

EXTENDING THE RIGHTS OF CHILDREN WITH CAPACITY UNDER THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004 (AS AMENDED) AND REPEALING SECTION 70 OF THE EDUCATION (SCOTLAND) ACT 1980

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

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	Individual	Group/Organisation
	<input type="checkbox"/>	<input checked="" type="checkbox"/> Please tick as appropriate
(a)	Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)? Please tick as appropriate Yes <input type="checkbox"/> No <input type="checkbox"/>	
(c)	The name and address of your organisation will be made available to the public (in the Scottish	

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes:

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

Are you content for your response to be made available?
Please tick as appropriate
 Yes
 No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?
Please tick as appropriate ✓

**EXTENDING THE RIGHTS OF CHILDREN WITH CAPACITY UNDER THE
EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND)
ACT 2004 (AS AMENDED) AND REPEALING SECTION 70 OF THE
EDUCATION (SCOTLAND) ACT 1980
CONSULTATION PAPER**

**EXTENDING RIGHTS TO CHILDREN WITH LEGAL CAPACITY UNDER
THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2004 (AS AMENDED) & ON PROPOSALS IN
RELATION TO SECTION 70 OF THE EDUCATION (SCOTLAND) ACT 1980**

Introduction

This consultation paper seeks your views on two proposals relating to extending the rights of children with legal capacity under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) (“the 2004 Act”). Your views are also sought on repealing section 70 of the Education (Scotland) 1980 Act (“the 1980 Act”).

Responses are required by 28 March 2014. Your views will contribute to the decision making process on potential primary and secondary legislation. General information about the Scottish Government consultation process can be found at Annex B and a list of organisations that are being consulted is attached at Annex C. If you have any queries please contact Dorothy Warren at:

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Or

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Prior to discussing the specifics of the consultation, the consultation paper will commence with background information on the current rights provided to children under the 2004 Act.

Background

Currently, in terms of the 2004 Act parents of children with additional support needs hold certain rights on behalf of their children. Young people (defined in the 2004 Act as “person over school age who has not attained the age of eighteen years”) with capacity hold rights on their own behalf. Where a young person does not have capacity, their rights are transferred to their parent.

What is capacity?

Under section 3 of the 2004 Act a child or young person lacks capacity to do something if the child or young person is incapable of doing it by reason of mental illness, developmental disorder or learning disability or of inability to communicate because of a physical disability.

However, a child or young person is not to be treated as lacking capacity by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).

On 20 October 2008 The United Nations Committee on the Rights of the Child (UNCRC) issued recommendations in a report for the United Kingdom that the state party:

“Ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational need tribunals”

At that time, the Scottish Government’s response to the UNCRC report did not include proposals to extend the rights of appeal in additional support needs cases to children with capacity as it was considered that the rights of the child were already served in terms of the 2004 Act. Under the 2004 Act, when establishing whether a child has additional support needs or the level of provision requested, an education authority has a duty to seek and take account of the views of the child, unless the authority are satisfied that the child lacks capacity to express a view (section 12).

However, following changes made by the Equality Act 2010, from 18 March 2011 a child with capacity can bring a disability discrimination case to the Additional Support Needs Tribunal. Therefore, currently, a child with capacity could bring a disability discrimination case to the Additional Support Needs Tribunal but not bring an additional support for learning case before the Tribunal.

Prior to commenting on what range of rights you think children should have, firstly it is important to establish if you think children with capacity should have their own rights.

Question 1.

(a) Do you think children with capacity should have their own rights in relation to Additional Support for Learning?

Proposal A: Extending the rights of Children under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

The Scottish Ministers propose to extend the rights of children with capacity under the additional support for learning legislation in line with the recommendations made by the UNCRC. In law, children are generally considered to have capacity at around age 12. However, some children with additional support needs may not have capacity. This would be a decision to be agreed between the family and the authority concerned based on a range of evidence available to them. Where a child is considered not to have capacity it would be for a parent to pursue the rights on the child's behalf.

