



## BRIEFING PAPER

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# Constituency casework: schools in Scotland

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## Summary

Members often receive enquiries from constituents about school-related matters. Many of these can be answered from readily available information on the internet or in standard publications. Where complex issues are raised it may be more appropriate to refer the constituent to specialist bodies and organisations or to a solicitor if legal advice is sought.

This note gives a very brief overview of the structure of the state-maintained school system, including an outline of the different categories of schools, as often an answer to a school-related constituency question may depend upon the type of school in question. The note provides brief background and key sources on a selection of issues that are typically raised with Members by constituents. Members who have questions on topics not covered here may contact the Social Policy Section for information.

The various guidance documents referred to in this briefing are current at the time of writing; however, some sources are updated regularly or from time to time so it is advisable to check the relevant websites.

This note relates to Scotland only. Education is a devolved area and information on school-related issues is available on the websites of the [Department for Education, Welsh Assembly Government](#), and the [Northern Ireland Department of Education](#).

There are also the following Library briefings:

- [Constituency casework: schools in England](#), SN 5396.
- [Constituency casework: schools in Wales](#), CBP 7904.
- [The school system in Northern Ireland](#), CBP 8024

# 1. Quick overview of the school system

## 1.1 Introduction and key organisations

Section 1 of the *Education (Scotland) Act 1980* requires local authorities in Scotland to ensure that there is adequate and efficient provision of school education and further education in their area. Section 1 of *The Standards in Scotland's Schools Etc. Act 2000* sets out the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into, by, an education authority.

The [Learning Directorate](#) has lead responsibility for ensuring there is an effective school system.

The Cabinet Secretary for Education and Skills has oversight of Scottish education. The Cabinet Secretary is supported by the Minister for Further Education, Higher Education and Science and the Minister for Childcare and Early Years.

School and pre-school education in Scotland is administered by the 32 local authorities through their statutory role as an Education Authority as required by the *Local Government (Scotland) Act 1973*.

Other key organisations include:

- [The General Teaching Council for Scotland](#) – the independent professional regulatory body for the teaching profession in Scotland. Since 2012, the GTCS has been wholly independent of government rather than an advisory non-departmental public body.
- [Education Scotland](#) – an Executive Agency of the Scottish Government, established in 2011 to support quality and improvement in Scottish education.
- [Scottish Qualifications Authority](#) – a non-departmental public body responsible for the development, accreditation, assessment, and certification of qualifications other than degrees.
- [Scottish Negotiating Committee for Teachers](#) – a body consisting of members from teaching organisations, Local Authorities, and the Scottish Government. The [SNCT Handbook of Conditions of Service](#) sets out pay and conditions of Service for teachers and associated professionals employed by Scottish Councils.

## 1.2 Different categories of schools

Almost all publically funded schools in Scotland are run by local authorities. There are also a small number of grant maintained schools, and around 4% of pupils attend independent schools.

### State-funded schools

These are also referred to as Public Schools in *The Education (Scotland) Act 1980*, and are schools under the control of an education authority.

These schools do not charge a fee for attending and have no restriction on entrance i.e. no entrance exams.

There are a significant number of denominational schools in Scotland, which are run in the same way as other local authority schools. The majority are Roman Catholic.

### **Grant-Aided schools**

Grant-Aided schools are independent of education authority and are supported financially by the Scottish Government. The governance of these schools is up to the schools themselves<sup>1</sup>. There are currently eight grant aided schools in Scotland, seven of which are special schools.

### **Independent schools**

Independent schools are not under the management of an Education Authority, but provide full-time education for at least five pupils of school age. Member schools are registered with the Scottish Government Education Department and are subject to inspection by Her Majesty's Inspectors. The Scottish Council of Independent Schools (SCIS) is a membership body for these schools. The ultimate responsibility for the operation of an independent school rests with the individual proprietors.

## **1.3 School governing bodies**

The Scottish Education system includes [Parent Councils](#), who are selected through the Parent Forum (consisting of all the parents of pupils attending the school) to represent parents' views to the head teacher and local authority. The functions of the councils are set out in *the Scottish Schools (Parental Involvement) Act 2006*.

