or for their responses to be anonymised in reporting. Prior to publication, all responses were moderated to ensure no inappropriate language or information which could potentially identify individuals by name.
8. Twelve out of fourteen respondents have given consent for their responses to be made public. These responses have been published on the Scottish Government's Consultation Hub and they can be viewed by accessing the following link:
https://consult.gov.scot/supporting-learners/users-of-the-section-70-complaints-process/consultation/published_select_respondent

¹ <https://consult.gov.scot/supporting-learners/users-of-the-section-70-complaints-process/>

Action as a result of consultation

9. The majority of responses received were positive. Most respondents commented that the guidance was clear, concise and easy to navigate. Clarification on the type of evidence required from both parties in making a complaint, and responding to a complaint, was welcomed. Positive comments were received on the introduction of statutory timescales and the breakdown provided in the guidance of these in practice. Positive comment was also received about the requirement for steps to be taken to resolve complaints or disputes as early as possible, at a local level, prior to consideration of making a complaint under section 70.
10. Some comments reflected that parents may find the guidance difficult to navigate. Amendments have been made to address this. In addition, we are working closely with Enquire, funded by the Scottish Government to provide advice and information on additional support for learning, to ensure their resources are updated to reflect the amendments to the regulations. In addition, minor amendments have been made to strengthen parts of the guidance in respect of the following areas:
- Provide consistency in terminology when referring to a complaint;
 - Further clarity provided on who an interested party may be;
 - Additions made to the section referencing other complaints mechanisms to clarify in what circumstances the use of these mechanisms may be more appropriate and to be clear about the role of SPSO and CYPSCS in this;
 - Provide clarity on who administers the complaint on behalf of Scottish Ministers;
 - Further information provided on the circumstances when a case may be fast-tracked to HMIE for investigation;
 - The timescales for the process have been further clarified to make clear that the complaint process must be completed within a maximum of 105 working days, from the date the complaint is received by Scottish Ministers.

Analysis of responses

Introduction information

Question 1: Is the information provided in the introduction clearly set out?

Answer	No. of respondents	% of all respondents
Yes	7	50%
No	3	21%
Don't Know	0	-
Not Answered	4	29%
Total	14	

* = percentage totals may not always equal 100 due to rounding

11. Most of those who responded to this question indicated that they felt the information provided in the guidance was clearly set out. The vast majority of those who were satisfied with the document's clarity offered no further comment. One comment

asked that the guidance define that a responsible body includes grant aided and independent schools.

12. Some of those who responded to this question indicated that the information in the introduction was not clearly set out. Comments included that the guidance should be more user friendly and more accessible for parents, children and young people; the terminology in the guidance should be consistent and refer to a complaint, rather than a reference; and the role of HMIE should be clarified.
13. In response to the comments raised about accessibility, the guidance has been amended in places to provide more clarity. The Scottish Government are working closely with Enquire, the advice and information service for additional support for learning, to ensure that the resources that they produce for parents and carers are updated to reflect the amendments to the legislation. This will also include resources aimed at children and young people.
14. In response to the comments about terminology, complaint is now used throughout the guidance to ensure consistency. Regarding the role of HMIE, on balance, it was felt that this was sufficiently explained later in the guidance.

Before making a reference under section 70

Question 2: Is the information sufficient clear?

Answer	No. of respondents	% of all respondents
Yes	5	36%
No	5	36%
Don't Know	0	-
Not Answered	4	29%
Total	14	

15. Many of those who responded to this question indicated that they felt the information provided was sufficiently clear and provided no further comment. One comment asked for clarity on whether there is an expectation that local dispute resolution has been explored in the first instance.
16. Of the responses that indicated the information in this section was not sufficiently clear, one asked for it to be presented in a different way, such as a flowchart or table, another asked for more information to be included on how a complainer can access support from an advocate, another comment raised concern about the information on other dispute resolution mechanisms only relating to additional support for learning. A final comment asked for it to be made clear that a section 70 complaint could only be made when the local complaints procedure has been completed.
17. In response to the comment about completing local complaints procedures before making a complaint under section 70, there is no legal requirement for this to have taken place and the guidance therefore cannot make this clear. Information on other complaints mechanisms is provided in a later section and it was felt that presenting the information in the form of a table would have been unclear.

Information is provided in this section about sources of support, such as Let's Talk ASN and Enquire. It was felt that these organisations are best placed to signpost individuals to advocacy support and information on advocacy has not been included in the guidance.