This consultation aims to identify your views on the proposal to extend the appeal rights of children with capacity under the additional support for learning legislation as well as the possibility of fully extending the rights currently afforded to parents and to young people (aged 16 over) with capacity to children under the 2004 Act.

Additional Support Needs Tribunals for Scotland

Under the 2004 Act, any young person, or where the young person lacks capacity, the parent, may refer to the Additional Support Needs Tribunals for Scotland ("the Tribunal") the following decisions or failures of an education authority including:

- a decision to prepare a co-ordinated support plan;
- a decision not to prepare a co-ordinated support plan;
- a decision to continue a co-ordinated support plan following a review;
- a decision to discontinue a co-ordinated support plan following a review;
- a failure to meet the timescales for preparing the co-ordinated support plan;
- a decision not to comply with a request to establish whether a child or young person has additional support needs requiring a co-ordinated support plan;
- the information contained in the co-ordinated support plan by virtue of section 9(2)(a) of the 2004 Act;
- the failure of the authority to review the co-ordinated support plan by the expiry date (i.e. 12 months from the date it was prepared) or within the timescale set by regulations;
- the decision of the authority to refuse a request from a parent or young person to review the co-ordinated support plan;
- the failure by the authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives;

- the failure to respond to a request to establish whether a co-ordinated support plan is required where the authority has said they intend to establish that a co-ordinated support plan is required but have failed to respond in the time specified in Regulations.
- a refusal of a placing request for a special school, special class or unit, and
- failures over post-school transition duties.

Extending the right to appeal to the Tribunal to children with capacity would be in line with the afore mentioned recommendation made by the UNCRC (20th October 2008), strengthening the rights of children, including looked after children, by ensuring they have an opportunity to have their cases heard at the Tribunal and are not restricted by their circumstances. The proposal also complements the proposals put forward by the Children and Young People (Scotland) Bill (as introduced in the Scottish Parliament on 17th April 2013) by putting children's rights at the centre of public services.

Under the terms of the Equality Act 2010, Schedule 17, Part 3, a claim may be made to the Tribunal that a responsible body has contravened Chapter 1 of Part 6 because of a person's disability by –

- (a) the person's parent;
- (b) where the person has capacity to make the claim, the person.

Therefore, in line with this, the Scottish Ministers propose that the rights to appeal to the Tribunal are extended under the 2004 Act to children with capacity.

Question 2.

(a) Do you think the Scottish Ministers should extend to children with capacity the right to make appeals to the Additional Support Needs Tribunals for Scotland under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)?

(b) Please offer comments to support your answer to 2(a).

Proposal B: Extend all rights under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children.

The Scottish Ministers will consider proposals to extend all rights under the 2004 Act to children with legal capacity. This change in rights would not only allow any child with capacity to bring a claim to the Tribunal but to also request an assessment on the provision of support from the education authority. Details of the rights currently afforded to parents and young people by the 2004 Act are detailed below.

Rights provided by the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

Parents and young people (aged 16 and over) who have capacity currently have the right to:

- ask the education authority to establish whether a child or young person has additional support needs
- request a specific type of assessment or examination (or both) at any time, including when the education authority proposes to formally identify whether a child or young person has additional support needs, or requires a co-ordinated support plan
- receive information or advice about a child or young person's additional support needs
- ask the education authority responsible for their or their child's education to find out whether they or their child requires a co-ordinated support plan, and to review an existing plan
- request a specific type of assessment and/or examination to find out whether they or their child require a co-ordinated support plan
- be asked for their views and have them taken into account and noted in the child or young person's co-ordinated support plan
- receive a copy of their or their child's co-ordinated support plan
- have their case heard by an Additional Support Needs Tribunal if they are involved in a dispute relating to a co-ordinated support plan.
- make a placing request to a special school if they or their child has additional support needs
- appeal against the education authority's decision to refuse their placing request. The appeal would either go to an education appeal committee or to an Additional Support Needs Tribunal depending on the situation
- use free independent mediation services
- have a supporter or advocate present at any discussions
- request independent adjudication
- apply to the Additional Support Needs Tribunal (called 'making a reference') for decisions about a CSP and certain other issues. In particular, a parent or young person may make a reference about the decisions of an education authority:

- to prepare or not prepare a CSP
- to continue or discontinue a CSP
- regarding the timescales for the CSP
- not to comply with a request to establish whether a child or young person needs a CSP
- to refuse a placing request where a CSP exists, or is required but has not yet been prepared, or if an appeal against a refusal of a placing request has not yet been considered

- have a supporter or advocate present at a Tribunal

hearing.

