Education Children and Young People's Committee
Restraint and Seclusion in Schools (Scotland) Bill
Children and Young People's Commissioner Scotland

July 2025

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Do you agree with the Bill's approach? Why?

We welcome Daniel Johnson MSP's Member's Bill on the use of restraint and seclusion in schools and the Scottish Government's commitment to support its general principles at Stage 1.[1] This bill will address the significant gap in legal protections for children when they are subject to restraint or seclusion in school. It reflects the Scottish Government's positive obligations under human rights law, and under the UNCRC (Incorporation) (Scotland) Act 2024, to put in place a legislative and regulatory framework sufficient to protect children from harm. We call on the Scottish Government to work with the Committee and Mr Johnson to develop a bill which maximises protections for children and young people.

Children do not experience restraint differently in school from other settings. Whether in residential care, in mental health settings or in secure care and justice settings, the impact of restraint and the inherent risks are the same.

Our position continues to be that there is a need for a consistent legal framework covering restraint and seclusion in all settings, including education, care (including secure care) and health services. There have been a number of legislative opportunities to do so during this parliamentary term, including the current Children (Care, Care Experience and Services Planning) (Scotland) Bill and we are disappointed that the Scottish Government have not availed of these.

Nonetheless this Bill does represent a significant advance in extending protections and we are pleased to support it.

Section 6 - Definition of a child and other definitions

We note that in section 6(2), the Bill adopts the definitions of "child" and "young person" used in s135(1) of the Education (Scotland) Act 1980 ("the 1980 Act"). We recognise this was possibly added during drafting for expediency.

[1] Letter from Cabinet Secretary for Education and Skills to the Convener 26 June 2025. https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/correspondence/2025/restraint-and-seclusion-bill-cab-sec-es-to-convener-26-june-2025.pdf

In adopting some of the definitions from the 1980 Act, section 6 of the Bill may be incompatible with the UNCRC requirements. For example, the definition of "child" under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) 2024 Act includes all persons under the age of 18 and the UN Committee on the Rights of the Child has made it clear that childhood continues to the age of 18 and that “the rights of every adolescent boy or girl are afforded equal respect and protection”.3 Furthermore, the definition of "school" fails to discharge the positive obligations of public authorities to pre-school children.

There is a history of the definition of a child as a “young person” in the 1980 Act being used to treat 16 and 17 year olds, especially those no longer attending school, as different from other children, not having the same rights to support as other children or in some cases as not being children at all. For example, the Education (Scotland) Act 2016 treats 12-15 year olds and 16- 17 year olds differently, resulting in children aged 16 and 17 not qualifying for Scottish Government funded support and advocacy.[2]

We therefore ask Mr Johnson to bring forward such amendments at Stage 2 as are necessary to ensure the Bill is compliant with the UNCRC, including to define “child” according to Article 1 of the UNCRC as outlined in the Schedule of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 and to ensure that there can be no question of the functions in the Bill being in scope of the 2024 Act.

Definition of restraint and seclusion

We do not take a position on a preferred definition of restraint and seclusion in section 1 of the Bill, other than to be clear that they must not exclude practices that are of legitimate concern and that there would be significant benefit in aligning definitions across sectors. While we note the Scottish Government’s concerns about the breadth of definition used in this Bill, we also note that they are taken from the Scottish Government’s current guidance.[3]

Recent discussions, of which we were a part, on the recording and monitoring of the use of restraint within education provision in secure care homes has highlighted the importance of consistent definitions across sectors, particularly where care and education are being provided within the same facilities and in many cases by the same staff.

Differentiating between education and care in secure is an artificial distinction – it is part of the ethos of secure care that care and education is threaded through children’s lives. Only recording restraint that took place in care, not education would result in nonsensical situations– restraint of the same child, by the same member of staff, would be recorded in a hallway during a break, but the same incident ten minutes later would not as it was during education provision. Restraint of a child in the swimming pool during recreation at 5pm might be recorded, but not at 2pm if it was a PE class. For secure care, this has been addressed through a temporary

[2] My Rights, My Say. *About My Rights, My Say.* *https://myrightsmysay.scot/about/*
[3] Letter from Cabinet Secretary for Education and Skills to the Convener 26 June 2025. https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/correspondence/2025/restraint-and-seclusion-bill-cab-sec-es-to-convener-26-june-2025.pdf

arrangement between the Care Inspectorate and HMIE, due for review in November. Similar situations will exist in other education and care settings including residential special schools.

