

Proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill

A proposal for a Bill to ensure restraint and seclusion of children and young people in schools are only used as a last resort where there is an immediate risk of harm and using appropriate methods.

Consultation by Daniel Johnson MSP, Scottish Labour member for Edinburgh Southern

19 June 2023

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Foreword



Children have a right to an education and we, collectively, have an obligation to ensure that every child has every opportunity to learn. Sadly for many children, especially for those with additional support needs (ASN), this isn't the case. For these children, the use of restraint and seclusion is a regular part of their experience at school, including: the use of prone and stress holds, being placed in restraining chairs, being put in so-called chillout spaces that are little more than a cupboard, being put in a chair and desk in the hallway and even having teaching time restricted to as little as an hour per day.

What is also clear, is that our teachers need more support and greater clarity regarding safe best practice. All too often they face distressing situations in their classroom which they have not received adequate training for, have no recourse to professional support and little clarity over the Guidance and how it is implemented. This situation is exacerbated by the reduction in specialist ASN teachers, meaning teachers do not have the recourse to specialist colleagues to support both them and the children.

This is the educational experience that many leading third sector organisations and the Children and Young People's Commissioner Scotland have found to be an everyday experience for children in our schools.

The data referred to later in this consultation reflect the scale of the issue. For example in the school year 2017-8 the Commissioner found that where incidents had been recorded the data showed that of the children who had been restrained and/or secluded, incidents had occurred at a frequency of 5.86 times per pupil.¹ However, this may just be the tip of the iceberg. A lack of standardisation in how Guidance is followed means that there are major discrepancies in how incidents of restraint and seclusion are reported, with almost half of all local authorities not recording data at all.

While it is welcome that the Scottish Government has brought forward Guidance on *Physical Intervention in Schools*, many in the sector feel it is important that we go further and include legal clarity and more robust reporting. Without codifying this

¹ [No Safe Place: Restraint and Seclusion in Scotland's Schools | Restraint and Seclusion in Scotland's schools - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)

guidance in law, setting out who is responsible for its implementation or how it should be overseen, ambiguity will continue.

I believe that unless action is taken now this problem will only get worse. This is why I believe there needs to be a change in the law and why I am proposing a Members' Bill.

The purpose of this proposed bill will be to situate current Guidance in law and provide a legal framework for its operation. It does not seek to alter the Guidance nor provide new legal definitions. It would simply create an explicit legal requirement on education authorities to ensure compliance current Guidance is complied with.

Placing the Guidance on a statutory basis, the proposed bill would seek to:

- **Monitor:** framework for consistent recording and reporting on the use of seclusion and restraint;
- **Inform:** duty for clear and consistent standards on parental information;
- **Escalate:** Consistent complaints and escalation procedures;
- **Train:** Robust national standards for training on the use of physical interventions.

This consultation sets out the context, rationale, and key functions of this proposed legislation. This is a difficult and sensitive area. The proposal does not seek to define nor create new standards, but to create a legal context and framework for what already exists. Schools are complex environments and physical intervention will sometimes be necessary, but what we need is clarity about how and when that is appropriate along with certainty about how that is monitored and overseen.

This proposed Bill will provide pupils, parents and teachers with the clarity and certainty they need and in turn foster a classroom environment based on trust and de-escalation not seclusion and restraint.

A handwritten signature in black ink that reads "Daniel Johnson" followed by a long horizontal flourish.

Daniel Johnson MSP
19 June 2023

Calum's Story by Beth Morrison, Calum's mum

Calum Morrison has Epilepsy, Cerebral Palsy, Autism and Learning Disabilities. In 2010, when he was 11 years old, Calum was held by 4 staff in his special primary school because he didn't want to come off a disabled bike he was riding in the gym hall. As a result, Calum was placed in a face-down, prone restraint. He was covered in bruises and had petechiae haemorrhaging all over his upper chest.

Calum has severe communication difficulties and in school, didn't understand the world around him. He should have been safe, nurtured and cared for. Instead, the school's approach was to use restraint to manage and control the children. We would never have done this at home.