Question 3.

(a) Do you think the Scottish Ministers should extend the rights which are currently afforded to parents and young people (with capacity) under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children to enable them to take up their own rights where they have capacity to do so?

(b) Please offer comments to support your answer to 3(a).

Section 70 of the Education (Scotland) Act 1980

Under section 70 of the Education (Scotland) Act 1980 any interested party can make a complaint to the Scottish Ministers that a responsible body (the managers of a school or education establishment, an education authority or other persons) has failed to discharge a duty imposed on them by or for the purposes of any enactment relating to education. Following an investigation of the complaint the Scottish Ministers may make an order declaring the responsible body to be in default in respect of the duty requiring them to discharge the duty. Section 70 also allows the Scottish Ministers to make such an order, following an investigation, without their first having been a complaint by any interested person.

At the Education and Culture Committee on 26 June 2012, Michael Russell, Cabinet Secretary for Education and Lifelong Learning, expressed dissatisfaction with the complaints mechanism under section 70 and committed to look carefully at how complaints are handled and restitution is sought. Following consideration of this issue, the Scottish Ministers propose to repeal section 70 of the Education (Scotland) Act 1980, thus removing the complaints mechanism under this section. Repealing section 70 would not however remove the right to make a complaint regarding education issues .

Complaints Mechanisms

The Scottish Ministers are keen that any issues which arise between parents, carers or young people and schools and local authorities are resolved at as local a level as possible. Therefore the Scottish Ministers consider that any issue which a parent, carer or young person feels should be addressed should initially be discussed with a teacher or the head teacher at school. Independent schools and education authorities have their own complaints procedures which can be followed. Depending on the nature of the complaint there are further methods of resolving complaints.

Specific Complaints – Additional Support for Learning

Under the 2004 Act, a parent or young person, depending on the nature of the complaint, has the right to:

- access independent mediation
- make a referral to independent adjudication
- appeal to the Tribunal

As part of their proposal to repeal section 70, the Scottish Ministers propose amendments to the 2004 Act, which will ensure complainants have attempted to resolve their complaint at as local a level as possible. This proposal entails complainants having “attempted” to resolve their complaint through independent mediation before accessing independent adjudication and the new mechanism for alleged failure of duty . The proposal also aims to ensure that complaints which fall under the jurisdiction of the Tribunal will remain with the Tribunal and will not be considered by Scottish Ministers.

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Specific complaints – Independent Schools

The legislative framework for the registration and regulation of independent schools is contained within sections 98 to 103B of the Education (Scotland) Act 1980. If the Scottish Ministers are satisfied that an independent school is objectionable, section 99 of the 1980 Act provides that they shall serve a Notice of Complaint on the proprietor of the school.

The Grounds for serving a section 99 notice of complaint are:

- that efficient and suitable instruction is not being provided at the school, having regard to the ages and sex of pupils attending thereat;
- that the welfare of a pupil attending the school is not adequately safeguarded and promoted there;
- that the school premises or any part thereof are unsuitable for a school;
- that the accommodation provided at the school premises is inadequate or unsuitable, having regard to the number, ages and sex of the pupils attending the school;
- that a condition imposed by Part V of the 1980 Act on the carrying on of the school is not being or has not been complied with;
- that any part of the school premises is disqualified from being used as a school;
- that any accommodation provided at the school premises is disqualified from being used as such or is being used as such for pupils of such number or such age or sex from which use it is so disqualified;
- that the proprietor of the school is disqualified from being the proprietor of an independent school, barred from regulated work working with children, a prescribed person or otherwise not a proper person to be the proprietor of an independent school;
- that a teacher in the school is disqualified under Part 5 of the Education (Scotland) Act 1980 from being a teacher in any school, barred from regulated work with children, a prescribed person or otherwise not a proper person to be a teacher in any school;
- that the proprietor has not provided the Registrar with the information required by the Scottish Ministers annually, or has failed to inform the Registrar of a change in the school's particulars.

