

RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is 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:

- Explanatory Notes (SP Bill 61–EN);
- a Financial Memorandum (SP Bill 61–FM);
- 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. This Policy Memorandum has been prepared by the Non-Government Bills Unit (NGBU) on behalf of Daniel Johnson MSP (the Member), to set out his policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES OF THE BILL

4. Children have the right to an education and must be given every opportunity to learn. Third sector organisations and the Children and Young People's Commissioner Scotland have found that for many children, especially for those with additional support needs (ASN), the use of restraint and seclusion is a regular part of their experience at school. These organisations have been campaigning for years for the introduction of statutory guidance to seek to ensure minimal appropriate use of accepted techniques, but with an emphasis on de-escalation wherever possible.

5. The Member strongly believes that parents, carers and guardians must be informed of any incidents of seclusion or restraint as soon as possible. In the years leading up to the introduction of this Bill, the Member has received substantial evidence highlighting cases where parents were either not informed about their child's restraint or seclusion at school or only found out because their child returned home traumatised or with visible injuries. The overwhelming weight of this evidence is the primary reason that he is advocating for legislative change through a Member's Bill.

6. The Member believes that existing resolution processes are not functioning as effectively, or being used as frequently as they should, partly because parents are often not informed of incidents of seclusion and restraint. The lack of information on such incidents, combined with a system that can be very challenging to navigate, results in a disproportionately small number of issues being pursued by parents at school, education authority level, or through formal processes with the tribunal or the SPSO compared to the scale of the issue.

7. The Member acknowledges that increased resources are necessary to support this legislation, in particular, ensuring an adequate number of teachers and support staff, including staff with a specialism in supporting children with ASN. Teachers and support staff require more support, including more specialist training on safe best practice, and sufficient time to undertake such training. Schools are complex environments, and school staff have so many pressures and responsibilities upon them. The Member therefore understands that there will sometimes be circumstances where physical intervention is necessary to ensure the safety of the child and/or others. The Member seeks clarity about how and when physical intervention is appropriate, and how that is monitored and overseen, whilst ensuring that recourse is available when needed.

8. The lack of a standardised approach means that there are significant discrepancies in how incidents of restraint and seclusion are reported, with many education authorities not recording data at all. Consequently, there is insufficient data to allow schools, education authorities and the inspectorate to identify areas of concern where seclusion and restraint are used excessively. Without such data, it is challenging to identify problematic practices and to address them whilst ensuring that de-escalation becomes the main focus. The Member believes that published data is needed to enable parliamentary scrutiny and to ensure that third sector organisations and others with advocacy or investigatory roles, such as commissioners, can conduct evidence-based work where issues persist.

9. Based on the policy objectives above, the Bill includes:

- a requirement for Scottish Ministers to issue statutory guidance on the appropriate use of seclusion and restraint;
- a duty on education authorities, proprietors of independent schools and managers of grant-aided schools (collectively described as ‘education providers’ in the Bill), to have regard to such guidance;
- a detailed list of what such guidance must include;
- a duty on schools to inform parents of the use of restraint or seclusion as soon as possible (and no later than 24 hours after the occurrence of the incident);
- a duty on education providers, including education authorities, to record all incidents of restraint or seclusion in their schools;
- a duty on the Scottish Government to publish a report and lay it before Parliament on an annual basis, detailing the number of incidents of restraint or seclusion in schools in Scotland; and
- a requirement for the Scottish Government to maintain a list of training providers on the use of seclusion and restraint that meet standards set by the Scottish Government, and to publish the list.

10. The provisions apply to publicly funded primary schools, secondary schools and special schools, including grant-aided schools. The provisions also apply to independent schools. The provisions that apply to parents also apply to guardians (or ‘any person who is liable to maintain or has parental responsibilities’).¹ While the implementation of the provisions of the Bill will particularly benefit children and young people with ASN, the duties under the Bill – such as the requirement to report an incident of seclusion or restraint to a parent – apply equally to all pupils.

BACKGROUND

11. This legislation is being brought forward as a result of sustained campaigning by numerous organisations and the efforts of individuals who seek change as a result of their own experiences and those of their families.

Calum’s law

12. Beth Morrison has been advocating for the introduction of Calum’s law, named after her son who sustained injuries in 2010 from being restrained at school. Calum’s law aims to ensure that restraint and seclusion are only used as a last resort. Beth Morrison learned of many similar experiences from other parents,² and in January 2015 lodged a public petition in the Scottish Parliament ([PE1548](#))³, calling for national guidance on the use of restraint and seclusion in all schools. The petition garnered 4,670 signatures.

13. The petition was considered by the Scottish Parliament’s Citizen Participation and Public Petitions Committee, the Education and Skills Committee (session 5), and the Education, Children and Young People Committee (session 6). As a result, the issue was debated many times in Parliament. After two sets of non-statutory Scottish Government guidance were produced, the petition was closed in 2022.

Restraint and Seclusion in Scotland’s Schools

14. The publication of the Children and Young People’s Commissioner Scotland’s 2018 report, *No Safe Place: Restraint and Seclusion in Scotland’s Schools*, provided new data on the widespread use of restraint and seclusion across Scotland, along with recommendations for the Scottish Government.⁴

15. The report identified 2,674 incidents of restraint and seclusion involving 386 children. It found that 10 local authorities failed to record all incidents. Of the 32 local authorities, 18 reported

¹ Education (Scotland) Act 1980, retrieved from:

<https://www.legislation.gov.uk/ukpga/1980/44/part/II/crossheading/duty-of-parents-to-provide-education-for-their-children>

² The consultation on the draft proposal for this Bill included a testimony from Beth Morrison which stated that “Over the last 13 years, I have been contacted by over 3000 families UK wide whose children have suffered like Calum did” (consultation published in June 2023).