Having different definitions of restraint and seclusion will result in the same lack of clarity for staff, service providers, schools, and most importantly children and their families.

It is therefore essential that consistent definitions are in place across all settings in which children may be subject to restrictive practices. We have previously called on the Care Inspectorate, the Mental Welfare Commission and HMIE to work together on a common understanding of a definition of restraint that could apply across all sectors. We urge the Scottish Government to work with these bodies and with the member to develop a coherent approach which can be added to this bill as a Stage 2 amendment.

No Safe Place

In 2018, our office published *No Safe Place* – our investigation into restraint and seclusion in schools[4]. The investigation reflected our escalating concerns about the extent to which children, often very young, and often disabled, were experiencing restraint, sometimes to injury. We found that guidance at local authority level was inconsistent, with significant variations in practice. Four councils had no policies or guidance in place at all. This placed children at risk of inappropriate and unsafe practices which could result in serious injury. Only 18 councils recorded all incidents of restraint and seclusion, meaning that we were unable to understand the extent of the use of restraint across Scotland. National guidance, including on reporting and monitoring, was virtually non-existent.

Statutory guidance

It has been clear for some time that the recommendations in our investigation can only be met, consistently across all schools, through the introduction of statutory guidance, reporting and monitoring.

This is in part due to our concern about the continuing, gravely serious case studies being collated by Positive & Active Behaviour Support Scotland (PABSS) led by Beth Morrison and Kate Sanger. They have included some of these in their submission to this Call for Views. They have seen a significant increase in numbers in the last year. Extraordinarily their survey – carried out by volunteer parents - represents the only national data on the use of restraint in education, but is by its nature only part of the picture. A fuller understanding of the prevalence of restraint and seclusion is only possible through a statutory requirement that its use be monitored.

In 2019, the Scottish Parliament's Public Petitions Committee considered Beth Morrison and Kate Sanger's petition on Restraint and Seclusion in Schools[5] and the issue of whether or not guidance needed to be on a statutory basis was discussed at

[4] CYPCS. 2018. *No Safe Place.* https://www.cypcs.org.uk/resources/no-safe-place/
[5] Scottish Parliament, 2015. *PE1548: National Guidance on Restraint and Seclusion in Schools.* https://www.parliament.scot/get-involved/petitions/view-petitions/pe1548-national-guidance-on-restraint-and-seclusion-in-schools

some length in the session on 7 November and 19 December 2019, taking evidence from both our office and from Beth Morrison, who was very clear in her belief that any guidance must be statutory. In his evidence the former Commissioner confirmed that our office's position was that *"it is very clear that the guidance needs to be statutory and have the force of law"*.[6] The current Commissioner supports this position.

In his evidence to the Public Petitions Committee on 19 December 2019, and in response to legal action taken by EHRC with the support of our office, the then-Deputy First Minister (now the First Minister) committed to having non-statutory guidance in place by January 2021, with a one year review that would trigger statutory provision if there was no evidence of impact.[7] While we accept that some delay due to the pandemic was inevitable, the finalised guidance was only published in November 2024 and remains lacking in its articulation of the legal position. It leaves school staff to navigate for themselves the extent of their common law duty of care and the application of human rights tests.[8] Despite repeated attempts, we have not been able to obtain any information from the Scottish Government about its plans for a one-year review.

Statutory guidance, as envisaged by this Bill, will also help to ensure a consistent approach to training and support for staff, including in de-escalation and preventive techniques and alternatives to restraint, as indicated in section 2(2) of the Bill. It could also provide a vehicle for ensuring the kinds of reflective practice and better planning that can reduce the risk of restraint and ensure it is genuinely only used as a last resort and where necessary to prevent harm.

In 2020, the First Tier Tribunal for Scotland's Health and Education Chamber considered a referral from a disabled child who had been subject to physical restraint by between three and five members of staff on at least 13 occasions. The periods for which the child was restrained varies from 5 to 35 minutes and on one occasion she was restrained three times on the same day, for a total of over an hour. As highlighted in the decision, the child was injured on at least two occasions and the type and duration of the holds represented a significant risk to her health. The Tribunal found monitoring forms had "critical omissions and inconsistencies which leads us to question how levels of restraint are measured and evaluated".[9] The Tribunal agreed with the child that "the preventative strategies intended to avoid restraint were inadequate or static" and found no evidence that the school engaged in tailored preventative work. The Tribunal concluded that the child had been discriminated against, in terms of the Equality Act 2010, on the basis that she was

