

Education, Children and Young People Committee

25th Meeting, 2022 (Session 6), Wednesday 26 October 2022

Public Petitions

Introduction

1. The Scottish Parliament's petitions system provides a way for members of the public and organisations to highlight issues of importance to them which might not otherwise be considered.
2. A petition must be asking something that is within the powers of the Scottish Parliament. It must be relevant to the whole country rather than a local or individual matter.
3. Every petition is considered by the Citizen Participation and Public Petitions Committee (CPPPC), which then determines which action to take on each petition. One of the actions that the CPPPC can take is to refer a petition to another Committee.
4. At this meeting, the Committee will consider two public petitions—
 - **PE1548**: National Guidance on Seclusion and Restraint in Schools; and
 - **PE1692**: Inquiry into the human rights impact of GIRFEC policy and data processing.
5. Petition PE1548 was first referred to the Session 5 Education and Skills Committee on 19 December 2019. Petition PE1692 was referred on 8 November 2018.
6. This paper sets out the last action taken by the Committee. It also invites members to agree what future action to take on each petition (Annexe A sets out the standard options available on each petition).

PE1548: National Guidance on Seclusion and Restraint in Schools

7. Petition [PE1548](#) is calling on the Scottish Parliament to urge the Scottish Government to introduce National Guidance on the use of restraint and seclusion in all schools; this guidance should support the principles of:

- Last resort - where it is deemed necessary, restraint should be the minimum required to deal with the agreed risk, for the minimum amount of time
 - Appropriate supervision of the child at all times, including during “time out” or seclusion.
 - Reducing the use of solitary exclusion and limiting the time it is used for (e.g. maximum time limits)
 - No use of restraints that are cruel, humiliating, painful and unnecessary or not in line with trained techniques.
 - Accountability of teaching and support staff for their actions; this should include recording every incident leading to the use of seclusion or restraint and monitoring of this by the local authority.
 - Regular training for staff in how to avoid the use of restraint.
 - Where restraint is unavoidable training in appropriate restraint techniques by British Institute of Learning Disability accredited providers and no use of restraint by untrained staff.
8. It is also calling on the Scottish Government to appoint a specific agency (either Education Scotland or possibly the Care Inspectorate) to monitor the support and care given in non-educational areas including the evaluation of the use of restraint and seclusion of children with special needs in local authority, voluntary sector or private special schools.
9. This petition was last considered by the Committee at its meeting on [4 May](#). At the meeting the Committee noted that—
- the Scottish Government had set up a working group to develop new, human rights-based, non-statutory guidance to minimise the use of restraint in schools, with the intention of publication the guidance in January 2021;
 - in an update, dated [16 February 2021](#), the Deputy First Minister and then Cabinet Secretary for Education and Skills explained that progress had been delayed by the Covid 19 pandemic and indicated that guidance would be finalised later in 2021; and
 - at that time, the guidance had not yet been published.
10. The Committee therefore agreed to write to the Cabinet Secretary for Education and Skills to seek an update on timescales for the publication of the guidance.

Cabinet Secretary submissions

11. The Cabinet Secretary responded on [6 June](#), and again on [21 June](#).
12. In her 6 June letter, the Cabinet Secretary confirmed that, following the last meeting of the [working group](#) on 23 November 2021, group members agreed that the draft guidance can be put to public consultation.
13. She explained that the Scottish Government was preparing the consultation at that time.

14. In her 21 June letter, the Cabinet Secretary confirmed that the consultation on the [draft guidance](#) had been launched on that day and would be open until Tuesday 25 October.
15. The Cabinet Secretary highlighted that the draft guidance is a result of the 'Scottish Government's 2019 agreement with the Children and Young People's Commissioner Scotland (CYPCS) and the Equality and Human Rights Commission that non-statutory guidance be developed as a first step to improve practice in this area'.
16. The draft guidance focuses on preventative support that should be in place to minimise restraint and provides detailed advice and safeguards that should be followed if restraint is used.
17. It also outlines restraints that should never be used on children and young people, such as prone and other high risk physical restraints.
18. The guidance makes clear that, should any form of restraint be used, it should be recorded. It also details the specific recording and reporting expectations for each type of physical intervention, including timescales.
19. It further makes clear that it is the responsibility of local authorities to actively monitor, scrutinise and challenge restraint data and practice to minimise the use of restraint and eliminate its misuse.
20. In her letter, the Cabinet Secretary explains that, in addition to this draft guidance, the Scottish Government will explore options to strengthen the legal framework in this area, including placing the guidance on a statutory basis, should the non-statutory guidance have the desired effect.