³ PE1548: National Guidance on Restraint and Seclusion in Schools, retrieved from:

<https://www.parliament.scot/get-involved/petitions/view-petitions/pe1548-national-guidance-on-restraint-and-seclusion-in-schools>

⁴ *No Safe Place: Restraint and Seclusion in Scotland’s Schools*, The Children and Young People’s Commissioner Scotland, published February 2020, retrieved from: <https://www.cypcs.org.uk/resources/no-safe-place/>

that they record all incidents of physical intervention. Six recorded most incidents, three recorded some and four recorded none. The Commissioner's report noted that 18 authorities were able to provide data on restraint and seclusion, but these were not the same 18 authorities that reported that they recorded all incidents.

16. The report details that, despite claiming to record all incidents, Midlothian, North Lanarkshire, South Lanarkshire, Aberdeen City, and Inverclyde councils were unable to provide any data. Angus, Argyll and Bute and Shetland Islands councils provided data but indicated that they only recorded most or some incidents. Fife Council provided data, but was unclear whether it reflected all, most, or just some incidents.

17. The 2,674 incidents of restraint and seclusion were reported by 18 authorities, yet only 13 of those recorded the number of children who were the subject of these physical interventions. The report further noted that "the information provided to us by families [throughout the duration of the case study] suggests that restraint and seclusion are used disproportionately with children with disabilities or Additional Support Needs. However, only 12 local authorities were able to provide data on these incidents".

Legislation and policy landscape

18. The number of pupils identified as having one or more ASN has grown significantly in the past decade. The school census in September 2022 showed that 34% of pupils were identified as having at least one ASN.⁵ The relevant legislation detailed below includes provision for a presumption towards mainstreaming of children with additional support needs and a broad definition of additional support needs. The intention is that the Bill will work alongside existing legislation.

19. This section details provisions in existing legislation and associated UN Conventions and articles that seek to protect the rights of children and young people, including protection from physical harm. The Member believes the Bill complements ongoing efforts to protect and respect the rights of children, including those with disabilities.

20. The Education (Scotland) Act 1980⁶ places several duties on education authorities, including the fundamental duty to secure the provision of education services. The Human Rights Act 1998⁷ further enshrines the rights and freedoms guaranteed under the European Convention on Human Rights, including in relation to freedom from 'inhuman or degrading treatment or punishment'.⁸

⁵ *Research into Provision for Pupils with Complex Additional Support Needs in Scotland*, Scottish Government, published September 2023, retrieved from: [Supporting documents - Pupils with complex additional support needs: research into provision - gov.scot](#)

⁶ Education (Scotland) Act 1980, retrieved from: <https://www.legislation.gov.uk/ukpga/1980/44/contents>

⁷ Human Rights Act 1998, retrieved from: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

⁸ European Convention on Human Rights, retrieved from: https://www.echr.coe.int/documents/d/echr/convention_ENG

21. The Standards in Scotland's Schools Etc Act 2000⁹ introduced a legal presumption that children will be educated in mainstream schools, except in exceptional circumstances. This legislation was supplemented by guidance from the Scottish Executive in 2002 that stated:

“It is based on the premise that there is benefit to all children when the inclusion of pupils with special educational needs with their peers is properly prepared, well-supported and takes place in mainstream schools within a positive ethos. Such inclusion helps schools to develop an ethos to the benefit of all children, and of society generally. It also helps meet the wishes of many parents that their children should be educated alongside their friends in a school as close to home as possible.”¹⁰

22. As explained by Kindred, an organisation that supports parents of children with complex needs, this presumption can create challenges for schools:

“The presumption to mainstream can be interpreted by local authorities to mean that children should start school in mainstream even when they have very high-level needs. The problem arises if the child is not able to cope and the process of seeking a place in a specialist provision can take many months or even a few years. Some of these children are very distressed by the mainstream environment and end up being taught separately, often in makeshift spaces within the school”.¹¹

The Education (Additional Support for Learning) (Scotland) Act 2004

23. Under the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”)¹², a pupil has additional support needs (ASN) if, for any reason, they are unlikely to benefit from school education without additional support. The Act requires education authorities to “make adequate and efficient provision” for children identified as requiring additional support. A diagnosis is not required under the Act; for example, a child exhibiting typical characteristics of dyslexia does not need a professional diagnosis to be entitled to additional support. The definition of ASN is broad and includes, for example:

- very able children;
- those who may need temporary additional support due to family circumstances such as bereavement; and
- children with physical or learning disabilities and neurodivergent children or young people.

⁹ Standards in Scotland's Schools etc Act 2000, retrieved from: <https://www.legislation.gov.uk/asp/2000/6/contents>

¹⁰ Supporting documents - Standards in Scotland's Schools etc. Act 2000 statutory guidance retrieved from <https://www.gov.scot/publications/statutory-guidance-standards-scotlands-schools-etc-act-2000-9781786528759/documents/>

¹¹ Evidence from Kindred to the Scottish Parliament Education and Skills Committee report *How is Additional Support for Learning working in practice?* Published in May 2017, retrieved from: <https://digitalpublications.parliament.scot/Committees/Report/ES/2017/5/15/How-is-Additional-Support-for-Learning-working-in-practice--1>

¹² Education (Additional Support for Learning) (Scotland) Act 2004, retrieved from, <https://www.legislation.gov.uk/asp/2004/4/contents>

24. The Act also sets out statutory dispute resolution procedures, summarised in the Scottish Parliament’s Session 5 Education and Skills Committee’s 2017 report, *How is Additional Support for Learning working in practice?*¹³, as follows:

“Where the local authority is responsible for the child’s education, parents have a number of rights. These include:

- A local authority must comply with a parent’s reasonable request to establish whether their child has additional support needs.
- A local authority must comply with reasonable requests for an assessment and take the findings into account. However, such assessment is to be carried out by a person the local authority considers appropriate.
- Certain children with complex needs are entitled to a statutory Co-ordinated Support Plan (CSP), which brings with it rights of appeal to the Additional Support Needs Tribunal. 1.4% of pupils with ASN have such plans.