The legislation also allows for the Scottish Ministers to consider imposing a condition on the continued registration of an independent school if there is evidence which would suggest the school may become objectionable under any of the above grounds.

Specific Complaints – Schools Closures

The powers held under section 70 of the Education (Scotland) Act 1980 are an important safeguard against non-compliance with the requirements of the Schools (Consultation) (Scotland) Act 2010 (the 2010 Act); in particular with the conditions which Ministers may impose on education authorities when they grant consent to a school closure proposal. Ministers are keen to ensure that there is no potential for these conditions to be ignored without penalty. Therefore, it is proposed that section 70 of the 1980 Act will be retained in respect of provisions of the Schools (Consultation) (Scotland) Act 2010.

The Scottish Public Service Ombudsman

The Scottish Public Services Ombudsman Act 2002 consider complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure in relation to public bodies or organisations providing public services. Before making any complaint to the Ombudsman, complainants must have been through the formal complaints procedure of the organisation concerned. Ombudsman complaints reviewers are fully aware of the dispute resolution mechanisms available under Education legislation and therefore will advise complainants to access the appropriate Education dispute resolution mechanism before they will then consider any complaint further.

If a complaint can be considered by the Ombudsman, they will make initial enquiries with the organisation concerned and investigate if anything can be done to resolve the dispute.

They will review:

- what happened;
- what should have happened;
- the basis of the complaint;
- why it is still not resolved after complaining;
- what would put things right for the complainant.

Complaints reviewers are impartial, which means that they take into account both sides of the story. To do this, they will collect and look at evidence from the complainant and the organisation concerned.

This may involve:

- looking at complaint paperwork such as complaint forms or letters;
- talking to the complainant and the organisation complained about;
- getting answers to questions;
- getting copies of documents;
- taking expert advice if required.

The Ombudsman makes decisions in written form, usually in a letter. This will inform whether or not the Ombudsman has upheld or not upheld the complaint. It will also contain any recommendations the Ombudsman has made to put things right.

If an investigation report finds that someone suffered injustice or hardship as a result of maladministration or service failure and that injustice or hardship has not been, or will not be, remedied the Ombudsman, in terms of the Ombudsman Act, can lay a 'special report' before the Scottish Parliament and the cost of producing and distributing a 'special report' can be recovered from the organisation against which the original complaint was made. Since the inception of the Ombudsman in 2002, there has been no occasion to issue a 'special' report. However, if this did occur it would then be for the Scottish Parliament to decide what, if any, action it wished to take.

The Ombudsman publishes anonymous reports of decisions on its website. The published reports raise awareness and share learning from complaints to help organisations improve their handling of complaints.

Further information on the Scottish Public Service Ombudsman can be accessed on its website: <http://www.spsso.org.uk/>

Question 4.

(a) Do you think the Scottish Ministers should amend the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to ensure that disagreements are resolved at as local a level as possible, therefore ensuring that a complainant has attempted independent mediation?

(b) Please offer comments to support your answer at 4(a).

Question 5.

(a) Do you think the Scottish Ministers should repeal section 70 of the Education (Scotland) Act 1980, removing the opportunity to complain directly to the Scottish Ministers with the exception of provisions of the Schools (Consultation) (Scotland) Act 2010?

(b) If yes, do you agree that, in future, the Scottish Public Service Ombudsman should consider failure of duty complaints which are currently considered under section 70 of the Education (Scotland) Act 1980?

(c) With the exception of provisions of the Schools (Consultation) (Scotland) Act 2010, do you think that the Ministerial powers under section 70 to make an order to carry out a duty should be transferred to the Scottish Public Service Ombudsman ?