As we, his parents, became determined to discover how this could have happened, we uncovered evidence that other children were being restrained at the same school. Other parents across Scotland have since contacted me to describe their child's experience with restraint, how they had been subjected to restraint and seclusion in school and other children's services. All the children had disabilities including learning disabilities and autism. Most had very little verbal language. Many were so distressed that they were shut in rooms, alone, until they were considered "calm".

In January 2015, I lodged Petition [PE1548](#) on National Guidance on Restraint & Seclusion in Schools. It gained 4670 signatures and was lodged in the Scottish Parliament. It called for national guidance on the use of restraint and seclusion in all schools. I continued to campaign to raise awareness. In 2016 the UNCRC made a set of recommendations to all 4 UK Governments. So far, none of these recommendations have been implemented.

The petition was considered by the Scottish Parliament's Citizen Participation and Public Petitions Committee, the Education and Skills Committee, and the Education, Children and Young People Committee and as a result was debated many times in Parliament. After two sets of non-statutory Government guidance were produced, the petition was finally closed in late 2022. However, children like Calum are still not protected in law from the misuse of restraint and seclusion. Over the last 13 years, I have been contacted by over 3000 families UK wide whose children have suffered like Calum did. Corporal punishment was banned in the 1980's, yet restraint and seclusion is used routinely on children like Calum as a response to distressed behaviour linked to additional support needs, disability, autism or neurodivergence.

It is important to recognise that teachers want to do a good job in looking after our children. But they are hampered by a lack of training, inadequate resources,

outdated procedures, policies and beliefs that can lead to staff responses escalating and even causing distressed (challenging) behaviour in our children. Bespoke mandatory training should help staff reduce incidents of concern, achieve more job satisfaction, and reduce staff absences and early retirements.

We are not seeking to introduce a blame culture, but to improve the current situation for teachers, other staff in educational settings and the children and the young people that they support. There is a need for transparency and an acceptance by teachers' leaders that this is NOT an education problem, but a learning disability problem within an educational context which needs a different response. Children's rights must be protected, and we must seek to avoid the trauma that can be caused by the use of restraint and seclusion.

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at: [Scottish Parliament Standing Orders](#)

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website
<https://www.parliament.scot/> under Bills and Laws/Proposals for Bills.

Aims of the Proposed Bill

Physical restraint in a school is any procedure where one or more adults restrict a pupil's physical movement or normal access to his or her own body. It is an intervention to be used only in crisis situations as a method of last resort when all other de-escalation methods have been exhausted, and in line with current legislation and common law. In other words, where not to do so could result in immediate physical harm or injury to the pupil or other pupils or staff.

As set out later in this document, there is clear evidence that restraint and seclusion are being used far more than necessary including using inappropriate methods.

The central aim of my proposed Bill is to reduce the incidence of seclusion and restraint in schools to ensure that it only takes place as a last resort using appropriate lawful methods. I will seek to achieve this by putting restraint and seclusion guidance on a statutory basis. I believe this will assist in ensuring Scotland promotes the rights and opportunities of our children and young people through clear, coherent, and consistent guidance to those charged with their education and well-being.

My proposed Bill will also:

- Create a requirement to record and report all incidents to an existing Scottish Government body;
- Establish a role for this body to monitor the approach to seclusion and restraint in schools and make recommendations for improvement;
- Inform parents or carers of each incidence of seclusion or restraint including details of the circumstances and the methods used;
- Implement a consistent complaints process to provide a clear route for concerns over seclusions and restraint to be escalated;
- Provide a statutory basis for standards of training for school staff including teachers and teaching assistants; and
- Require data including on the incidence of seclusion and restraint to be regularly published by the Scottish Government and reported to Parliament.

Scope and Purpose

A focus on school settings

This consultation for my proposed Bill will focus on the use of restraint and seclusion in Scotland's schools. By 'schools' this consultation refers to the broad spectrum of educational settings in Scotland. This includes local schools, special schools, denominational schools, boarding schools and independent schools. The statutory guidance that this consultation proposes will be relevant in all of these settings.