Petitioner submission

21. In [response](#) to the Cabinet Secretary's correspondence, the petitioner states that while some of the guidance is good, she is "extremely concerned that unless the guidance is statutory, nothing will change for the staff, or children affected."
22. The petitioner highlights her experience of supporting children who have experienced physical intervention at school, and their families.
23. She states that children with additional support needs (ASN) and disabilities are disproportionately affected by physical intervention. She is therefore concerned that the draft guidance does not have a relevant section on children with ASN.
24. The petitioner explains that she has also been campaigning for guidance on restraint and seclusion in England, Wales and Northern Ireland.
25. The petitioner notes that on 31 August 2022, EHRC announced that the UK Government has committed to—

- Provide new guidance on restraint in schools to promote de-escalation practices to avoid the need for restraint;
- Bring into force primary legislation, contained in the Apprenticeships, Skills, Children and Learning Act 2009, to make the recording of physical force mandatory in schools, and make it a legal duty to inform parents when restraint has been used; and
- Make it compulsory for all schools to have a restraint policy which includes data recording.

26. In her submission, the petitioner expresses her disappointment that, in her view, Scotland is now trailing behind the rest of the UK on this issue.

27. The Committee is invited to consider what action it wishes to take in relation to this petition.

PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing

28. Petition [PE1692](#) is calling on the Scottish Parliament to urge the Scottish Government to initiate an independent public inquiry into the impact on human rights of its routine gathering and sharing of citizens' personal information on which its Getting It Right For Every Child (GIRFEC) policy relies.

29. This petition was last considered by the Committee at its meeting on [4 May](#). At the meeting the Committee noted that—

- the Deputy First Minister and then Cabinet Secretary for Education and Skills [confirmed](#) in January 2020 that guidance and products to support information sharing practice were being developed. The Scottish Government expected their publication by the end of 2020, at which point the additional guidance would be subject to a consultation process; and
- in an update, dated [16 February 2021](#), it was explained that progress had been delayed by the Covid 19 pandemic, however, it was anticipated that the guidance would be finalised later in 2021.

30. The Committee therefore agreed to write to the Cabinet Secretary for Education and Skills to seek an update on timescales for the publication of this guidance.

Cabinet Secretary submission

31. In her response of [6 June](#), the Cabinet Secretary confirmed that the refreshed material had been published.

32. The Cabinet Secretary also stated that—

- the refreshed materials, including the statutory guidance for the Assessment of Wellbeing, were co-produced by working groups including practitioners from relevant sectors;
- the statutory guidance on the Assessment of Wellbeing was subject to a public consultation; and
- remaining documents, including the role of the named person and information sharing, were subject to direct engagement with key stakeholders.

33. She further noted that an independent analysis of the responses to the Assessment of Wellbeing statutory guidance consultation was due imminently, at which point the Scottish Government would consider whether any changes to the materials are necessary ahead of final publication later this year.

34. The [analysis report](#) was published on 7 September 2022, and the final version of the [materials](#) were published on 30 September 2022.

Petitioners' submission

35. In their [response](#), the petitioners argue that the Cabinet Secretary's submission is irrelevant to the purpose of the petition, as it is calling for an independent public inquiry into the impact on human rights of its routine gathering and sharing of citizens' personal information in relation to the GIRFEC policy, "not to address possible future harm through any "refreshed material"."

36. The submission states that "The Supreme Court found that the information sharing provision of the Children and Young People (Scotland) Act 2014 was incompatible under article 8 of the ECHR and it is this that forms the basis of petition 'PE1692'".

37. It further states that "GIRFEC, SHANARRI and the Named Person provisions had, by the time of the judgment of the Supreme Court in July 2016, already been rolled out and had been in force for a number of years." The petitioners argue that an inquiry is therefore essential, to examine the impact of these policies on children, young people and families.

38. When the [Session 5 Public Petitions Committee referred the petition](#) to the Session 5 Education and Skills Committee in November 2018, it did so to inform the Committee's work on the Children and Young People (Information Sharing) (Scotland) Bill.