(d) Please offer comments to support your answer to 5(a), (b) and (c)

CONSULTATION QUESTIONS

Dyslexia Scotland welcomes the opportunity to respond to this consultation.

In general terms, as an organisation representing people with dyslexia, we would like to make the point that the consultation itself is not dyslexia-friendly. The wording in the preamble to the questions and in the questions themselves is at times too lengthy, not in plain English and therefore not accessible. The consultation also leaves a lot of questions unanswered, making it difficult for respondents to answer in a fully informed way.

This in itself means that many people who have an interest in the subject matter of the consultation will not have had the opportunity to participate. Dyslexia is hereditary so it is likely that many parents with dyslexia as well as young people who would like to contribute their views may have been prevented from doing so.

1(a) Do you think children with capacity should have their own rights in relation to Additional Support for Learning?

Yes – however please see under 1(b) the comments received from a parent through one of Dyslexia Scotland's branches. We hear concerns such as this one on a daily basis about children and young people whose dyslexia is not identified or only identified after considerable delay. Children should have their own rights in relation to Additional Support for Learning – this should include the right for their additional support needs to be identified early so that the right support is put in place.

1(b) Please offer comments to support your answer to 1(a).

Because this would enable children to pursue claims on their own behalf and establishes equality of arms between disabled children with additional support needs and children with additional support needs who are not disabled.

It also means that in the case of looked after children where the local authority has parental responsibility children will be able to take forward their own claims without having to ask the local authority to do it for them. Indeed, it would be difficult to envisage how currently a local authority could take action against itself in these circumstances.

The consultation paper does not discuss whether children exercising their rights in the above regard would have access to legal aid. Presumably they would?

However, there is a fundamental concern about the logic of promoting the rights of children and young people to more learning support without ensuring that the right to be assessed for dyslexia or other learning difficulties is made easier. The following is an example submitted to Dyslexia Scotland for inclusion in this response of a young person whose dyslexia was not identified until 18 years old:

“My daughter was not diagnosed with dyslexia until she was 18 years old despite my raising concerns with nursery, primary and secondary schools. Within 2 months of starting college, questions were being asked by lecturers 'are you dyslexic' and we then paid a considerable amount of money to get her diagnosis confirmed privately. Missing out on an earlier diagnosis has had a huge impact on her exam results and future life chances.

Unfortunately she is not the only one. As a college lecturer, I frequently see students who are bright and intelligent but 'can't do exams'. It is no surprise to find that a referral to our learning support service results in some type of undiagnosed learning difficulties.

These young people see themselves as 'thick' - their own words - and lack confidence in their abilities. Again this has an impact on their futures

I have two main concerns with this new paper

1. It is all very well promoting the rights of children and young people to more learning support but it is equally as important that the right to be tested for dyslexia or other learning difficulties is made easier. At present it is a fight to get help and teachers are too willing to label families as pushy parents when they question the service that is being provided. Even if you get an agreement for referral the waiting list is months long and frequently the child slips through the net or moves onto another stage of education when the process has to begin from scratch again.

2. Where is the money coming from? Part of the problem with non diagnosis is a shortage of money. If a child is diagnosed then that may mean providing

them with a support worker. As these individuals are often the first to go in these days of economic difficulties, they are very thin on the ground. Teachers are discouraged from referring children because there is no money for support workers or psychologists to make the diagnosis. Everyone suffers - teachers, the child, the family and classmates.”

2(a) Do you think Scottish Ministers should extend the right to enable children to make an appeal to the Additional Support Needs Tribunals for Scotland under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)?

Yes

2(b) Please offer comments to support your answer to 2(a).

This extension is to be welcomed for the reasons put forward above. It supports the principle of putting children’s rights at the centre of public services.

The consultation document states on page 7 that ‘In law, children are generally considered to have capacity at around age 12. However, some children with additional support needs may not have capacity. This would be a decision to be agreed between the family and the authority concerned based on a range of evidence available to them’.

What happens if a parent or parents and the local authority disagree on whether or not a child has capacity?