The scope of children's educational settings is very broad. Although there is an acknowledgement that the use of restraint and seclusion is not confined to the classroom and more work must be done to ensure the child is protected under statutory guidance across all contexts of their education, this consultation looks at the beginning of this trend in the classroom and wider school setting. To cover all settings outside of schools under statutory guidance would be too broad an ambition for simply one proposed Bill. Yet, there is a clear acknowledgement throughout that different settings exist where restraint and seclusion might be used, and more work must be done to ensure the child is protected throughout. Some of the other settings not covered by my proposed Bill include:

- Transport settings – closely associated with classroom education, whether that's transport to and from school or ad hoc use of transport for school trips and other extra curriculum events.
- Residential care settings – where a child stays and has access to on-site care and education².

² For more information, see [Foundations of the promise - The Promise](#)

- Contexts involving law enforcement – where a child might be subject to questioning from representatives from law enforcement.

This list is not exhaustive, but details some other examples where restraint and seclusion might present issues.

A broad definition of Additional Support Needs

This consultation acknowledges the broad definition of the term Additional Support Needs (ASN). It also acknowledges that restraint and seclusion are not only used on children and young people with ASN. It should not be assumed that incidents of inappropriate restraint or seclusion exclusively impacts on children and young people with ASN.

According to the Education (Additional Support for Learning) (Scotland) Act 2004, a pupil has additional support needs if, for whatever reason, they are unlikely to be able to benefit from school education without additional support. The Act provides that education authorities “make adequate and efficient provision” for those children identified as requiring additional support. A diagnosis is not required under the Act – for example a child with the typical characteristics of dyslexia would not need a professional to say she has dyslexia for her to be entitled to additional support. The definition of ASN is broad and includes, for example:

- very able children
- those who may need temporary additional support due to family circumstances such as bereavement
- children with physical or learning disabilities and neurodivergent children or young people.

The number of pupils identified as having one or more ASN has grown significantly in the past decade. The most recent school census shows that 34% of pupils were identified as having at least one ASN in September 2022.

This consultation’s use of the term ASN considers all pupils who fit into the definition set out by the 2004 Act.

This consultation will firstly set out more on the extent of the issue. It will then acknowledge existing legislation, implemented over many years, which is relevant to the issue of restraint and seclusion, as well as the growing coverage in public policy. It will also consider systems that are in place internationally. It brings us up to date with where policy on restraint and seclusion sits at present and makes the case for putting the existing restraint and seclusion guidelines on a statutory basis to help promote the

rights and opportunities of our children and young people and provide clear, coherent, and consistent statutory guidance for those charged with their education and wellbeing.

The extent of the use of restraint and seclusion in schools

This section considers relevant data including from the *In Safe Hands* report, as well as Positive and Active Behaviour Scotland's (PABS) case study, *Reducing Restrictive Intervention of Children and Young People*. Specifically, it looks at evidence of the prevalence of restraint and seclusion and also the adequacy of current data collection at education authority level. As can be seen from the evidence set out below, there is a clear divergence between the number and nature of incidents of restraint reported from consulting families and carers and the data collated at education authority level. I consider the research undertaken indicates that the prevalence of the use of restraint is far more widespread and regular than the patchy information collated by education authorities would suggest.

Across the period 2019-2021 Positive and Active Behaviour Scotland (PABSS) carried out the case study *Reducing Restrictive Intervention of Children and Young People*. The organisation collected case studies from the families of 613 children. Issues related to 331 children were recorded in 2019-2020, and 282 in 2020-2021.³ To collect case study data, PABSS invited family carers to share their child's experiences of restrictive interventions in schools. Family carers completed a case study questionnaire by email or phone call. The children attended schools in 28 different authorities across different regions of Scotland. 472 children had experienced seclusion and of those 56% had been secluded more than 3 times in a week; 24% were secluded "daily"; 15% were secluded for several periods in a day; 5% were secluded 'too many times to count'; and 93% of the children has sustained injuries.