Local authorities must make available certain dispute resolution procedures (mostly free of charge), these are:

- Right to have a ‘supporter’ present in discussions or an ‘advocacy worker’ make representations to the local authority, but the local authority does not have to pay for this.
- Right to advocacy services, free of charge, for those taking cases to the Additional Support Needs Tribunal.
- Independent mediation, free of charge.
- Independent adjudication, free of charge.
- Additional Support Needs Tribunal for certain issues involving CSPs, placing requests and disability discrimination cases under the Equality Act 2010.”

25. The Committee found that resource challenges, including staffing shortages, time and workload pressures, had a significant impact on how the system operates. For example, the procedures under the 2004 Act typically rely on a child or young person being fully assessed, and, where appropriate diagnosed, to enable an informed decision to be taken on whether they should have a Co-ordinated Support Plan (CSP). Resources then need to be available to develop and continually review a CSP and to ensure that all teachers and support staff have the time and relevant training to provide the necessary specialist support. Additionally, resources are needed to ensure that the rights listed above, such as independent mediation, can be accessed in practice.

¹³ Report of Scottish Parliament Education and Skills Committee: *How is Additional Support for Learning working in practice?*, published in May 2017, retrieved from: <https://digitalpublications.parliament.scot/Committees/Report/ES/2017/5/15/How-is-Additional-Support-for-Learning-working-in-practice--1>

The Equality Act 2010

26. The Equality Act 2010¹⁴ places a range of duties on the responsible bodies of schools to prevent discrimination against pupils with protected characteristics. Specifically, the Act imposes several duties on schools regarding the admission and treatment of pupils. Section 85 of the Act requires schools to make reasonable adjustments for pupils with protected characteristics, including disabled pupils. It also mandates that schools must not discriminate against pupils with protected characteristics in the provision of education, including admission decisions. Schools are also prohibited from harassing or victimising disabled pupils during their attendance at school.

United Nations Convention on the Rights of the Child (UNCRC)

27. The United Nations (UN) describes the UNCRC¹⁵ as ‘the most complete statement of children’s rights ever produced and the most widely-ratified international human rights treaty in history’. It was ratified by the UK in December 1991 and came into force in January 1992.

28. Of the 54 Articles in the UNCRC, Articles 3, 19, and 28 are particularly relevant to the use of seclusion and restraint in schools.

29. Article 3 provides that the best interests of the child should be a primary consideration in any action that impacts them. Article 19 provides that children should be protected from all forms of violence and injury and Article 28 provides that schools should discipline children in a manner consistent with their dignity.

30. By placing Scottish Ministers under a duty to issue statutory guidance on the use of restraint and seclusion and requiring that those to whom the guidance is directed must have regard to it, the Bill seeks to ensure that these practices are regulated and used only when absolutely necessary, prioritising the best interests of the child.

Scottish Government guidance

31. The Scottish Government has published non-statutory guidance in 2011, 2017 and 2024. In 2017, the Scottish Government published *Included, Engaged and Involved Part 2*, updating the previous version published in 2011. This document included new guidance on the use of restraint and seclusion in educational settings in Scotland.

32. Several organisations produced reports which found that the guidance was insufficient and recommended that it be placed on a statutory footing. The 2018 report from the Children and Young People’s Commissioner Scotland detailed above in paragraphs 14 to 17 was one such report.¹⁶ Another was ENABLE Scotland’s 2019 report, *In Safe Hands?*, which called for stronger, dedicated guidance on the use of restraint and seclusion in schools. On 23 October 2019, the Children and Young People’s Commissioner Scotland (CYPCS) and the Equality and Human

¹⁴ Equality Act 2010, retrieved from: <https://www.legislation.gov.uk/ukpga/2010/15/contents>

¹⁵ United Nations Convention on the Rights of the Child (UNCRC), retrieved from:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁶ Report by the Children and Young People’s Commissioner Scotland: *No Safe Place: Restraint and Seclusion in Scotland's Schools*, published February 2020, retrieved from: <https://www.cypcs.org.uk/resources/no-safe-place/>

Rights Commission (EHRC) wrote to the then Deputy First Minister and Cabinet Secretary for Education and Skills requesting five actions to address seclusion and restraint. On 7 November 2019, the then First Minister¹⁷ confirmed at First Minister's Questions that the 2017 guidance was being reviewed, and that: "putting that on a statutory footing...is certainly something that we would be happy to consider as we undertake the review."

33. On [30 April 2021](#), Nick Hobbs, Head of Advice and Investigations and, from 17 May 2023, the then Interim Children's Commissioner at the CYPCS, noted¹⁸ that "the guidance promised by Scottish Government hasn't appeared, nor has a consistent approach to recording incidents – a [Physical Intervention Working Group] exists to deliver both, but work has been delayed by the [COVID-19] pandemic".

34. The Scottish Government published draft guidance for [consultation](#)¹⁹ in June 2022, entitled *Physical Intervention in Schools: Draft Guidance*. The consultation was open between June and October 2022. The non-statutory guidance forms the third part of the Included, Engaged and Involved guidance series.²⁰ The guidance states that its purpose is to:

"improve child or young person's learning experiences by outlining best practice in:

- promoting positive relationships, behaviour and wellbeing;
- minimising the use of restraint and seclusion and eliminating their misuse;
- ensuring children and young people's rights are understood, respected and taken account of in all decisions around the use of physical intervention."