The [National Parent Forum of Scotland \(NPFS\)](#), established in 2010, represents the views of Parent Councils at a national level.

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<sup>1</sup> See Education Scotland, [Glossary of Educational Terms](#)

## 2. School organisation: opening, changing the character of, or closing a school

It is the duty of every Education Authority to ensure there are a sufficient number of places in adequate schools for all children of school age. The legislation directly relevant to the opening, closing or status change of a school is *The Education (Scotland) Act 1980*, as amended and the *Schools (Consultation) (Scotland) Act 2010*, as amended.

In that context, [education authorities](#) may undertake reorganisation of their school estate at any time. School closures (or rationalisations), amalgamations or altering catchment areas can be prompted by many factors such as changing population patterns and the need to provide suitable school buildings for pupils and teachers.<sup>2</sup>

### Gaelic language education

The [Education \(Scotland\) Act 2016](#) provided new requirements on education authorities to promote and support Gaelic medium education and learning.

### 2.1 Opening and closing a school

[Section 17 of The Education \(Scotland\) Act 1980](#), as amended, sets out that education authorities are required to provide sufficient accommodation for the provision of state education in their area. This duty includes the ability to provide new schools if the authority is satisfied that a new school is required.

Education authorities also have a general duty to ensure all their services constitute best value under the *Local Government (Scotland) Act 2003*.

The [Schools \(Consultation\) \(Scotland\) Act 2010: Updated Information Guide](#) provides information on how changes to the school estate, including the potential closure of a school, should be considered. There are additional requirements in place where the school being considered for closure has been designated as a rural school, which are included in this guidance. It is also possible to refer school closure decisions to Ministers for review where it is believed that a local authority has failed to follow the process properly or has failed to take account of an important issue in reaching its decision.

However, if the decision is to close a school and complainants think that their local authority has failed to follow the process properly or has failed to take account of an important issue in reaching its decision, they may ask Scottish Ministers to call in the decision for review; the decision will then be assessed by an independent review panel.

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<sup>2</sup> Scottish Government, *The Schools (Consultation) (Scotland) Act 2010*

## Independent schools

All new Independent schools set up in Scotland must be registered with the [Registrar of Independent Schools](#) in Scotland. The School will then have to undergo a pre-registration inspection by HM Inspectors<sup>3</sup> before the school opens. This inspection will check that the school site is fit for purpose, pupil numbers are agreed and appropriate consideration has been given to the care and welfare of pupils.

The [Scottish Council of Independent Schools](#) represents over 70 independent schools.

The [Independent Schools Council](#) is a UK-wide organisation of all Independent schools.

## 2.2 Making significant changes to state-funded schools

Section 17 of *The Education (Scotland) Act 1980* also explains that an Education Authority can alter, improve, enlarge, equip or maintain a school at its own discretion, to allow it to continue to carry out its statutory duty of providing school places.

The [Schools \(Consultation\) \(Scotland\) Act 2010: Updated Information Guide](#) states that:

When proposing a major change to a school(s) the local authority must:

- Publish a proposal paper, including a statement of the educational benefits of what's proposed
- Set a consultation period of at least 6 weeks of term time
- Let parents and the Parent Council know about the consultation and invite responses
- Hold a public meeting
- Invite Education Scotland to prepare a report on the educational aspects of the proposal
- Publish a consultation report which responds to issues raised through the consultation period<sup>4</sup>

## Independent schools

Changes to schools and how they should be carried out are not laid out in legislation for Independent schools, but rather are based on established practices and procedures of HM Inspectors during inspection. However, when structural changes are made to the school, the school should review the fire risk assessment.<sup>5</sup>

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<sup>3</sup> HM Inspectors are part of Education Scotland, an Executive Agency of the Scottish Government with responsibility to improve the overall quality of education. The Agency brought together the work of HM Inspectorate of Education and Learning and Teaching Scotland.