39. The Children and Young People (Information Sharing) (Scotland) Bill was withdrawn in September 2019.

40. The Committee is invited to consider what action it wishes to take in relation to this petition.

**Education, Children and Young People Committee Clerks
20 October 2022**

Annexe A

Options available to Committees considering petitions

Once a petition has been referred to a subject Committee it is for the Committee to decide how, or if, it wishes to take the petition forward. Among options open to the Committee are to:

- Keep the petition open and write to the Scottish Government or other stakeholders seeking their views on what the petition is calling for, or views on further information to have emerged over the course of considering the petition;
- Keep the petition open and take oral evidence from the petitioner, from relevant stakeholders or from the Scottish Government;
- Keep the petition open and await the outcome of a specific piece of work, such as a consultation or piece of legislation before deciding what to do next;
- Close the petition on the grounds that the Scottish Government has made its position clear, or that the Scottish Government has made some or all of the changes requested by the petition, or that the Committee, after due consideration, has decided it does not support the petition;
- Close the petition on the grounds that a current consultation, call for evidence or inquiry gives the petitioner the opportunity to contribute to the policy process.

When closing a petition, the Committee should write to the petitioner notifying the decision and setting out its grounds for closure. Closing a petition does not preclude the Committee taking forward matters relevant or partly relevant to the petition in another way.

Annexe B

Correspondence relating to Petition PE1548 and PE1692

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06 June 2022

[PE1548: National Guidance on Seclusion and Restraint in Schools](#)

[PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing](#)

Thank you for your letter of 6 May 2022. I am pleased to provide Committee with an update on the progress made in relation to the petitions noted above.

PE1548: National Guidance on Seclusion and Restraint in Schools

As you indicate in your correspondence, the Scottish Government set up a working group to develop new, human rights-based, non-statutory guidance to minimise the use of restraint in schools. This new guidance will replace existing advice provided within Included, Engaged and Involved Part 2: Preventing and Managing School Exclusions ([Supporting documents - Included, engaged and involved part 2: preventing and managing school exclusions - gov.scot \(www.gov.scot\)](#)).

As the Committee is aware, the physical intervention working group began work on the new guidance in January 2020. Progress was affected by members' focus on the Covid-19 response. However, following the last meeting of the working group on 23 November 2021, group members agreed that the draft guidance can be put to public consultation.

The Scottish Government is currently preparing this consultation for publication. It is anticipated that the consultation will launch prior to the end of the school year in June and will run for an extended period of 18 weeks. This is intended to provide all those who wish to contribute, with the opportunity to do so. I will update Committee once the publication date has been finalised.

Details of the membership and notes of the meetings of the physical intervention working group are available on the Scottish Government's website: [Physical Intervention Working Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/collections/documents/Physical-Intervention-Working-Group-2022-23.pdf).

PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing

The Scottish Government remains fully committed to the delivery and continued development of GIRFEC and the national practice model.

The refreshed materials, including the statutory guidance for the Assessment of Wellbeing, were co-produced by working groups including practitioners from relevant sectors, and the statutory guidance on the Assessment of Wellbeing was subject to a public consultation. The remaining documents, including the role of the named person and information sharing, were subject to direct engagement with key stakeholders.

An independent analysis report of the consultation responses is expected imminently, at which point consideration will be given to any necessary changes to the materials ahead of final publication later this year.

I hope the committee finds the response helpful.

SHIRLEY-ANNE SOMERVILLE

Rùnaire a' Chaibineit airson Foghlam agus
Sgilean

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21 June 2022

[PE1548: National Guidance on Seclusion and Restraint in Schools](#)

Further to my letter of 6 June 2022 updating you on the above petition, I am pleased to confirm to the committee that the public consultation on the draft physical intervention in schools guidance launched today.

The draft guidance, Included engaged and involved part 3 - A relationship and rights based approach to physical intervention in Scottish schools, is available [here](#) and the consultation [here](#). An accessible, Easy Read version of the draft guidance and consultation has also been made available on the Scottish Government's website.

As the committee is aware, the draft guidance is a result of our 2019 agreement with the Children and Young People's Commissioner Scotland (CYPCS) and the Equality and Human Rights Commission in 2019 that non-statutory guidance be developed as a first step to improve practice in this area. We also committed in 2019 to exploring options to place the guidance on a statutory basis if it does not have the desired effect.