35. The Member considers that the Scottish Government guidance includes valuable content, meaning that much of the work required to produce statutory guidance under this Bill has already been undertaken. The most recent version of the guidance, published in November 2024²¹, is entitled *Physical intervention in schools - a relationships and rights based approach*.²² In response to a written parliamentary question (S6W-14741 dated 18 April 2023²³) the Scottish Government confirmed:

¹⁷ Scottish Parliament (2019, November 7) Official Report of Meeting of Parliament, retrieved from: <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-07-11-2019?meeting=12344&job=111594>

¹⁸ Children and Young People's Commissioner Scotland website, retrieved from: <https://www.cypcs.org.uk/news-and-stories/restraint-and-seclusion-are-still-real-issues-in-scotlands-schools/>

¹⁹ Scottish Government consultation on physical intervention in schools guidance (page updated 30 April 2024), retrieved from: <https://consult.gov.scot/learning-directorate/physical-intervention-in-schools/>

²⁰ *Physical Intervention in schools: draft guidance*, Scottish Government, published June 2022, retrieved from: <https://webarchive.nrscotland.gov.uk/20241028093139/https://www.gov.scot/publications/included-engaged-involved-part-3-relationship-rights-based-approach-physical-intervention-scottish-schools/documents/>

²¹ This guidance was consulted on between June and October 2022 <https://www.gov.scot/publications/scottish-government-physical-intervention-schools-guidance-consultation-told-easy-read/>

²² *Physical intervention in schools - a relationships and rights based approach: guidance*, Scottish Government, published November 2024, retrieved from: <https://www.gov.scot/publications/included-engaged-involved-part-3-relationships-rights-based-approach-physical-intervention-schools/pages/7/>

²³ Response to written parliamentary question, S6W-14741 dated 18 April 2023, retrieved from: <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-14741>

“Alongside the publication of the guidance, and in line with our original commitments, we are exploring options to strengthen the legal framework in this area, including placing the guidance on a statutory basis.”

36. In the absence of statutory guidance by the Scottish Government and other key measures to complement the guidance, such as a duty to inform parents of incidents of seclusion and restraint as soon as possible, the Member has decided to drive what he considers to be much-needed progress in this area forward through the Member’s Bill process.

Parliamentary scrutiny

37. The Scottish Parliament’s Education, Children and Young People Committee completed an inquiry in May 2024, highlighting ongoing issues with supporting children with additional support needs in Scotland’s schools. The evidence heard by the Committee covered many of the challenges highlighted earlier in this document. For example, an informal session with parents and carers in February 2024 highlighted that lower attendance at school can result from physical restraint, with the Committee noting that “Several parents expressed concerns about physical restraint which can play a part in pupils refusing school.” The findings of this inquiry report²⁴ reinforced the need for progress in several areas where the Member seeks to make improvements through his Bill.

PROVISIONS IN THE BILL

38. The Bill proposes to place Scottish Ministers under a duty to issue statutory guidance on the use of restraint and seclusion in schools. The Bill defines seclusion and restraint in broad terms. Further detail regarding the various forms of behaviour that constitute seclusion and restraint will be set out in the statutory guidance established by the Bill. This will include guidance regarding what constitutes appropriate and inappropriate forms of restraint and seclusion. The guidance will also provide information on the legal requirements that might apply or be relevant to the use of physical restraint and seclusion, for example, how existing law defines physical assault. The intention is that these broad terms can be elaborated upon in the guidance, and the Bill provides a specific power for Scottish Ministers to do that. This means that any changes in language or approach can be reflected in later versions of the guidance, whilst maintaining statutory definitions on the face of the Bill.

39. The guidance must be consulted on before being finalised, and also before any revised versions are issued. Key stakeholders must be consulted regarding the contents of the guidance. They include: trade unions representing school staff; bodies representing the interests of parents; education providers; the Children and Young People’s Commissioner Scotland; and other voluntary organisations, such as children’s charities with a focus on additional support needs, and other advocacy organisations.

²⁴ *Additional Support for Learning Inquiry report*, Scottish Parliament Education, Children and Young People Committee, published May 2024, retrieved from:
<https://bprecdn.parliament.scot/published/ECYP/2024/5/15/496ab9b0-bd4a-40ed-8f16-64d07018b3d6/ECYP-S6-24-02.pdf>

40. An ‘education provider’ is defined in the Bill as the education authority responsible for a state school, such as a primary or secondary school or a special school. In relation to an independent school, it will be the proprietor of the school, and in grant-aided schools (which include grant-aided special schools) it will be the managers of the school. Where there are specific additional support needs (ASN) units attached to primary or secondary schools then the education authority will be the education provider for these units. A “member of the staff of an education provider”, as referred to in Section 1 of the Bill, includes anyone acting under the authority of the education provider. This definition includes any agency or contracted staff, or other individuals working for schools in any capacity (for example tradespeople working on site), in addition to those under permanent contracts with the education provider.

41. The Bill requires the Scottish Ministers to issue guidance on the use of restraint and seclusion in schools. Education providers will require to “have regard to” that guidance. In addition to details of appropriate and inappropriate forms of restraint and seclusion, the guidance must provide advice about alternatives to restraint and seclusion, and action that might be taken to prevent or minimise the use of restraint and seclusion. This is included to ensure that the guidance places a strong emphasis on de-escalation, wherever possible. Alternatives to restraint and seclusion could, for example, include ways of identifying what the child is seeking to communicate, including when they become frustrated or exhibit other behaviours borne from a difficulty in conveying how they are feeling. This and other forms of de-escalation can be extremely valuable as a means of diffusing a situation before any other means need to be considered. The Member envisages that the guidance will actively direct school staff towards such measures and will provide information on a range of techniques.