<sup>4</sup> Scottish Government, [Schools \(Consultation\) \(Scotland\) Act 2010: Updated Information Guide](#), p3

<sup>5</sup> The Registration of Independent Schools in Scotland: [Guidance Notes - Premises](#)

## 3. School admissions

### 3.1 Admission by school type

#### State-funded schools

Local authority schools are non-selective and generally accept children living within the catchment area of the local school; this also applies to the mainstream grant-aided school. Grant-aided special schools accept children from anywhere in Scotland. Denominational schools can have larger catchment areas that overlap those of non-denominational schools.

Furthermore, if parents want their child to go to a school outside their catchment area, they have a right to submit a 'placing request' to their education authority.<sup>6</sup> Although parents have a right to submit a placing request, the education authority does not have to agree to it.

The Scottish Government guide to [Choosing a School](#) states that:

If you have a child who is due to start primary school or who will be transferring to secondary school soon, your council will probably suggest that you should use the local school designated by them. Of course most people are happy to do so, but the council must also tell you of your right to choose a different school. It can give you a contact address where you can get information to help in making up your mind. If you write to a council and request a place in a particular school, this is known as a placing request. The council has a duty to grant such a request wherever possible. **However, the size of the school, the current roll and number of children who already live in the catchment area and other factors will affect the council's ability to grant a placing request.**<sup>7</sup>

Each education authority has its own criteria when dealing with placement requests. For example, priority may be given where:

- the parents' workplace is near the school;
- childcare is near the school;
- the child has a sibling at the school; or
- the child has attended the school's nursery.

The education authority must acknowledge the placing request by 30 April, if the request was submitted before 15 March, otherwise the authority has 2 months to respond. Full details of the process of considering a placing request can be found on the [Choosing a School: A Guide for Parents](#) website.

The Scottish Government has issued guidance to education authorities on [how to decide a school's capacity](#).

Section 28 of the [Education \(Scotland\) Act 1980](#) requires that, as far as is compatible with reasonable public expenditure and the provision of a

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<sup>6</sup> See [Choosing a School: A Guide for Parents](#) and [Education Scotland: Sending my child to a local school](#)

<sup>7</sup> Scottish Government, [Choosing a School: A Guide for Parents](#)

suitable education, pupils are to be educated in accordance with the wishes of their parents.

## Independent schools

Independent schools are free to select their pupils, unlike state-funded or Grant Aided schools, on the basis of ability. Each Independent School has its own admissions policy and entrance procedures.<sup>8</sup>

## 3.2 Admission appeals

### Rejected placing request

A school may not have enough places to satisfy all placing requests, in which case education authorities must produce clear guidelines in deciding which pupils will be offered a place. Guidance on [Choosing a School: A Guide for Parents](#), states:

The guidelines should normally give the first places to children living within the catchment area of the school. Preference may be given to children who already have brothers or sisters at the school. Guidelines may also cover schools where a child can study a subject or take a course that is not available at his or her local school. Guidelines may apply to all the schools run by a council, or only to certain schools.

Further information on local guidelines can be found by contacting individual education authorities.

The education authority must provide an explanation as to why the request is rejected in writing. If a parents wishes to challenge the decision they may appeal. Details on how to appeal can be found in [Section 3](#) of [Choosing a School: A Guide for Parents](#).

## 3.3 Deferring school entry

Provisions on deferring school entry are in place for the children who would be at the younger end of their school year, and whose parents believe it would be better for their entry into school to be deferred to the following year from their 'normal' entry year group. Parents whose children are born between September and December may request a deferral; parents whose children are born in January or February will have their requests automatically approved.

[The relevant guidance states:](#)

In Scotland, the school year begins in mid-August. Any single school year group consists of children born between the beginning of March in one year and the end of February the following year. Children born between March and August start school in the August of, or following, their fifth birthday. Those born between September and February start school in the August prior to their fifth birthday. As such, children in Scotland usually start school between the ages of 4.5 and 5.5 years old.

