

RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are published to accompany the Restraint and Seclusion in Schools (Scotland) Bill, introduced in the Scottish Parliament on 17 March 2025.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 61–FM);
 - a Policy Memorandum (SP Bill 61–PM);
 - a Delegated Powers Memorandum (SP Bill 61–DPM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 61–LC).
3. These Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Daniel Johnson MSP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

Overview

5. 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 policy intention of the Member is to ensure that appropriate techniques of restraint and seclusion are used in schools only as a last resort.
6. 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.

7. 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. The Bill also places a duty on education providers to record all incidents of restraint and seclusion in their schools. Education authorities must 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.

8. The Bill requires Scottish Ministers to maintain a list of training providers who provide training in the use of restraint and seclusion.

9. The Bill is in 8 sections.

Commentary on sections

Section 1 – Restraint and seclusion – definitions

10. Section 1 defines “restraint” and “seclusion” establishing, in broad terms, the activities that are being regulated under this Bill. The definitions refer to things done by a member of staff “with the intention of” restraining or secluding a child or young person. This builds in a degree of intention or purpose rather than something that just has the effect of restraining or secluding without that necessarily being the intention.

11. The definitions relate to the actions of a member of staff of an education provider. Where a school is under the management of an education authority, the education authority is the ‘education provider’. In the case of an independent school the education provider is the proprietor of that school; and for a grant-aided school it will be the manager of the school. There are eight grant-aided schools in Scotland, seven of which are special schools.

12. Section 1(3) provides that a member of staff of an education provider includes anyone ‘acting under the authority of an education provider’. In addition to covering all teachers, assistants and support staff, it would also cover any contractors or other persons allowed into schools to provide services or work at events. Tying the definitions to things done by members of staff makes clear that the Bill does not cover the use of seclusion or restraint by pupils on each other.

Section 2 – Guidance on restraint and seclusion in schools

13. 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. The definition of “schools” is provided in section (6). 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. This applies to the initial guidance produced and any revised version of the guidance produced as a result of the terms of the guidance being kept under review. Subsection (7) places a duty on education providers to “have regard to” the guidance.

Section 3 – Duty to inform parents of use of restraint or seclusion

14. Section 3(1) places a duty on a ‘responsible person’ for a school to inform the parent of a child or young person subjected to restraint or seclusion about the incident and to provide details of it. The responsible person is the proprietor for independent schools, the manager for grant-aided schools and the headteacher or another authorised member of staff in schools run by the education authority. Section 6(2) applies the definition of “parent” in section 135(1) of the Education (Scotland) Act 1980 which includes a guardian or a person who is responsible for the care of a child or young person.

Section 4 – Duty to record and report on use of restraint and seclusion

15. Section 4 requires each education provider to record all incidents of restraint or seclusion in its schools. Where the education provider is a grant-aided or independent school, it must report those incidents to the education authority, which must, in turn, collate and report all incidents (including those within schools run by the authority) to the Scottish Ministers. Subsection (4) requires the Scottish Ministers to prepare a report on the number of incidences of the use of restraint and seclusion each year and to lay the report after the end of each year. Under subsection (5) the end of each year will fall during school summer holidays, on 31 July.

Section 5 – List of approved training providers

16. Section 5 requires the Scottish Ministers to maintain a list of persons who provide training on the use of restraint and seclusion in schools along with details of courses or programmes of such training. This list is intended to be the authoritative source of appropriate training for school staff, particularly those in roles involving contact with children and young people who are likely to be subject to restraint or seclusion.

Section 6 – Interpretation

17. Section 6 defines “education provider” and applies definitions of certain terms in section 135(1) of the Education (Scotland) Act 1980. Key terms in this section have been explained in these Notes in relevant places.

Section 7 – Commencement

18. Section 7 provides for the Bill to come into force at the end of 6 months beginning with the day of Royal Assent (when the Bill gets formal agreement by the King and becomes an Act of the Scottish Parliament).

Section 8 – Short title

19. Section 8 provides for the short title of the Bill, by which it may be cited.

This document relates to the Restraint and Seclusion in Schools (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 17 March 2025

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