42. The guidance will also set out the processes that must be followed in the event that an incident involving the use of seclusion or restraint takes place. This will include details of the processes necessary for the ‘responsible person’ to fulfil their duties under section 3: namely, the duty to inform parents of the use of restraint or seclusion including details of the incident as soon as possible, and within 24 hours. The responsible person for a state school will be the headteacher, in a grant-aided school it will be the manager of the school, and for an independent school it will be the proprietor of the school.

43. The duties to inform and record do not imply that every recorded incident will include a process of apportioning blame and associated processes. The intention of the duty is to ensure that parents are informed about what happens to their children in school. The Member believes that more detailed communication on this issue will lead to more dialogue between the parents, the child and the school, which will, in turn, help ensure that any future uses of seclusion and restraint are not necessary. The duty will also provide parents with reassurance that there are no incidents taking place that they are not being informed about. In addition, an awareness that each incident must be reported might have the effect of redirecting some school staff towards de-escalation techniques.

44. In more serious circumstances, for example, where a parent is informed that their child has been restrained using inappropriate techniques, the parent (and the child) has the right to pursue the matter at school or education authority level, or through more formal procedures such as the ASN Tribunal or even the police or social services where there are concerns that the incident constituted abuse or criminal assault. This is only possible if the parent is informed of the details of the incident. In these circumstances, parents would have the relevant information to seek redress

for their child. These processes are currently available to parents, where they are equipped with the necessary information. The guidance in the Bill will include details on these complaints processes. The Member believes that the duty to inform and record could increase take-up of existing complaints processes. However, he also considers that it is likely that with improved processes and practices in place as a result of the guidance, for example more mediation at school and education authority level, most issues could be addressed at this level without the need for the tribunal or other processes. On this basis the number of formal complaints would not necessarily rise as a result of the Bill.²⁵

45. The duty in section 4 to record and report on the use of restraint and seclusion is the responsibility of the ‘education provider,’ meaning the education authority for state schools. In including a duty to record all instances, the Member acknowledges that there will be instances where seclusion or restraint, using appropriate techniques, and where de-escalation has not worked, may be necessary. Data held at education authority level could provide valuable insights to aid education authorities in identifying areas for improvement in particular schools. Data on the number of incidents must then be reported to the Scottish Ministers who must, in turn, lay a report before Parliament. The Member envisages this report will provide high level data on the incidents of seclusion and restraint across Scotland. This published information will enable parliamentarians and others to scrutinise the levels of restraint and seclusion in schools, including any trends suggesting an increase or a decrease.

46. The guidance must also include detail on inspection of the practice of restraint and seclusion. The Member envisages that this will specify what information must be provided to inspectors as standard. This will help inspectors understand the nature of such incidents and assess the need for changes in practice, as well as making targeted recommendations for further action wherever necessary.

47. In addition, the guidance will detail the required standards for the training of school staff. The Member envisages this will include distinct levels and forms of training for people in different roles. This element of the guidance will be complemented by the establishment of a list of approved training providers that provide training to standards set by the Scottish Government. This list must also detail the courses or programmes involved in such training. The list will be published with a view to ensuring that details of training are readily available to schools and their staff, and that there is clarity on training requirements. The Member appreciates that these measures will need to be accompanied by adequate time being available to school staff to ensure that such training is undertaken on a regular basis.

48. The interpretation provisions in the Bill set out that terms such as ‘child’, ‘education authority’, ‘parent’, and ‘young person’ have the meanings given in section 135(1) of the Education (Scotland) Act 1980.²⁶ For ease of reference, a number of these definitions are summarised here: “child” means a person who is not over school age; “education authority” means a council; “parent” includes a guardian and any person who is liable to maintain or has parental

²⁵ A case study on resolving disagreements in West Lothian Council reflects a change to mediation processes resulting in a reduction in formal complaints to the tribunal, Audit Scotland briefing on Additional Support for Learning, page 22, February 2025 retrieved from https://audit.scot/uploads/2025-02/briefing_250227_additional_support_for_learning.pdf

²⁶ Education (Scotland) Act 1980, section 135, retrieved from <https://www.legislation.gov.uk/ukpga/1980/44/section/135>

responsibilities in relation to, or has care of a child or young person; and “young person” means a person over school age who has not attained the age of eighteen years. For the purposes of this Bill “school” means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a special school. This differs from the definition in the Education (Scotland) Act 1980 as it does not include nursery schools.

49. A number of studies informing this Bill, and the evidence that instigated these studies, have highlighted issues specifically in primary and secondary school education as opposed to in school nurseries, for example [*No Safe Place: Restraint and Seclusion in Scotland’s Schools*](#), an investigation from the Children and Young People’s Commissioner Scotland. It should be noted that there are forms of physical intervention which would not be considered to be restraint that are much more commonly used in nursery schools than in schools for older children. [*Scottish Government guidance Physical Intervention in Schools*](#), in Annexe B, sets out what constitutes such physical intervention, for example ‘hugs, guiding hands, moving and handling’.

50. The commencement provision provides that the Act comes into force 6 months after it receives Royal Assent. The Member considers that, given the work that has already been undertaken in relation to the guidance, and given that a number of education authorities already collate data as required in the Bill, and many schools will already inform parents as standard of incidents of seclusion and restraint, then the work required to implement the provisions of the Bill can happen within a 6-month period. In addition, given the longstanding calls for statutory guidance and associated duties provided for in the Bill, based on the need to reduce the incidence of seclusion and restraint and better understand the circumstances in which it happens, the Member considers that the Bill’s implementation should be progressed as a matter of urgency.