The draft guidance has been developed carefully, over time, with extensive input from over 30 working group members and partners, including the CYPCS, young people, parents, staff, local government and third sector organisations. I am very grateful for the commitment and input of working group members throughout this process. The draft guidance focusses on preventative support that should be in place to minimise restraint and provides detailed advice and safeguards that should be followed if restraint is used. The draft guidance also outlines restraints that should never be used on children and young people, such as prone and other high risk physical restraints. The draft guidance reflects the latest advice within the National Guidance for Child Protection, commitments in The

Promise Implementation Plan and is compliant with the Human Rights Act (1998), UNCRC and UNCRPD rights.

The consultation period has been extended to 25 October to allow all those with an interest in this sensitive area, including children and young people, to feedback their views. We will work closely with partners, following final publication, to ensure the guidance is followed.

In addition to the publication of non-statutory guidance, we will explore options to strengthen the legal framework in this area, including placing the guidance on a statutory basis.

I have also written to the Citizen Participation and Public Petitions Committee to update them on this work.

I hope the committee finds this update helpful.

SHIRLEY-ANNE SOMERVILLE

PE1548/UU Petitioner submission of 31 August 2022

In June 2022, after more than 7 years since the petition was lodged, The Scottish Government published [new guidance on the use of Physical Intervention in schools for consultation](#).

I was part of the Physical Intervention working group for the new guidance along with my colleague Kate Sanger and although we tried very hard to make sure the guidance had a legal basis, much to our disappointment, it is not statutory.

For over seven years, I have supported over 2500 families nationwide who were brave enough to trust me with their child's story. Many of the children were physically injured and emotionally traumatised because of their experience. Some parents sent me photos and videos of their child's injuries. I have personally travelled to schools all over Scotland to support parents in meetings and I have listened to education staff tell me that they just don't know what to do, to support children with additional support needs and disabilities.

Some of what's in the guidance is good. The team worked long and hard, however, I am extremely concerned that unless the guidance is statutory, nothing will change for the staff, or children affected.

There is a fleeting mention of children with ASN but no relevant "section" in the guidance which talks solely about those children. My research shows that children with ASN and disabilities are disproportionately affected by physical intervention when they use behaviour to communicate (because it's all they have).

This year, I released some Scottish family survey results involving 613 Scottish Children who had been subjected to physical intervention in Scottish Schools from September 2019 to October 2021.

The families all came to me independently for help and support. They completed a questionnaire (same as the one for The Reduce Restrictive Interventions and Safeguard Children (RRISC) Report launched in The House of Lords)

- 91% of the incidents happened in NURSERY and PRIMARY SCHOOLS.
- 74% of the children had Autistic Spectrum Disorder and ADHD
- 29% of the children were only 6 (SIX) years old
- The youngest child was just 4 years old
- We had NO children over the age of 14 years old.
- 56% were secluded "more than 3 times a week"
- 33% were restrained 1 to 5 times a week
- ALL of the children had additional support needs and disabilities
- 93% of the children had some kind of injury

These figures are absolutely shocking.

In my view the Scottish Government Non statutory guidance will do absolutely nothing to protect these children.

In 2017 I started campaigning in England and Wales for guidance. In 2019, I went to Northern Ireland again, campaigning for “guidance”.

In 2022, Northern Ireland committed to introducing “Harrys Law” which included mandatory recording and monitoring of incidents.

In 2020, I went to The House of Lords for the launch of the [RRISC Report](#) hosted by Baroness Sheila Hollins.

As a result, the Equality and Human Rights Commission launched a formal inquiry into the recording and monitoring of the use of restraint & seclusion in English and Welsh Schools.

Today (31st August 2022) The EHRC announced that the UK Government has committed to

- Provide new guidance on restraint in schools to promote de-escalation practices to avoid the need for restraint;
- Bring into force primary legislation, contained in the Apprenticeships, Skills, Children and Learning Act 2009, to make the recording of physical force mandatory in schools, and make it a legal duty to inform parents when restraint has been used; and
- Make it compulsory for all schools to have a restraint policy which includes data recording.

You can only imagine how I disappointed I am that after over 7 years, the Scottish Government has failed to protect children in law and are now trailing behind the rest of the UK despite saying that it wants to make children’s rights a priority.

The Scottish Government non statutory guidance is out for consultation till the 25th October.

I can only hope that those responding to the consultation will help The Scottish Government to make the guidance statutory.

The campaign in Scotland continues.