3(a) Do you think Scottish Ministers should extend the rights which are currently afforded to parents and young people (with capacity) under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children to enable them to take up their own rights where they have capacity to do so?

Yes in principle. However, the consultation paper does not explain how potential disputes between parents and children are to be resolved. For example, where a parent wants to make a placing request for a child to attend a particular school but the child with capacity does not wish for

this...how is this to be resolved.....at a Tribunal?? Also, how would a child, even one with capacity, be expected to participate in mediation?

3(b) Please offer comments to support your answer to 3(a).

Again, as above, this extension supports the principle of extending the rights of children, in line with current Scottish Government legislation and policies. To complement the extension proposed, children would need to be made aware of their rights and any support required to pursue them. Further detail is required as noted above about how particular rights can be accessed. Any information provided to the children would need to be fully accessible to that individual, taking particular account of their specific additional support needs, e.g. a child with dyslexia.

4(a) Do you think the Scottish Ministers should amend the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to ensure that disagreements are resolved at as local a level as possible, therefore ensuring that a complainant has attempted independent mediation?

No

4(b) Please offer comments to support your answer at 4(a).

In principle we agree with the idea that matters should be resolved at as a local level as possible without resorting to more formal or legal measures. Indeed, the code of practice stresses this point. However, the consultation paper **does not provide any evidence to suggest that parents are not attempting to resolve matters at a local level.** Therefore, no case has been made for changing the legislation. Indeed, such a change would, if implemented, simply provide parents with other, probably time-consuming, hoops to jump through where they have a complaint. That is they would have to access independent mediation and if that was unsuccessful, independent adjudication and, if necessary, SPSO and after that Parliament!

Also, the current code of practice stresses that mediation is a **voluntary process** for the parties involved. Making mediation compulsory if, at least, one of the parties does not wish to get involved, would be counter-productive. Indeed, even under ACAS (Advisory, Conciliation and Arbitration Service) arrangements for employment disputes, collective mediation is a completely voluntary process. Making mediation compulsory in the sphere of

education would, we believe, be totally inappropriate and at odds with the consensual principle underpinning mediation.

Finally if children with capacity are to have the same rights as parents under the Act, the consultation paper needs to explain how mediation is factored in. Would children be expected to be involved in mediation compulsorily and then independent adjudication?

5(a) Do you think the Scottish Ministers should repeal section 70 of the Education (Scotland) Act 1980, removing the opportunity to complain directly to the Scottish Ministers with the exception of provisions of the Schools (Consultation) (Scotland) Act 2010?

No

5(b) If yes, do you agree that, in future, the Scottish Public Service Ombudsman should consider failure of duty complaints which are currently considered under section 70 of the Education (Scotland) Act 1980?

N/a

(c) With the exception of provisions of the Schools (Consultation) (Scotland) Act 2010, do you think that the Ministerial powers under section 70 to make an order to carry out a duty should be transferred to the Scottish Public Service Ombudsman ?

No

5(d) Please offer comments to support your answer to 5(a) and (b)

There may be a case for repealing section 70 of the Education (Scotland) Act 1980 (as amended) but the consultation paper has not explained what the case is and what the Cabinet Secretary's objections are to Section 70.

As the paper indicates, the SPSO can lay a 'special' report before the Scottish Parliament but the consultation paper states 'Since the inception of the Ombudsman in 2002, there has been no occasion to issue a 'special' report. However, if this did occur it would then be for the Scottish Parliament to decide what, if any, action it wished to take'

This is not a very convincing argument for transferring these responsibilities to SPSO. The Scottish Ministers can issue directions without having to request approval from the Parliament and this is potentially a much quicker and less bureaucratic process than referral to SPSO and then Parliament.

We are also concerned about confidentiality. If SPSO was to deal with complaints and if a 'special' report was made to Parliament in a particular case we are not clear how the complainant's anonymity and confidentiality could be preserved.

The section 70 complaints route is by no means perfect but we believe that steps can be taken procedurally to speed up and improve the process and that this is preferable to repealing section 70. We believe parents will find the SPSO route complex and unwieldy and will be reluctant to use it.