ALTERNATIVE APPROACHES

51. The alternative to the statutory approach for requiring a number of processes, as set out in the Bill, would be pursuing the policy objectives of the Bill through non-statutory means. As established above, guidance has been available to be used by education authorities on a voluntary basis for a number of years. Available evidence would suggest, in the absence of statutory guidance, incidents of seclusion and restraint have not reduced in the time that non-statutory guidance has been in place.

52. Evidence, including details of many experiences provided directly to the Member, clearly demonstrates that parents are not being told timeously and as a matter of course that seclusion or restraint has been used on their child. Parents have reported to the Member that they are regularly not being informed by schools at all and often learn of an incident from their child if they come home upset, or from observing injuries sustained by their child. In the absence of a statutory requirement to inform parents (including guardians and carers), the Member contends that it is challenging to see how this situation will improve.

53. In relation to the collation of data, the Scottish Government already has the ability to ask for data to be recorded and collated by education authorities in a consistent way and in a standardised format and then shared with the Scottish Government (and others). This practice occurs for numerous datasets reflecting the functions of education authorities. However, in the

absence of a legal requirement, this is not currently happening in a consistent way. In some education authorities, it would seem that such data is not collated at all. Research, including by the Children and Young People's Commissioner Scotland, has established that the data required to establish how widespread the use of seclusion and restraint across Scotland is not available, nor is reliable data collated as standard at a local level to inform schools, education authorities and the inspectorate. Therefore, in the absence of a statutory requirement for data on the number of incidences of seclusion and restraint to be collated, it is challenging to establish the extent and nature of the issue. The Member believes that improved data collation as a result of his Bill will enable schools, education authorities, the inspectorate and the Scottish Government to better understand the nature of the challenge and to identify targeted steps to be taken to address it.

54. One alternative approach that the Member considered was to introduce a more substantial Bill that included changes to existing statutory complaints processes. He considers that existing processes are not widely understood by those seeking to use them, namely parents and their children, and that navigating to the most useful sources of information and advice can be challenging. He is also aware that there are longstanding and deep-seated issues with insufficient resources to properly support processes, including staff time in school and dispute resolution services at education authority level. In addition, an absence of information on specific incidents being provided to parents at present (which the Bill seeks to rectify) may prevent legitimate complaints from being pursued. The low level of uptake in the existing formal routes of complaint in serious circumstances, including those specific to children with additional support needs such as the ASN Tribunal,²⁷ may be indicative of a lack of an effective complaints mechanism. However, the Member also wishes to note that more of a focus on resolution processes at school and education authority level would be very valuable and considers that this increased focus through the implementation of the statutory guidance in the Bill could actually prevent the need for referrals to the tribunal and formal complaints processes such as the SPSO.

55. Existing complaints processes, including those that assist in resolution at school or education authority level, as well as those that allow for escalation of serious complaints, are already underpinned by statute.²⁸ It is unclear whether the processes need to be amended by legislation, or rather that these processes must become more widely understood and more accessible to those who require to use them such as parents. This Bill therefore does not include revised processes, but in bringing forward this Bill the Member wishes to highlight the importance of improving the functioning of the existing resolution and complaints processes, not least because the provisions of the Bill will be implemented far more effectively if they are part of a wider system that ensures that the incidence of seclusion and restraint is minimised, including effective recourse through resolution and complaints processes wherever necessary.

CONSULTATION

56. On 19 June 2023, Daniel Johnson lodged a draft proposal for a Member's Bill in the following terms—

²⁷ Information on ASN Tribunals, retrieved from: <https://www.healthandeducationchamber.scot/additional-support-needs/12>

²⁸ For example, the Education (Additional Support for Learning) (Scotland) Act 2004, retrieved from: <https://www.legislation.gov.uk/asp/2004/4/contents>

“A proposal for a Member’s Bill 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.”

57. The draft proposal was accompanied by a consultation exercise.²⁹ The consultation period ran from 20 June 2023 until 29 September 2023 and 148 responses were received. Of the 148 responses received, 81 were from private individuals, 33 were from organisations, 31 were from professionals with relevant experience, two were from academics, and one was submitted by a politician.

58. Respondents were asked whether they were supportive of the proposed bill:

- Of the 139 respondents who gave a direct answer to the question, 92.09% were supportive (87.77% were fully supportive, while 11.51% were partially supportive).
- Only a small proportion of respondents (6.47%) were opposed in principle to the proposed bill overall.
- 25 of the 33 organisations responding to the consultation (80%) provided a clear support for the aims of the proposed bill, while 4 (16%) opposed it.
- Of the 40 respondents who self-selected as parents, guardians or carers in response to the consultation, 39 were supportive of the proposed bill, while one was opposed.

59. Reasons given in support of the Bill included personal experience of the inappropriate use of restraint or seclusion in Scottish schools, that the aims of the Bill align with upholding human rights, and that making the guidance statutory would lead to greater accountability and improve enforcement and clarity around the appropriate use of physical intervention in school settings.

60. Reasons given in opposition to the Bill by those opposed to its aims included that the education system requires additional resources and funding, including to support children with additional support needs, and legislating would not improve support for teachers and school staff in the face of challenging classroom behaviour. The Member is aware of and alive to these issues and is of the view that progressing this Bill should not preclude further action being taken to tackle educational resourcing concerns and improved support for teachers.