PE1692/F Petitioners' submission of 13 September 2022

The letter from the Cabinet Secretary, Shirley-Anne Somerville references "The refreshed materials, including the statutory guidance for the Assessment of Wellbeing...". It should be remembered that the purpose of petition 'PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing' is to examine the effects of the GIRFEC policy over the, now, nearly ten years it has been practised across Scotland, not to address possible future harm through any "refreshed material". The submission from the Cabinet Secretary is irrelevant to the purpose of the petition.

The judgment of the Supreme Court on 28th July 2016 in *The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)* highlighted the risk of SHANARRI wellbeing indicators leading to the named person functions being exercised in an ECHR incompatible manner.

Paragraph 1 of the judgment stated one of the underpinning issues with the SHANARRI wellbeing indicators in that they were "...a shift away from intervention by public authorities after a risk to children's and young people's welfare has been identified, to an emphasis on early intervention to promote their wellbeing...". This was to be achieved by altering "...the existing law in relation to the sharing of information about children and young people, so as to enable information about concerns about their wellbeing, held by individual bodies, to be pooled in the hands of named persons and shared with other bodies, with the ultimate aim of promoting their wellbeing."

Paragraph 16 of the judgment:

" "Wellbeing" is not defined. The only guidance as to its meaning is provided by section 96(2), which lists eight factors to which regard is to be had when assessing wellbeing. The factors, which are known under the acronym SHANARRI, are that the child or young person is or would be: "safe, healthy, achieving, nurtured, active, respected, responsible, and included". These factors are not themselves defined, and in some cases are notably vague: for example, that the child or young person is "achieving" and "included"."

Paragraph 95 of the judgment expands on this:

"...the very wide scope of the concept of "wellbeing" and the SHANARRI factors..."

Paragraph 106 of the Supreme Court judgment found "...that the information-sharing provisions of Part 4 of the Act (a) do not relate to reserved matters, namely the subject matter of the DPA and the Directive, (b) are incompatible with the rights of children, young persons and parents under article 8 of the ECHR because they are not "in accordance with the law" as that article requires, (c) may in practice result in a disproportionate interference with the article 8 rights of many children, young persons and their parents, through the sharing of private information..."

The Supreme Court found that the information sharing provision of the Children and Young People (Scotland) Act 2014 was incompatible under article 8 of the ECHR and it is this that forms the basis of petition 'PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing'. GIRFEC, SHANARRI and the Named Person provisions had, by the

time of the judgment of the Supreme Court in July 2016, already been rolled out and had been in force for a number of years. The impact of this unlawful legislation on the children, young people and families of Scotland and the damage it has caused has never been assessed or addressed. This is why an inquiry is essential.

That families have been seeking erasure of unlawfully processed personal data for many years and are being met with brick walls from the ICO, whose office failed to advise in accordance with the law in the first instance and issued unlawful guidance, and CYPCS whose role does not appear to extend to protecting children's UNCRC Article 16 rights despite being asked by young people to intervene, remains a matter of keen public interest.

That families have been seeking erasure of unlawfully processed personal data for many years and are being met with brick walls from the ICO, whose office failed to advise in accordance with the law in the first instance and issued unlawful guidance, and CYPCS whose role does not appear to extend to protecting children's UNCRC Article 16 rights despite being asked by young people to intervene, remains a matter of keen public interest.

[Research](#) by the Scottish Home Education Forum in 2020 found unlawful data processing had become embedded across services, and the committee is asked to affirm that guidance which does not comply with overarching human rights and data protection legislation, is not lawful, including the de facto imposition of a named person claiming information sharing powers as is currently the practice in Highland. Without hearing from families themselves, there is little likelihood of any improvement in practice and every likelihood of increasing self-exclusion from services by fearful families. Denial of this petition would send a clear message that the lives of children and families do not matter to the government.

Furthermore, the nature of the Cabinet Secretary's submission, specifically its attempt to suggest all will be well whilst ignoring the significant issues raised, is all too similar to the flawed process that led to unlawful legislation being passed in the first place; a culture involving acquiescence with authority, group think and secrecy meant that important questions were never asked and significant shortcomings, risks and errors were never acknowledged. In light of this, the Cabinet Secretary's response, which ignores the questions and issues raised by this petition, seems to indicate that no lessons have been learned. We urge the Committee to act in the defence of families by endorsing this petition.