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[6] Scottish Parliament, 2019. *Official Report: Public Petitions Committee 19 December 2019.* https://webarchive.nrscotland.gov.uk/20230606143620/https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12439

[7] Scottish Parliament, 2019. *Official Report: Public Petitions Committee 7 November 2019.* https://webarchive.nrscotland.gov.uk/20230606143609/https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12360

[8] Scottish Government, 2024. *Physical intervention in schools - a relationships and rights based approach: guidance.* https://www.gov.scot/publications/included-engaged-involved-part-3-relationships-rights-based-approach-physical-intervention-schools/

[9] Health and Education Chamber, First Tier Tribunal for Scotland. 2020. P17 https://www.healthandeducationchamber.scot/sites/default/files/decisions/add/ASN_D_%2014_01_2021.pdf

treated unfavourably because of the distressed behaviours arising as a consequence of her disabilities.[10]

Human Rights framework

Restraint, seclusion and restrictive practices engage a number of children's human rights under both the UNCRC and the European Convention on Human Rights (ECHR).[11] Inappropriate use of restraint can amount to "inhuman or degrading treatment or punishment" which is prohibited by Article 3 of the ECHR (the prohibition of torture). Article 3 is an absolute right, interference with which cannot be justified on any grounds. Both the UNCRC (Article 37)[12] and UN Convention on the Rights of People with Disabilities[13] (UNCRPD Article 15) contain equivalent prohibitions on cruel, inhuman or degrading treatment or punishment. UNCRC Article 19, which outlines the right to protection from violence and injury, places a duty on the state to ensure that "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment…"[14]

Importantly Article 3 (and Article 37 of the UNCRC) imposes positive obligations on the State. There is a particular duty to provide effective protection for children, including reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge. This is currently absent.

There have been instances, in the UK and elsewhere, where inappropriate use of restraint has resulted in the death of a child.[15] In other cases, children have been seriously injured.[16] The necessity of appropriate guidance and training on the use of restraint therefore engages children's right to life in Article 2 of the ECHR and Article 6 of the UNCRC.[17] The latter extends an obligation on states to "ensure to the maximum extent possible the survival and development of the child".

Even where conduct may fall below the standard required to evidence a breach of Article 3 ECHR / Article 37 UNCRC, non-consensual physical intrusion is considered to be a human rights violation, which means that restraint could constitute a breach of the child's Article 8 ECHR and Article 16 UNCRC rights. Disabled children are especially vulnerable to such rights breaches, as they are often unable to express their views, or give (or refuse) consent.

The test, derived from human rights standards, is that restraint should only ever be used as a last resort, to prevent an immediate risk of harm to the child or another person, using the minimum necessary force and for the shortest time possible. It should never be used to discipline or punish.

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[10] Ibid. p1
[11] European Convention on the Rights of the Child. https://www.echr.coe.int/documents/d/echr/convention_eng
[12] UNCRC Article 37 https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#37
[13] United Nations Convention on the Rights of People with Disabilities. https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-articles
[14] UNCRC Article 19 https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#19
[15] For example, the deaths of Gareth Myatt and Adam Rickwood
[16] As outlined in the report by PABSS, to be submitted in response to this Call for Views.
[17] UNCRC Article 6 https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#6

As the UN Committee on the Rights of the Child notes in General Comment 8:

> *"The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.*

Seclusion or isolation may not only amount to cruel or inhuman treatment but may also constitute an unlawful deprivation of liberty in terms of Article 5 ECHR, Article 37 UNCRC and Article 14 UNCRPD. Any statutory guidance must, therefore, include seclusion, including the use of "quiet rooms", "sensory rooms", "cool down spaces" or even "medical rooms". Inappropriate or excessive use of such spaces can be harmful and could breach children's human rights. They should only be used as part of a support plan and any use should be recorded to ensure it can be monitored and reviewed.

This Bill must also be considered in the context of the human rights of disabled children. In the absence of accurate recording of the use of restraint, it is not possible to identify what proportion of incidents involve a disabled child. However, both our own investigation and the work of others, including PABSS, indicates that a substantial proportion are disabled. Specific groups of disabled children are disproportionately likely to experience restraint, particularly those with a learning disability, autistic children and those with other neurodivergent conditions. It is therefore important to consider this proposal in the context of both the UN Convention on the Rights of People with Disabilities (UNCRPD) and the Equality Act 2010.