61. All responses that were provided on a for publication basis remain available on [the Member’s website](#)³⁰ and a summary of responses produced by the Non-Government Bills Unit is available on the [Parliament website](#).³¹

²⁹ Daniel Johnson MSP consultation on proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill, published 19 June 2023, retrieved from: <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/daniel-johnson-final-cd.pdf>

³⁰ Information on the member’s proposal and consultation retrieved from: <https://danieljohnson.org.uk/safeandincluded/>

³¹ Summary of responses to the member’s consultation on his proposed bill, published September 2024, retrieved from: <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/final-consultation-summary--proposed-restraint-and-seclusion-prevention-in-schools-scotland-bill.pdf>

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

62. The initial equalities impact assessment undertaken for this Bill highlights its positive impact on particular protected characteristics, including disability. As set out above, the term ‘additional support needs’ (ASN) is a broad term, and an individual does not require to be diagnosed in any way in order to be entitled to additional support at school.

63. Children and young people with a disability, whether that be physical or otherwise, are a core cohort of people entitled to additional support. As demonstrated in the work by the Children and Young People’s Commissioner Scotland, Enable, Beth Morrison and others, the incidence of seclusion and restraint using inappropriate techniques is far higher where children have additional support needs, including disabilities. Reducing the use of seclusion or restraint by ensuring that the main focus is on de-escalation techniques by trained staff is the main aim of the Bill. In doing so, the Member envisages that school staff will be better equipped to understand the needs of children with ASN, including disabilities, and avoid using inappropriate techniques to manage their behaviour, therefore leading to an overall more positive school experience for children with ASN across Scotland. On that basis, the main benefits of the effective implementation of an Act of the Scottish Parliament resulting from the Bill will be to disabled children and young people.

64. Further consideration of the protected characteristic of age is set out in the section below on the UN Convention on the Rights of the Child (UNCRC).

Human rights

65. The rights of the child and also the rights of disabled people have been a particular focus in the development of the policy behind the Bill. As mentioned earlier in this document, the UN Convention of the Rights of Persons with Disabilities³² is particularly relevant. Article 7 of the Convention states, in relation to children with disabilities, that:

“States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children”

66. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. Preventing children and young people from experiencing traumatic incidents during their formative years, which can cause both physical and mental injury, is a central policy objective of the Bill and this is linked to the right of children to experience an education and associated positive experiences in the school environment.

67. In addition, although not provided for in the Bill, the Members hopes that where a parent is informed of an incident, it is anticipated that this information will allow the parent to provide the child or young person with the support that they need to pursue any further processes, including

³² UN Convention of the Rights of Persons with Disabilities, retrieved from: <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

for resolution, mediation, or formal complaint. These processes are rightly designed to ensure that the perspective of the child or young person can be voiced and be central to the deliberations involved in these processes, including informing decisions taken and next steps identified.

68. The Scottish Government has produced non-statutory guidance through a rights-based approach and, as acknowledged earlier in this document, the Member anticipates that much of the content in [*Physical intervention in schools - a relationships and rights based approach: guidance*](#) will be used to closely inform the statutory guidance provided for in his Bill.³³

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

69. Daniel Johnson MSP has made a statement that, in his view, the provisions of the Bill have a positive impact on compatibility with the UNCRC requirements.

70. Article 1 of the UNCRC defines a child as being under 18. As the Bill relates to children and young people of school age, including (but not limited to) those with additional support needs, the entire Bill is relevant to children's rights.

71. The Member considers that the practice of restraint and seclusion has the potential to engage the following Articles of the UNCRC: -

- Article 2 - all children have the rights the Convention lays out, and no child should be discriminated against
- Article 3 - the best interests of a child should be a primary consideration in any action that would have an impact on them
- Article 12 - children have the right to express a view and have it taken into consideration when decisions are made about them
- Article 16 - children's rights to privacy and family life should be respected, which includes the right to bodily integrity
- Article 19 - children should be protected from all forms of violence and injury
- Article 23 - children with disabilities should enjoy full lives in conditions that uphold their dignity
- Article 24 - children should enjoy the highest attainable standard of health
- Article 28 - schools should discipline children in a manner consistent with their dignity
- Article 29 - children's education should allow them to develop their personality, talents and mental and physical abilities to their fullest potential
- Article 37 - children have a right to be protected from cruel, inhuman or degrading treatment or punishment, and a right not to be deprived of their liberty unlawfully or arbitrarily.

³³ Physical intervention in schools - a relationships and rights based approach: guidance, Scottish Government, published November 2024, retrieved from: <https://www.gov.scot/publications/included-engaged-involved-part-3-relationships-rights-based-approach-physical-intervention-schools/pages/7/>

72. By placing Scottish Ministers under a duty to issue statutory guidance on the use of restraint and seclusion and requiring that those to whom the guidance is directed must have regard to it, the Bill seeks to ensure that these practices are regulated and used only when absolutely necessary, enhancing the rights of children and young people set out under the UNCRC Articles listed above.

73. The Bill establishes a duty to inform parents within 24 hours of an incident and requires education authorities to record all incidents of restraint or seclusion and report them to the Scottish Ministers, who must then report to the Scottish Parliament. These measures are designed to enhance transparency and accountability and thus help protect children from inappropriate use of restraint and seclusion. Finally, by creating a list of approved training providers, the Bill seeks to promote the use of appropriate interventions, which respect children's rights and dignity.

Island communities

74. Specific considerations in relation to island communities include the challenge of school staff attending in-person specialist training, as the likelihood is that it would not be run on small islands. On that basis, lengthier periods of staff time would be required to cover lessons and supervision in the school while school staff travelled for training. Low staffing levels on some islands, including where specialist vacancies can prove challenging to fill, can impact on the ability for cover to be provided and, therefore, for staff to attend such training. In addition, travel to and from training would presumably be more expensive than for those living closer to the training venue, and would often need to include transport by ferry to the mainland.

