



The Empowerment Project - Stronger Voices for Fairer Futures

Note on Accountability & Section 70 of the Education (Scotland) Act 1980

26 February 2026

**Key Takeaways**

- STAND is concerned about reports from parents and carers that, when they raise concerns about the education of neurodivergent children with the Scottish Government, they are told that it is the responsibility of the local authority to meet a child's needs.
- This note highlights the existence of a mechanism which could be used by the Scottish Government to hold local authorities to account for failures to discharge statutory duties relating to education and additional support for learning.

**Contents**

**Introduction**..... 2

**Scottish Government v Local Authorities - Accountability**.....2

**Section 70**..... 2

    How is it triggered?..... 3

    How does it work?..... 3

    What are the consequences?..... 3

    The relevant duties..... 3

**Under-utilisation**..... 3

**STAND's Message**..... 4

## **Introduction**

A key theme arising from the work that STAND does with the parents and carers of neurodivergent children is the lack of accountability faced by schools and local authorities. This note highlights an example of a mechanism which could be used by the Scottish Ministers to hold the local authorities accountable for the failures which occur every day, in particular the failure to discharge statutory duties under additional support needs legislation.

Parents and carers tell us that when they contact the Scottish Government about concerns they are often told that the decisions of local authorities which lead to these concerns are not ones that can be interfered with by the Scottish Government, and that it is the local authority's responsibility to provide education to a particular child rather than the Scottish Government's.

## **Scottish Government v Local Authorities - Accountability**

However, we do not feel this properly reflects the reality of the legal context. Firstly, there is always the option of legislative reform. Secondly, the Scottish Government has responsibility for producing guidance, for example the Statutory Guidance issued under the Education (Additional Support for Learning) (Scotland) Act 2004, which can be used to influence the situation. Presumably there is also scope for conditions to be attached to funding arrangements with local authorities too.

Specifically, there is a mechanism under the Education (Scotland) Act 1980 which could be used in the short term which allows the Scottish Government to investigate local authorities and hold them to account for failure to discharge statutory education duties. Failures to discharge duties in relation to neurodivergent children are flagged to the Scottish Government regularly, yet there does not seem to be evidence that this mechanism is being utilised.

## **Section 70**

Section 70 of the Education (Scotland) Act 1980 is a statutory provision that grants Scottish Ministers the power to investigate and enforce the discharge of statutory duties by education authorities (and other bodies responsible for providing education in Scotland).

## How is it triggered?

Section 70 allows the Scottish Ministers to investigate whether an education authority has discharged a duty either in response to a complaint by an interested party, or “otherwise”, i.e. even if no complaint by an interested party has been made.

## How does it work?

The procedure for this is laid out in [Regulations](#). There is also [guidance](#) which gives more detail.

If a complaint is made, the Scottish Ministers must establish within 15 days whether or not the complaint is a relevant complaint. If they consider it to be a relevant complaint, they must then investigate it within 105 days.

If no complaint has been made, but the Scottish Ministers otherwise establish that there may have been a failure to discharge a duty, they may investigate and, if they do, they must do so within 105 days.

## What are the consequences?

If the Scottish Ministers are satisfied a failure has occurred, they may issue a legally binding order requiring the local authority to discharge the duty by a specified date.

## The relevant duties

The importance of this power for STAND relates to the types of duties that can be enforced, which include the duties under the Education (Additional Support for Learning) (Scotland) Act 2004 (except where that duty is enforceable by application to Tribunal)

This is important given the limitations of the rights of families to apply to the Tribunal.

## Under-utilisation

From what we can gather from the results of FOISA requests, section 70 is significantly underused. The number of complaints reaching a formal determination is low overall, and there seem to be areas where there is high dissatisfaction amongst families but no evidence of investigation under section 70.

This is disappointing, especially given that the mere initiation of an investigation may persuade a local authority to properly engage in constructive dialogue with families.

## **STAND's Message**

We urge the Committee to request further information from the Cabinet Secretary for Education and Skills about the use of this process, both in respect of the mechanism for responding to complaints and in respect of the power to investigate local authorities, even without a formal complaint having been made, when it comes to the attention of the Scottish Ministers that a potential failure has arisen.

In particular, we would like reassurance that the Scottish Government does not leave the responsibility of challenging the decisions of local authorities to the parents and carers of neurodivergent children themselves, when they are already struggling. Given the obvious difficulties being faced by neurodivergent children in the education system in Scotland, a proactive approach by the Scottish Government in order to hold schools and local authorities to account would be appreciated.