

RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Supplementary Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Daniel Johnson MSP, the Member in charge of the Restraint and Seclusion in Schools (Scotland) Bill (“the Bill”) in accordance with Rule 9.7.9 of the Parliament’s Standing Orders. It has been prepared to assist the Delegated Powers and Law Reform Committee in its consideration of the Bill as amended at Stage 2. It describes those provisions in the Bill which confer power to make subordinate legislation which were introduced or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum (“the DPM”) which accompanied the Bill on introduction. It describes the purpose of each of the new or revised provisions in the Bill and outlines the reasons for seeking the proposed powers.

2. This memorandum has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

3. The amended and new delegated powers in the Bill are listed below, with a brief explanation of what each power allows, why the power has been taken, and why the selected form of Parliamentary procedure is considered appropriate.

DELEGATED POWERS

Section 2(1): Guidance on restraint and seclusion in schools

Power conferred on:	Scottish Ministers
Power exercisable by:	Guidance
Parliamentary procedure:	None
Revised or new power:	Revised

Provision

4. Section 2(1) of the Bill requires the Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools. Matters that must be included in the guidance are listed in section 2(2).

5. Section 2(2) has been amended to insert a new paragraph (za), requiring the guidance to include “what is meant by significantly restricting physical movement for the purposes of the definition of restraint in section 1(1)(a)”.

Reason for revision

6. At Stage 2, the word “significantly” was added to the definition of “restraint” to make clear that only meaningful or material restrictions of movement are caught by the definition. At introduction, the Bill already provided that the statutory guidance could elaborate on the definitions of “restraint” and “seclusion” (see section 2(4)) and there was therefore nothing to prevent the Scottish Ministers from explaining, in guidance, what constitutes a significant restriction of physical movement for the purpose of the definition of restraint. The revision converts this previously optional aspect of guidance into a mandatory requirement. This ensures that all education providers receive clear, statutory guidance on the threshold of “significant” restriction within the definition of restraint, supporting consistent interpretation and application of the legislation.

Choice of procedure

7. There is no parliamentary procedure attached to the issuing of guidance. The justification remains as set out in the DPM.

Section 4(3A): Reporting of incidences to a specified person

Power conferred on:	Scottish Ministers
Power exercisable by:	Regulations made by Scottish statutory instrument
Parliamentary procedure:	Affirmative
Revised or new power:	New

Provision

8. Section 4(3A) empowers the Scottish Ministers to make regulations requiring education providers to report incidences of restraint or seclusion to a person specified in the regulations. New subsections (3B) to (3D) set out matters that may be included in regulations, including timescales, form and content of reports, and onward provision of information to the Scottish Ministers.

9. The Scottish Ministers must consult such persons as they consider appropriate before laying such regulations in draft.

Reason for taking power

10. The power is intended to provide the option of establishing a role for a designated national body (for example, HM Inspectorate of Education (“HMIE”)) in the reporting framework at a later stage. Discussions are ongoing between the Cabinet Secretary and the soon-to-be appointed Chief Inspector regarding HMIE’s future remit, and it is considered appropriate to retain flexibility in the Bill to enable a reporting duty to HMIE (or another suitable national body) to be created through regulations should that be agreed. A requirement for schools to report each incident in real time to a national oversight body would align with existing Care Inspectorate incident-reporting arrangements, and with proposed Mental Welfare Commission reporting requirements for restraint

in certain care and health settings. Establishing a national system of incident reporting would also support early identification and intervention where immediate wellbeing concerns arise, whether from a single incident or from patterns of repeated use of restraint or seclusion.

Choice of procedure

11. As the power allows for the creation of a statutory reporting framework it is considered appropriate that regulations are subject to the affirmative procedure.

Section 4(4A): Excluding specified types of restraint or seclusion from recording/reporting

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative
Revised or new power: New

Provision

12. Section 4(4A) provides a new power for the Scottish Ministers to specify types of restraint or seclusion which need not be recorded under section 4(1) or reported under subsections (2) and (3) or under regulations made under subsection (3A). Section 4(4B) requires consultation before laying draft regulations.

Reason for taking power

13. This power provides the Scottish Ministers with flexibility to avoid disproportionate administrative burdens by excluding defined minor interventions that do not materially contribute to safeguarding oversight. This is intended to ensure that the reporting system remains targeted and proportionate.

Choice of procedure

14. As the power permits the Scottish Ministers to narrow the scope of statutory duties to record and report, affirmative procedure is considered appropriate. As such, any regulations made under this power should be subject to thorough parliamentary scrutiny.

Section 6A: Regulation-making powers

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative (except commencement and certain ancillary regulations)
Revised or new power: New

Provision

15. This Section in itself is not a new or altered power. Section 6A is a new provision clarifying that regulation-making powers in the Act include the ability to make different provision for different purposes or areas. It also provides that, except where otherwise specified, regulations

under the Act are subject to the affirmative procedure (unless an ancillary power which does not add to, replace or omit any part of the text of an Act). It does not apply to regulations under section 7(2) (the Commencement power).

Reason for taking power

16. This is a provision which standardises the procedure applicable to regulation-making powers under the Act and ensures that substantive regulations receive an appropriate, consistent level of scrutiny.

Choice of procedure

17. Section 6A is not a power in itself and as such a parliamentary procedure does not apply to it but, in general, the subject matter of the Bill means that the affirmative procedure provides an appropriate safeguard and ensures consistency across the regulatory framework.

Section 6B: Ancillary provision

Power conferred on:	Scottish Ministers
Power exercisable by:	Regulations made by Scottish statutory instrument
Parliamentary procedure:	Affirmative if amending primary legislation; otherwise negative
Revised or new power:	New

Provision

18. Section 6B introduces an ancillary power enabling the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory, or saving provision.

Reason for taking power

19. This is a standard ancillary power that ensures the Scottish Ministers can make provision necessary to give full effect to the Act or any subordinate legislation made under it, including adjusting related enactments.

Choice of procedure

20. Where the regulations amend primary legislation, they are subject to the affirmative procedure; otherwise they are subject to the negative procedure. The procedure is consistent with standard practice and reflects the distinction between regulations modifying primary legislation (requiring greater scrutiny) and those that do not.

Section 7(2): Commencement regulations

Power conferred on:	Scottish Ministers
Power exercisable by:	Regulations made by Scottish statutory instrument
Parliamentary procedure:	None
Revised or new power:	Revised

Provision

21. Section 7(2) provides that sections 1 to 5 come into force on such day as the Scottish Ministers may appoint by regulations. Subsection (3) allows for transitional, transitory, or saving provision and different commencement for different purposes. Subsection (4) requires commencement regulations to be made no later than 31 July 2028. Sections 6, 6A, 6B and 8 come into force on the day after Royal Assent.

Reason for taking power

22. Commencement by regulations allows Scottish Ministers sufficient time to prepare the statutory guidance and any subordinate legislation to be made under the Act prior to the duties in sections 1 to 5 taking effect. The long-stop date ensures timely implementation.

Choice of procedure

23. It is standard practice for commencement regulations not to be subject to Parliamentary procedure. This is considered appropriate because the policy behind the provisions will already have been considered by the Parliament during the passage of the Bill.

This document relates to the Restraint and Seclusion in Schools (Scotland) Bill (SP Bill 61A) as amended at Stage 2

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