75. There would also be considerations in relation to the anonymity of individuals, where data collected about incidents of seclusion and restraint relate to small cohorts of children in small schools. This could make the specific child more identifiable in small datasets. In designing the data collection processes, the Member has been very clear that the data would never be published at school level, to avoid any risk of individuals being identified. Indeed, there is no intention under the provisions of the Bill for the data relating to a specific school to be identifiable.

76. The requirement to publish data deliberately sits at a national level, with the responsibility falling to the Scottish Ministers. This avoids any situation where school level data is published and individuals become recognisable from the data, or schools' data can be compared to each other in public. Education authorities and the inspectorate would have access to school level data across an education authority. The processes required for such data collecting and reporting is considered further below.

Local government

77. The Bill will create additional duties for education authorities and, in turn, the schools the authorities are responsible for. The impact of these additional duties will vary from authority to authority, based on a number of considerations. A key one is the extent to which a local authority and its schools are currently undertaking the various requirements set out in the Bill. For example, the amount of work required to implement the Bill at a local level will depend on the extent to which an authority is already ensuring that its schools: adhere closely to the non-statutory guidance; inform parents as standard in a timely way of every incident; record all incidents; and ensure that school staff have the required training in de-escalation techniques and appropriate seclusion and restraint techniques..

78. As highlighted in the investigation by the Children and Young People’s Commissioner Scotland, there appears to be a wide variation in approach to data collecting by different local authorities. A number appear to collate information on incidents of seclusion and restraint. However, the Commissioner’s investigation suggested that some of the authorities recording incidents were not doing so on a comprehensive basis, using systems that collated information as standard from all schools across the education authority area. There was also evidence of a range of approaches to informing parents, with some schools in certain authorities not having processes in place to inform parents as standard.

79. Resource limitations for education authorities and, by extension, schools will be a real consideration in the implementation of this Bill, if passed. Limits to staff numbers, including those with a specialism, impact on the ability to provide the level of support required for effective de-escalation. These also impact on the ability of staff to cover teaching or supervision time, so that other school staff can attend specialist training courses. Staffing levels across education authorities undoubtedly impact on the ability of school staff to complete processes related to children with additional support needs that would assist them in providing tailored support, such as [Co-ordinated Support Plans](#) (CSPs). Resource limitations can also limit the extent to which parents are informed of their (and their child’s) rights in relation to raising complaints or receiving mediation or other support in resolving issues involving the repeated use of seclusion or restraint against their child.³⁴

Sustainable development

80. The Non-Government Bills Unit carried out an assessment of the proposal, based on the key principles of sustainable development (SD) using the Scottish Parliament’s SD impact assessment tool. Extracts of its contents are detailed below.

81. The 17 UN Sustainable Development Goals (SDGs) cover the general principles of sustainable development. These include the provision of education facilities that are child- and disability-sensitive. In addition, the goals cover safe, nonviolent, inclusive and effective learning environments for all, as well as the social, economic and political inclusion of all, irrespective of age or disability.

82. The potential trauma and wider impact of seclusion and restraint on children and young people can notably impact on their education, and also their later life experiences. For example, as mentioned above in paragraph 37 there is a correlation between incidents occurring and children and young people missing school. This can include where parents decide to home-school even in the event that the strong preference of them and their child would be to attend a suitable school environment³⁵. Long-term absence from school can limit the progress of children who experience repeated restraint and seclusion at school, including their chances of future employment in a role

³⁴ Education and Skills Committee: How is Additional Support for Learning Working in Practice 2017 (Session 5). Retrieved from: <https://webarchive.nrscotland.gov.uk/20240327035401/https://archive2021.parliament.scot/parliamentarybusiness/CurrentCommittees/103397.aspx>

³⁵ Additional Support for Learning Inquiry - informal participation session with parents and carers (19 February 2024), Scottish Parliament Education, Children and Young People Committee, published 14 March 2024, retrieved from: <https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/asl-note-of-discussion-with-parents-and-carers-19-february-2024.pdf>

that suits them and that they enjoy. It can also affect them in many other ways, including their outlook on society and their willingness or ability to communicate within their family and to interact within their wider community.

83. The UN SDGs cover healthy lives and wellbeing, including for all persons with disabilities. In addition to the physical impact of seclusion and restraint incidents, the negative impact on the mental health and wellbeing of the children and young people, as well as that of their parents and wider family, is clear. The evidence gathered directly from parents and families by Beth Morrison, as set out earlier in this Memorandum, is illustrative of this point.

84. In sum, the assessment undertaken reflects numerous positive impacts of moving to a system where there is clear implemented statutory guidance, and where the presumption is that de-escalation techniques by trained school staff are used as a matter of course as an alternative to seclusion and restraint.

Data impact

85. The proportionate and necessary processing of data, including the rights of individuals and the appropriate storage and sharing of data has been considered in the development of the Bill. Considerations include that the Bill will require the processing of children's data, and some of these children will have disabilities. Special category data will be processed as part of the information recorded and shared with parents/carers. The processing will also include the data of staff involved in incidents.

86. Consideration has been given to the extent to which the processes under the Bill already take place on a non-statutory basis. Information collated at present could presumably be under the auspices of a [public task](#), however it may be that the lawful basis for processing changes when there is a statutory basis for collating data. In other words, data practices would move to being on the basis of [legal obligation](#). Different rights apply for individuals when processing on the basis of a public task, as opposed to when processing data on the basis of legal obligation.

87. Irrespective of the change in status, secure storage of special category data will be standard practice in schools and education authorities at present, and it is envisaged that these practices will continue under the Bill. In addition, all data shared at a national level would be anonymised to minimise the risk of details about an individual child, member of school staff, or school becoming public.

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

RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL

POLICY MEMORANDUM

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