However, parents of children born between September and December can request to defer their child's entry to the following August. These deferrals are not automatic and are subject to approval by the local education authority. Parents of children born

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<sup>8</sup> See [SCIS: Entrance procedures](#)

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in January and February may also choose to defer their child's entry; these requests are automatically approved. Children with birthdays in January and February and whose entry to school is deferred are eligible for a further year of funded pre-school education whereas those with September to December birthdays who are deferred are not. Children whose entry is deferred will tend to be aged between 5.5 and 6 years old at the time they start school.<sup>9</sup>

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<sup>9</sup> The Scottish Government, [Chapter 2: Entry to school](#)

## 4. School transport

Section 51 of *The Education (Scotland) Act 1980* requires education authorities to provide school transport for pupils in some circumstances and outlines when parents have a right to expect this. The Scottish Executive Education Department [Circular 7/2003](#) provides school transport guidance. It states:

In general, [education authorities] make free travel available to pupils who live outwith the statutory walking distance, defined in section 42(4) of the 1980 Act as being 2 miles for any pupil under 8 years of age and 3 miles for any other pupil.

[Guidance from Transport Scotland](#) sets out further information:

Education authorities are required to make such arrangements as they consider necessary for school pupils residing, and attending schools, in their area. This can include:

- the provision of free school transport for some or all of the journey;
- making bicycles or other suitable means of transport available to
- pupils;
- paying some or all of the travelling costs; or
- any combination of these.

Authorities must consider the safety of walking and cycling routes to school for pupils living within statutory walking distances from their designated school. If the routes could be considered unsafe, then transport should be provided, even when distances may fall short of eligibility criteria.

Authorities are expected to review the eligibility criteria and have flexibility to consider safety factors such as volume and speed of traffic, availability of safe crossings, and sufficiency of pavements, footpaths and street lighting.

Authorities are also expected to consider medical conditions of pupils which may affect their travel to school, and also the medical condition of parents where they may be expected to accompany their child for part or all of a journey.<sup>10</sup>

It is for the education authority themselves to negotiate the terms of contracts to provide school transport. However, the Condition of Contract or Good Practice codes for each education authority will outline the expectations of contractors.

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<sup>10</sup> Transport Scotland, [A Guide to Improving School Transport Safety](#), 2010, p7

## 5. School attendance

Parents are legally responsible for ensuring that their children of compulsory school age are educated, whether by sending them to a local authority school or otherwise. In addition, a pupil has a right to be educated in an education authority school (Under the *Standards in Scotland's Schools Etc. Act 2000*). [Parents may home educate](#) their children if they wish and a suitable level of education is provided.<sup>11</sup> However, most parents enrol their children in school.

When an enrolled child is absent and the education authority has decided that the child does not have a valid reason for being off school, and the issue cannot be resolved, the education authority can serve a School Attendance Order. It is a criminal offence to fail to comply with such an order, and it is a criminal offence if the parent does not ensure that the child registered at the school attends regularly without a reasonable excuse. There are, however, statutory defences - for example, where the child is ill. A penalty notice may be issued instead of prosecution in court.

Failure to attend school regularly is a ground for referral to the Children's Hearing.

It is at the discretion of the education authority to request an Attendance Order if they feel there has been no improvement in the pupil's attendance. This means the parent must comply with its terms by ensuring their child attends school regularly. The Attendance Order is in force for as long as the pupil is of school age.

If the Attendance Order is breached, the parent may face a fine of up to £1,000 or a term in prison, or both. An Attendance Order may be revoked at the discretion of the Direction of Educational Services of that particular education authority. In practice, however, such prosecutions are rare. Guidance states:

Measures for compulsion are expensive processes which are time consuming and can lead to further unnecessary interventions into family life. The Scottish Government is committed to ensuring that efforts to improve outcomes for children are progressed quickly and involve an appropriate level of intervention. Measures for compulsion are essential when efforts to engage children and families in voluntary measures to improve attendance have failed, or if a wider range of issues are of concern in addition to non attendance at school.<sup>12</sup>

[Guidance on the management of attendance and absence in Scottish schools](#) provides more information.

### 5.1 Holidays during school term-time

Schools will not normally give a family permission to take a pupil out of school for a holiday during term-time. This would be recorded as an

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<sup>11</sup> See Scottish Government, [Home education guidance](#), 2007, for more information on home education in Scotland

<sup>12</sup> Scottish Government, [Included, engaged and involved- part 1: attendance in Scottish schools](#)

unauthorised absence. It would be at the discretion of the education authority to decide what sanctions would be used if there was an unauthorised absence.