In 2023, the UN Committee on the Rights of the Child published its most recent set of Concluding Observations. It called on the Scottish Government to

- *"Regularly collect, analyse and publish disaggregated data on the use of stop-and-search checks, harmful devices, seclusion, restraint, solitary confinement and isolation on children;*
- *"Take legislative measures to explicitly prohibit, without exception, the use of… (iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools and alternative care and health settings;*
- *"Develop statutory guidance on the use of restraint on children to ensure it is used only as a measure of last resort and exclusively to prevent harm to the child or others, and monitor its implementation;*
    - *"Explicitly prohibit the use of restraint and seclusion in educational settings and adopt a child rights-based approach to addressing violence or other disturbances in schools, including by prohibiting the presence of police in schools and providing regular training for*

teachers on relevant guidance for addressing such disturbances in a child-sensitive manner"[18]

In addition, the UN Committee on the Rights of Persons with Disabilities, in its last review of the UK in 2017, called on the Scottish Government to:

- *"Adopt appropriate measures to eradicate the use of restraint for reasons related to disability […], as well as practices of segregation and isolation that may amount to torture or inhuman or degrading treatment;*
- *"Set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities."*[19]

We call on Scottish Government to not just support the current proposed Bill but to bring forward national human rights based legislative standards, guidance, recording and monitoring of restrictive practices across all settings.

Do you think this timescale for informing parents is reasonable?

It is vital that parents are notified as soon as practically possible and certainly by the end of the school day, but recognise that there may be some exceptional situations, particularly in residential schools and secure, where immediate notification is not practical or possible.

Do you agree this information should be recorded, collated and reported to Parliament annually?

We take no position on whether or not this information should be reported to Parliament on an annual basis, but we recognise this would provide a level of oversight for MSPs and that the Committee may find this reassuring.

It is, however, essential that there is national oversight of the frequency, circumstances and nature of the use of restraint and seclusion. For state mainstream and special schools, this should form part of the education authority quality assurance processes. The data should be collated and publicly reported, as part of official statistics, at a national level. We believe that there is a role for HMIE in this process, ideally receiving more regular data reports, and that statistics should be reviewed as part of the inspection process for individual schools as well as for education authorities.

We note that section 4(2) currently requires independent schools (including independent special schools) and grant aided schools (all but one of which are special schools) to report the use of restraint and seclusion to their local education

[18] UN Committee on the Rights of the Child, 2023. *Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland : Committee on the Rights of the Child.* https://digitallibrary.un.org/record/4013807?ln=en&v=pdf

[19] UN Committee on the Rights of Persons with Disabilities. *Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland.* https://digitallibrary.un.org/record/1310654?ln=en&v=pdf

authority. We welcome the inclusion of these schools in the Bill, particularly given recent concerns about unacceptable use of restraint in residential special schools.[20]

We would suggest further exploration of the most appropriate body to monitor the use of restraint in these schools. It may be that this would more appropriately sit with HMIE, who are currently fulfilling this role in relation to education provision in secure care. This would enable national monitoring of this relatively small group of schools which are, in the case of special schools, more likely to have situations in which there is a risk of restraint or seclusion being used. This data should also form part of the national dataset

What do you think about maintaining a list of training providers on the use of restraint and seclusion in schools?

Appropriate training of staff is an essential part of preventing excessive or inappropriate use of restraint and seclusions in all schools. When considering whether and which staff need to be trained, consideration should be given for the full range of situations in which restraint may be used in an unplanned, emergency situation for the prevention of harm to the child or another person. This should include risk assessing time outwith class settings such as during lunch or breaks.

We understand that the inclusion of a list in legislation is responding to genuine and valid concerns about the quality of some commercially provided training. However, it may be difficult to keep such a list up to date.

We are content with the present provision that training providers must be certified as complying with the Restraint Reduction Network training standards[21], as is required by the current non-statutory guidance[22], but this guidance does need to be on a statutory footing.

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774

[20] For example: Care Inspectorate, 2024. *Hillside School.* *https://careinspectorate.com/berengCareservices/html/reports/getPdfBlob.php?id=318538*

[21] Restraint Reduction Network. *RRN Training Standards.* https://restraintreductionnetwork.org/training-standards/

[22] Scottish Government, 2024. *Included, Engaged and Involved Part 3: A relationships and rights-based approach to physical intervention.* https://www.gov.scot/publications/included-engaged-involved-part-3-relationships-rights-based-approach-physical-intervention-schools/ page 25