



Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
By email
c/o Clerk to the Committee

Daniel Johnson MSP

17 June 2025

Dear Stuart,

Restraint and Seclusion in Schools (Scotland) Bill

Thank you for your letter of 11 June 2025 regarding the delegated powers in the Restraint and Seclusion in Schools (Scotland) Bill.

The Committee's question was as follows:

The Committee asks whether any consideration was given to whether the matters which are to be included in guidance under section 2 of the Bill should be provided in regulations instead.

This would maintain the intention for statutory status and provide the Parliament with an oversight of those matters which are key to the policy intention of the Bill.

I would respond as follows:

As the Committee noted, the key policy aim of the Bill is to give statutory status to guidance about the use of restraint and seclusion practices. The Bill proposes to achieve this by requiring Scottish Ministers to issue guidance on restraint and seclusion. I expect that the guidance so issued will be an updated version of the current guidance, after it has been reviewed and revised. That revised guidance, having been (re)issued under the Act which flows from the proposed Bill, will be statutory guidance.

Giving the guidance statutory status does not mean that persons to whom it is directed must comply with it. Compliance can only be required through imposing clearly defined

legal obligations in legislation. However, I believe that statutory guidance will have greater weight than non-statutory guidance and is therefore more likely to influence how education providers approach the use of restraint and seclusion in schools.

Section 2(2) of the Bill sets out the matters that must be covered in the guidance. Those matters are those which are already covered in the existing guidance, the contents of which were used as a template for this section of the Bill.

Whilst it would be possible for the Bill to give Scottish Ministers a power to set out the matters which the guidance is to cover in regulations, listing them on the face of the Bill gives the Parliament greater oversight than it would have if they were included in regulations. It also provides the Parliament with the opportunity to debate the matters which the guidance is to cover during the passage of the Bill through Parliament.

I hope you will find this response helpful, and I would be happy to answer any further questions which the Committee may have.

Yours sincerely,

Daniel Johnson MSP