Schools would not usually authorise absences for family holidays, unless there are exceptional circumstances. There are some circumstances where this would be allowed, for example if a family needs time together to recover from distress or if a family holiday is restricted to term time because of the parent's job.<sup>13</sup>

The [attendance guidance](#) states:

The categorisation of most term-time holidays as unauthorised absence has been a contentious issue for some families, many of whom are concerned at the higher cost of holidays during school holiday periods. The Scottish Government has no control over the pricing decisions of holiday companies or flight operators. Our main focus is to encourage parents and pupils to recognise the value of learning and the pitfalls of disrupting learning for the pupil, the rest of the class and the teacher. It is for schools and education authorities to judge what sanctions, if any, they may wish to apply to unauthorised absence due to holidays. (p16)

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<sup>13</sup> Scottish Government, [Attendance at school – what do I need to know?](#), 2009

## 6. School exclusion

The legal responsibility for the exclusion of a pupil rests with the education authority. However, they may devolve power to exclude a pupil to senior management level within a school if this see fit. The circumstances under which a pupil may be excluded are set out in Regulation 4 of the *Schools General (Scotland) Regulations 1975*. It states that an education authority shall not exclude a pupil from school unless the authority:

- are of the opinion that the parent of the pupil refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school; or
- consider that in all circumstances to allow the pupil to continue at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of pupils there.

Exclusions must also operate within the duties imposed by anti-discrimination, human rights and other relevant legislation. Failure to comply with the regulations can leave the education authority open to legal challenge by the parent(s) or pupil.

[National guidance for schools and local authorities in managing school exclusions](#) provides more information.

### 6.1 Right of appeal against an exclusion

The right to appeal an exclusion is set out in Section 28H of the *Education (Scotland) Act 1980*. An appeal may be made to the Education Appeal Committee, which is setup by each education authority. A further appeal may be made against the outcome of the first appeal to the court.<sup>14</sup>

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<sup>14</sup> The Education (Appeal Committee Procedures) (Scotland) Regulations 1982 regulate the procedures of appeal committees.

## 7. Additional Support for Learning (ASL)

The *Education (Additional Support for Learning) (Scotland) Act 2004*, as amended, sets out the statutory duties of education authorities and other agencies to provide additional support to enable a pupil or young person with additional support needs to benefit from an education.

Seven of the eight grant-aided schools in Scotland are special schools. The schools provide education for children and young people with more complex additional support needs.

Section 1 of the 2004 Act defines additional support needs:

A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.

Sections 4 to 8 outline the general powers and duties of relevant bodies. Whilst Sections 9 to 11 set out the co-ordinated support plans that should be in place for each pupil or young person.

In addition, there is a statutory presumption that pupils will be educated in mainstream schools, under the *Standards in Scotland's Schools Etc. Act 2000*. The Scottish Government published [Guidance for local authorities in their decision-making on the presumption](#) in March 2019.

Schedule 2 of *The Education (Additional Support for Learning) (Scotland) Act 2004*, explains the duty of education authorities to comply with placing requests.

[Guidance from Enquire](#), the Scottish Government-funded advisory service for additional support, provides a helpful overview for parents looking to make a placing request:

You can make a placing request for your child to go to:

- any school under the management of a local authority
- any local authority nursery school or partnership nursery (a nursery run by people who come to an arrangement with the local authority to provide pre-school education)
- an independent special school or grant-aided special school in Scotland
- a school in England, Wales or Northern Ireland that caters wholly or mainly for children with additional support needs.

Before making a placing request for an independent or grant-aided special school, you must check that the school managers are willing to admit your child.

You cannot make a placing request for an independent or grant-aided school that is not a special school. Before making a placing request for a school in England, Wales or Northern Ireland as

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mentioned above, you should check that the school will offer your child a place<sup>15</sup>

The Enquire guide also notes that where placements at independent schools are granted, the education authority must pay the relevant fees.