Interaction with other complaints mechanisms

Question 3: Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Answer	No. of respondents	% of all respondents
Yes	7	50%
No	3	21%
Don't Know	1	7%
Not Answered	3	21%
Total	14	

18. Some of those who answered this question indicated that there were areas which were missing or required strengthening. Of the comments received some suggested small amendments which have been made to provide clarity on the appropriateness of section 70 complaints and other complaints mechanisms. The comments received from SPSO and the CYPCS about their complaints procedures have been reflected in the amended guidance.
19. One comment asked that the GTCS Fitness to Teach scheme be mentioned in this section with section 70 complaints highlighted as an alternative. Reference to this scheme has not been included as it was felt this may lead to confusion about when a section 70 complaint would be appropriate. Another comment asked for the role of independent advocates to be promoted. This has not be included in this section for the reasons outlined in paragraph 17 above.

The Section 70 complaints process

Question 4: Is the information clear? Is the structure correct? Is there any information which should be added or removed?

Answer	No. of respondents	% of all respondents
Yes	4	29%
No	6	43%
Don't Know	0	-
Not Answered	4	29%
Total		

20. The majority of those who answered this question indicated that there was no information which should be added or removed.
21. Comments from those who indicated that there was information missing included, providing clarity on when a complaint would be fast-tracked to HMIE, and the process to be followed in those circumstances and; a request for further clarity on

the timescales that apply. The guidance has been amended to take these comments into account.

How to make a reference

Question 5: Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Answer	No. of respondents	% of all respondents
Yes	3	21
No	5	36
Don't Know	1	7
Not Answered	5	36
Total	14	

22. The majority of those who answered this question indicated that they were satisfied with the information provided in this section.
23. Of those who indicated this section could be strengthened, minor amendments were suggested which have been reflected in the updated guidance.

How to respond to a reference

Question 6: Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Answer	No. of respondents	% of all respondents
Yes	1	7
No	7	50
Don't Know	1	7
Not Answered	5	36
Total	14	

24. The majority of those who responded to this question indicated that they were satisfied with this information provided in this section.
25. Of those who indicated this section could be strengthened, minor amendments were suggested which have been reflected in the updated guidance.

The role of HM Inspectors of Education and Application form

Question 7: Are there any areas missing, requiring strengthening, or are which are not required and could be removed?

Answer	No. of respondents	% of all respondents
Yes	1	7
No	7	50

Don't Know	1	7
Not Answered	5	36
Total	14	

26. A large majority of those who responded to this question indicated that they were satisfied with the information provided in this section.
27. Of those who indicated this section could be strengthened, minor amendments about the timescales and process involved in an HMIE investigation were suggested and have been reflected in the updated guidance.

Guidance structure

Question 8: Does the structure help the reader to follow/use the guidance effectively?

Answer	No. of respondents	% of all respondents
Yes	8	57
No	2	14
Don't Know	0	-
Not Answered	4	29
Total	14	

28. A large majority of those who answered this question indicated that the structure of the guidance allowed the user to follow the guidance effectively.
29. One comment suggested that the structure could be improved to outline the role of HMIE earlier in the document. On balance, it was felt that the positioning of the information about HMIE was appropriate within the guidance.

Question 9: Is there anything in the body of the document that you would like moved to an annex or anything in an annex that you would like moved to the body of the document?

Answer	No. of respondents	% of all respondents
Yes	0	-
No	9	64
Don't Know	0	-
Not Answered	5	36
Total	14	

30. None of those who responded to this question indicated that any of the information should be moved to an annex. No comments were provided.

General

Question 10: Is this guidance helpful?

Answer	No. of respondents	% of all respondents
Yes	8	57
No	2	14
Don't Know	-	-
Not Answered	4	29
Total	14	

31. The large majority of those who responded indicated that the guidance was helpful. Respondents indicated that the guidance was clear and concise and provides information about how to access the system and how long the process will take. It was also noted that it helpfully sets out what evidence would be required.
32. A Comment was made about the appropriateness of the guidance for parents and carers and children and young people. As noted above, steps have been taken within the guidance and elsewhere to address this. One comment asked for links to websites to be provided. As noted above, readers are signposted to Enquire and Let's Talk ASN which is the most appropriate route for them to access further information.

Question 11: Are there any other comments you would wish to make about the draft guidance?

33. Most of the comments made here reiterate comments that have been made about earlier sections.
34. One comment asked for clarity on how users will be made aware of the section 70 process. It is felt that through this guidance and resources produced by Enquire, those who wish to make a complaint under section 70 will have access to appropriate information.
35. A further comment asked that the Scottish Government collate information gathered as part of the section 70 process and report it to the Education and Skills Committee. However, due to the small number of complaints received, this would prove difficult and would lead to the identification of individuals. In addition, it is not the role of the Committee to oversee the section 70 process.
36. A further comment highlighted looked after children within the section 70 process and asked that the guidance to draw attention to the rights of looked after children. It also asked for research to be carried out into why looked after children are under-represented within the complaints and tribunal process. This is out of the scope of this guidance. However, the Scottish Government will continue to work to improve outcomes for all children, including those who are looked after.



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