The publication of the Children and Young People Commissioner Scotland's Report *No Safe Place* in 2018 provided key data on the widespread use of restraint and seclusion across Scotland, as well as some recommendations for the Scottish Government.⁴

The report identified 2,674 incidents of restraint and seclusion relating to 386 children. It found that 10 local authorities failed to record all incidents. 18 of the 32 local authorities reported that they record all incidents of physical intervention. Six recorded most incidents, three recorded some and four recorded no cases. The Commissioner's report notes that 18 authorities were able to provide data on restraints and seclusion - however these were not the same 18 authorities which reported that they recorded all incidents.⁵

³ Positive and Active Behaviour Support Scotland, PABSS AND CBF: Reducing Restrictive Intervention of Children and Young People

⁴ No Safe Place: Restraint and Seclusion in Scotland's Schools (2018)

⁵ *ibid*

The report details that, despite saying they recorded all incidents, Midlothian, North Lanarkshire, South Lanarkshire, Aberdeen City, and Inverclyde local authorities were unable to provide any data at all. Angus, Argyll and Bute and Shetland were able to provide data but indicated that they only recorded most/some incidents. Fife provided data but was not clear whether it reflected all incidents, most, or just some.⁶

The 2,674 incidents of restraint and conclusion were reported by 18 authorities, yet only 13 of those recorded the number of children who were the subject of those physical interventions. The results suggested this equated to around 5.86 incidents per child.⁷ The report further details that ‘the information provided to us by families [throughout the duration of the case study] suggests that restraint and seclusion are used disproportionately with children with disabilities or Additional Support Needs. However, only 12 local authorities were able to provide data on these incidents.

Legislative and Policy Background

Relevant Scottish legislation detailed further below includes provision for a presumption towards mainstreaming of those with additional support needs, provision for a broad definition of additional support needs and also provisions seeking to protect the rights of children and young people including in relation to physical harm. The timeline sets out some of the key pieces of legislation which are then considered in more detail below.

The specific issue of restraint and seclusion in Scottish Schools has been addressed through non-statutory guidelines to date. The Scottish Government proposes to update these guidelines, maintaining them on a non-statutory footing with the option to introduce legislation later if required.

Timeline of legislation

1980 - The Education (Scotland) Act 1980 includes a number of duties on education authorities including the fundamental duty to secure the provision of education services.

1998 - The School Standards and Framework Act 1998 provided for the abolition of corporal punishment. A ban on corporal punishment for minors had widely been in effect since the mid 1980s.

1998 - The Human Rights Act gave further effect in the UK to rights and freedoms guaranteed under the European Convention on Human Rights including in relation to ‘inhuman or degrading treatment or punishment’.

⁶ ibid

⁷ ibid

2000 - The Standards in Scotland's Schools Etc Act 2000 introduced a legal presumption that children will be educated in mainstream schools.

2004 - The Education (Additional Support for Learning) (Scotland) Act 2004 provided for a broad definition of additional support needs and numerous related provisions set out further in this section.

2010 - The Equalities Act 2010 places a number of duties on the responsible bodies of schools not to discriminate against pupils with protected characteristics.

2014 – The Children and Young People (Scotland) Act 2014 placed a duty on Scottish Ministers to identify and take steps to give further effect in Scotland to the United Nations Convention on the Rights of the Child.

Scotland

Section 15 of the Standards in Scotland's Schools Etc Act 2000 provides a legal presumption that children will be educated in mainstream schools except for in exceptional circumstances. This legislation was supplemented by guidance from the Scottish Executive in 2002 that stated:

“It is based on the premise that there is benefit to all children when the inclusion of pupils with special educational needs with their peers is properly prepared, well-supported and takes place in mainstream schools within a positive ethos. Such inclusion helps schools to develop an ethos to the benefit of all children, and of society generally. It also helps meet the wishes of many parents that their children should be educated alongside their friends in a school as close to home as possible.”

However, as explained by Kindred below, this presumption can introduce challenges for schools:

“The presumption to mainstream can be interpreted by local authorities to mean that children should start school in mainstream even when they have very high-level needs. The problem arises if the child is not able to cope and the process of seeking a place in a specialist provision can take many months or even a few years. Some of these children are very distressed by the mainstream environment and end up being taught separately, often in makeshift spaces within the school”. Evidence from Kindred to the Scottish Parliament Education and Skills Committee report *How is Additional Support for Learning working in practice?* Published in May 2017

Following the 2002 guidance, further primary legislation then provided clearer definitions on the rights and responsibilities of education authorities and parents and carers of children. The Education (Additional Support for Learning) (Scotland) Act 2004

stipulated that a person has 'additional support needs' if *for whatever reason*, they are unlikely to be able to benefit from school education without additional support. As mentioned earlier, the Scottish Government's Pupil Census lists the reasons for support for pupils with Additional Support Needs with the prevalence of diagnosed ASN on an increasing trend.