Education authorities must accept the request to place a pupil in the school specified in the placing request, provided the school concerned is a state-funded school and a series of exceptions, listed in [section 28A of the Education \(Scotland\) Act 1980](#) do not apply:

- (a) if placing the child in the specified school would—
  - (i) make it necessary for the authority to take an additional teacher into employment;
  - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
  - (iii) be seriously detrimental to the continuity of the child's education;
  - (iv) be likely to be seriously detrimental to order and discipline in the school;
  - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;
  - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school; [or]
  - (vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers;
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
- (c) if the education authority have already required the child to discontinue his attendance at the specified school;
- (d) if, where the specified school is a special school, the child does not have [additional support needs] requiring the education or special facilities normally provided at that school; or
- (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,

Additionally, as previously noted, a statutory presumption that pupils will be educated in mainstream schools is in place. A placing request may also be denied if the specified school is a special school, and the authority believes that this is not necessary to meet the child's needs; acceding to the request might therefore mean that local authority did not meet its duty to place children in a mainstream school.

[Statutory guidance to the 2004 Act](#) provides more detail.

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<sup>15</sup> Enquire, [Factsheet 3: Placing requests](#), August 2016, p3

## Resolving disagreements

The [Statutory guidance](#) includes information on the resolution of disagreements about a child's additional support provision. Chapter 8 of the guidance provides full details.

It is expected that most disputes should be resolved locally, through procedures established by schools and local authorities. However, further stages are in place where no resolution is made.

Disputes might be resolved successively at:

- School level
- Education authority level
- Using Independent Mediation Services – most likely to be used at education authority level, but may subsequently be used if useful
- Third Party reviews:
  - Dispute Resolution (External Independent Adjudication) - For disputes about the way the authority are exercising their functions, for instance not properly implementing support
  - Education Authority Appeal Committee – placing request appeals (except for those to special schools or where co-ordinated support plan is involved) and exclusion appeals
  - Additional Support Needs Tribunals – For co-ordinated support plans, placing requests involving coordinated support plans or special schools, and post-school transitions. ASN Tribunals are now part of the [Health and Education Chamber of the First-tier Tribunal for Scotland](#).

The Third Party stage may progress to further levels, depending on which is appropriate to the case. A chart on page 150 of the [statutory guidance](#) provides information.

## Enquire

[Enquire](#), an advice service for additional support for learning, funded by the Scottish Government, may be a helpful source of advice for constituents.

## 7.1 Independent special schools

There are 19 independent special schools in membership of the [Scottish Council of Independent Schools](#). They provide a mixture of residential education, day education and short break services for pupils of all school ages. These schools offer education to pupils whose needs cannot be met in a local school. The cost, however, is met by the education authority on the recommendation of its Educational Psychologists and social workers.

## 8. Complaints about schools

The following relates to complaints about schools that do not concern admissions, exclusions or ASL – as noted above, there are specific arrangements for appeals in those circumstances.

[Guidance on the Scottish Schools \(Parental Involvement\) Act 2006](#)

outlines how a person, or someone acting on their behalf, can make a complaint.<sup>16</sup> Complaints should first be raised at a local level with the school and or education authority. Each education authority must have clear arrangements in place for handling complaints. An appeal can be made directly to the education authority.

Section 70 of the *Education (Scotland) Act 1980* provides for complaints to be referred to Ministers where it is alleged that a body has failed to carry out a statutory duty relating to education.

It is also possible in some circumstances to [complain to the Scottish Public Services Ombudsman \(SPSO\)](#). The SPSO can consider whether a school applied policies and procedures properly, or whether they have proper policies and procedures in place.

The relevant [Parent Council](#) will be able to discuss any problems at a general level (but not individual complaints) and it may be worth contacting [Citizens Advice Scotland](#).

The [General Teaching Council for Scotland](#) website provides guidance on how to make a complaint about a registered teacher. A complaint can be made by completing an [online form](#) which is dealt with by Fitness to Teach Department.

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<sup>16</sup> See [Annex C: Handling complaints](#)

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