

RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Daniel Johnson MSP, the Member in charge of the Bill (“the Member”), in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Restraint and Seclusion in Schools (Scotland) Bill (“the Bill”). It describes the purpose of the delegated power in the Bill and outlines the reasons for seeking the proposed power.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 61–EN);
- a Financial Memorandum (SP Bill 61–FM);
- a Policy Memorandum (SP Bill 61–PM);
- statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 61–LC).

3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

OUTLINE OF BILL PROVISIONS

4. The Bill makes provision about the use of restraint and seclusion in schools by individuals acting under the authority of education providers (which includes education authorities, grant-aided schools and independent schools). The Member’s policy intention is to ensure that restraint and seclusion techniques are used in schools only as a last resort. To achieve this, the Bill imposes a duty on Scottish Ministers to issue guidance on the use of restraint and seclusion and requires education providers to have regard to this guidance.

5. In addition, the Bill:

- requires schools to inform parents as soon as possible and no later than 24 hours after there has been an incident in which restraint or seclusion techniques have been used on their child;

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- places a duty on education authorities to record all incidents of restraint or seclusion in schools within their area and report to the Scottish Ministers who must, in turn, report to the Scottish Parliament every year detailing the number of incidents;
- requires Scottish Ministers to maintain a list of training providers who provide training in the use of restraint and seclusion.

RATIONALE FOR SUBORDINATE LEGISLATION

6. The central tenet of the Bill is to ensure restraint and seclusion of children and young people in schools is only used as a last resort where there is an immediate risk of harm and using appropriate methods by providing for statutory guidance for use in schools.

7. To achieve this, the Bill places a duty on Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools. It also sets out a list of matters which the guidance must include. No other delegated powers are conferred by the Bill.

DELEGATED POWER

Section 2(1): Guidance on restraint and seclusion in schools

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: None

Provision

8. Section 2(1) requires the Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools. The guidance will apply to publicly funded primary schools, secondary schools and special schools. It will also apply to independent and grant-aided schools. However, it will not apply to nursery schools. Subsection (2) sets out the matters that must be covered in the guidance and subsection (4) provides that the guidance may “elaborate” on the definitions in section 1. This does not allow the guidance to alter the definitions, but it would allow them to be filled out by giving examples of what constitutes seclusion or restraint. Subsection (6) provides for consultation before issuing guidance and lists the bodies and individuals whom the Scottish Ministers must consult. The consultation requirements apply to the initial guidance issued and any revised versions. Subsection (7) requires that education providers must “have regard to” the guidance.

Reason for taking power

9. The reason for imposing a duty on Scottish Ministers to issue guidance on the use of restraint and seclusion is to ensure that such guidance has statutory status. There is existing Scottish Government guidance on physical intervention in schools; [Included, Engaged and Involved Part 3: A Relationships and Rights-based Approach to Physical Intervention in Schools](#). However, that guidance, having been prepared and issued by the Scottish Ministers at their own initiative is “non-statutory” and there is no legal requirement for education providers to have regard to it. The Member considers that statutory guidance will have greater weight than non-

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statutory guidance and is therefore more likely to influence how education providers approach the use of restraint and seclusion in schools.

Choice of procedure

10. Guidance issued by the Scottish Ministers is typically not subject to parliamentary procedure. However, before issuing guidance under this section, the Scottish Ministers must consult various stakeholders, including education providers, trade unions, and the Commissioner for Children and Young People in Scotland. The final guidance must then be published.

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