

Restraint and Seclusion in Schools (Scotland) Bill

Stage 3 briefing

Children and Young People's Commissioner Scotland

March 2026

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.

This Bill represents the culmination of many years of campaigning by children, their families and organisations to ensure that there is statutory guidance on the use of restraint and seclusion in Scotland's schools.

We give particular thanks to Beth Morrison and Kate Sanger whose campaign for Calum's Law has ensured that the experiences of hundreds of children and their families across Scotland were recognised. These experiences formed a vital part of the evidence supporting the introduction of this bill. Beth and Kate have shown that the children who experience restraint and seclusion are almost all disabled and in most cases young. Beth and Kate have campaigned not for their own children, who are now adults, but to ensure that other children do not experience the trauma caused by inappropriate use of restraint and seclusion.

We thank Daniel Johnson, MSP and his team for all their work on this Bill and we thank the Education Children and Young People Committee and their clerks for their careful consideration of the Bill, which resulted in Stage 2 amendments passing unanimously.

This Bill puts in place important human rights protections for some of the children in Scotland most at risk of not having their rights realised.

The Commissioner asks you to support this Bill at Stage 3.

Restraint and seclusion engage a number of children's human rights under both the UNCRC¹ and the European Convention on Human Rights (ECHR).² 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)³ and UN Convention on the Rights of People with Disabilities

¹ United Nations Convention on the Rights of the Child. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/>

² European Convention on Human Rights. https://www.echr.coe.int/documents/d/echr/convention_eng

³ UNCRC Article 37. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#37>

(UNCRPD Article 15)⁴ contain equivalent prohibitions on cruel, inhuman or degrading treatment or punishment. UNCRC Article 19,⁵ 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...” Restraint also engages children’s rights to respect for bodily autonomy contained within Article 16 UNCRC⁶ and Article 8 ECHR.⁷

Seclusion, where a child is placed in a room or space and is unable to leave if they choose to, may constitute an unlawful deprivation of liberty in terms of Article 5 ECHR. Unlike restraint to prevent immediate harm, a deprivation of liberty has to be authorised by a court or tribunal in order to be lawful.

The UN Committee on the Rights of the Child outlined in General Comment 8 that while restraint can be used in some situations there is a need for governments to take action to minimise its use:

“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.”⁸

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;*

⁴ UNCRPD Article 15. <https://social.desa.un.org/issues/disability/crpd/article-15-freedom-from-torture-or-cruel-inhuman-or-degrading-treatment-or>

⁵ UNCRC Article 19. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#19>

⁶ UNCRC Article 16. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#16>

⁷ ECHR Article 8. https://www.echr.coe.int/documents/d/echr/convention_eng

⁸ UN Committee on the Rights of the Child. General Comment No. 8 (2006) the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para 2; and 37 inter alia). <https://www.refworld.org/legal/general/crc/2007/41020>

- *“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”⁹*

This Bill will require new, statutory guidance on restraint and seclusion to be developed by the Scottish Government. This will be informed by the review of the current non-statutory guidance, which is nearing completion. The guidance must be grounded in human rights and practical and useable for staff.

Amendments

We support the Cabinet Secretary’s amendments **2, 3, 4, 5, 6, and 7**.

We oppose amendment **1**. “Significant harm” is too high a bar for recording of restraint. If restraint is not recorded, it could result in a pattern of increasing use of restraint not being identified. Opportunities to reflect and learn, to plan new strategies to minimise the use of restraint, including additional support for the child could be missed, resulting in an increased risk of “significant harm”.

We recognise the intent behind amendment 1 may be to exclude physical interactions such as a hug being captured within the definition of restraint, however we are satisfied that the inclusion of the language “restricting the physical movement of a pupil” in the definition already achieves this.

Seclusion must always be recorded. As defined in the Bill, it represents an unlawful deprivation of liberty and should not be happening.

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

⁹ UN Committee on the Rights of the Child. *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>