Local authorities must "make adequate and efficient provision" for the additional support required by every child for whose school education it is responsible. Whilst only reasonable expenditure to meet this support is required by the Act, managing support for this growing number of pupils with social, emotional, and behavioural difficulties must be guided by clear and supportive guidance.

The Act also sets out statutory dispute resolution procedures, summarised in the Scottish Parliament Education and Skills Committee's 2017 Report *How is Additional Support for Learning working in practice?*

"Where the local authority is responsible for the child's education, parents have a number of rights. These include:

- A local authority must comply with a parent's reasonable request to establish whether their child has additional support needs.
- A local authority must comply with reasonable requests for an assessment, and take the findings into account. However, such assessment is to be carried out by a person the local authority considers appropriate.
- Certain children with complex needs are entitled to a statutory Co-ordinated Support Plan (CSP), which brings with it rights of appeal to the Additional Support Needs Tribunal. 1.4% of pupils with ASN have such plans.

Local authorities must make available certain dispute resolution procedures (mostly free of charge), these are:

- Right to have a 'supporter' present in discussions or an 'advocacy worker' make representations to the local authority, but the local authority does not have to pay for this.
- Right to advocacy services, free of charge, for those taking cases to the Additional Support Needs Tribunal.
- Independent mediation, free of charge.
- Independent adjudication, free of charge.

- Additional Support Needs Tribunal for certain issues involving CSPs, placing requests and disability discrimination cases under the Equality Act 2010.”

The Committee found that resource challenges, including staffing shortages, time and workload pressures, have a huge impact on the how the system envisaged set out above operates. For example, the procedures set out above under the 2004 Act are usually reliant in the first instance on a child or young person being fully assessed, and where appropriate diagnosed, to enable an informed decision to be taken on whether they should have a Co-ordinated Support Plan. The resources then need to be available to develop a ‘CSP’ and continually review it and ensure all teachers and support staff have the time and relevant training to provide the specialist support required. The resources also need to be available to ensure that the rights listed above, such as independent mediation, can be accessed in practice.

UK wide legislation

The Equalities Act 2010 places a number of duties on schools in relation to the admission and treatment of pupils. Section 85 places a duty on schools to make reasonable adjustments for pupils with protected characteristics which includes pupils with a disability. Section 85 also states that schools must not discriminate against pupils with protected characteristics in relation to the provision of education including decisions on admission. Schools are also prevented from discriminating against pupils with a disability by harassing or victimising them during their attendance at school.

United Nations Convention on the Rights of the Child (UNCRC)

Prominent in the rights sphere is the United Nations Convention on the Rights of the Child (UNCRC) which the UN describes as ‘the most complete statement of children’s rights ever produced and is the most widely-ratified international human rights treaty in history’. It was ratified by the UK IN December 1991 and came into force in January 1992. .

The Children and Young People (Scotland) Act 2014, as well as placing duties on public authorities, stipulates at section1:

s1. The Scottish Ministers must—

- (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and
- (b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

Of the 54 Articles in the UNCRC, articles 19, 37 and 7 are particularly relevant:

Article 19

1. States Parties shall take 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, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which considers the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

United Nations Convention on the Rights of Persons with Disabilities (article 7)

The UN Convention on the Rights of Persons with Disabilities is also relevant. Article 7 of the convention states, in relation to children with disabilities, that:

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Work on restraint and seclusion in Scotland, including Scottish Government action

This section provides a timeline of work that has been done on restraint and seclusion in Scotland including a focus on the Scottish Government's work in this area.

As set out earlier, in 17 February 2015 Beth Morrison lodged a petition ([PE1548](#)) entitled National Guidance on Restraint and Seclusion in Schools. The petition called on the Scottish Government to introduce National Guidance on the use of restraint and seclusion in all schools and to appoint a specific agency 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.

In 2017, [Included, Engaged and Involved Part 2](#) (updating the previous iteration of Part 2 which was published in 2011) was published by the Scottish Government and included new guidance on the use of restraint and seclusion in education settings in Scotland. A coalition of voices responded that the guidance did not go far enough and called for such guidance to be placed on a statutory footing. The Scottish Government accepted this and on 7 November 2019, the [First Minister confirmed](#) at First Minister's Questions that the 2017 guidance was being reviewed, and most significantly said,

“putting that on a statutory footing ... is certainly something that we would be happy to consider as we undertake the review.”

Then, in 2018 the Children and Young People Commissioner Scotland undertook an investigation, the office’s first, into restraint and seclusion in schools. This followed ‘dozens of enquiries, calls and emails from parents and carers of children with disabilities and other additional support needs, as well as professionals who work with them’. The Commissioner’s No Safe Place: Restraint and Seclusion in Scotland’s Schools report (December 2018) concludes by drawing attention to confused or conflicting policies (or no policies at all); complicated and often inadequate reporting; and an absence of monitoring’ as well as ‘the lack of reliable information about how many and how often children are being restrained and secluded across the country, and in what circumstances’.

ENABLE Scotland’s 2019 report ‘In Safe Hands?’ called for urgent action from the Scottish Government. This report set out the following key calls:

- Issue stronger, dedicated guidance on the use of restraint and seclusion in schools.
- Roll out positive support strategies in all schools through skilled staff.
- Introduce a duty of candour around restraint and seclusion for all schools.
- Strengthen transparency and accountability, with powers of oversight resting with the appropriate body.

On 23 October 2019 the Children and Young Person’s Commissioner Scotland (CYPCS) and Equality and Human Rights Commission (EHRC) wrote to the Deputy First Minister and Cabinet Secretary for Education and Skills requesting five actions to address seclusion and restraint. At a meeting with these parties on 14 November 2020 the Deputy First Minister agreed to progress the five actions. It was at this point that the Physical Intervention Working Group was established that included both the petitioner Beth Morrison and CYPCS. The Deputy First Minister at that time, John Swinney MSP, again undertook to consider a statutory way forward should it be deemed necessary as mooted by the First Minister in 2017. The Deputy First Minister wrote to the Convener of the Education and Skills Committee on 18 February 2020 confirming this narrative.

In a blog on 30 April 2021, Nick Hobbs, Head of Advice and Investigations and from 17th May 2023 Interim Children’s Commissioner at the CYPCS noted that ‘the guidance promised by Scottish Government hasn’t appeared, nor has a consistent approach to recording incidents – a working group exists to deliver both, but work has been delayed by the pandemic’. He also stated that ‘what’s striking is that for years, families and campaigners have been raising these cases. But they have often been dismissed as one-off failings. The result of poor individual practice by teachers or classroom assistants. The findings of our report, and the scale of restraint and seclusion revealed

in research conducted before the pandemic – more than 700 cases across the UK, more than 400 of them in Scotland – tell us this is not the case’.

The Scottish Government published for consultation draft guidance in June 2022 entitled *Physical Intervention in Schools: Draft Guidance*. The consultation was open between June and October 2022. The non-statutory guidance forms the third part of the Included, Engaged and Involved guidance series and is intended to replace the existing guidance on physical intervention and seclusion within Part 2. The guidance states that its purpose is to: “improve child or young person's learning experiences by outlining best practice in:

- promoting positive relationships, behaviour and wellbeing;
- minimising the use of restraint and seclusion and eliminating their misuse;
- ensuring children and young people's rights are understood, respected and taken account of in all decisions around the use of physical intervention.”

The Government guidance should be read in conjunction with this consultation document as, in my view, it includes a lot of very valuable content that my proposed Bill would be seeking to put on a statutory footing. In a number of places it sets out clear expectations of standards in schools, for example in relation to reporting incidences of restraint. The crucial issue for me is that the guidance in its current form has no statutory basis and is not enforceable. On that basis, its reach is only to seek to promote good practice.

On 26 October 2022 the Scottish Parliament Education, Children and Young People Committee (established in June 2021) ‘agreed to close the petition [PE1548] under Rule 15.7 of Standing Orders on the basis that national guidance has now been developed to minimise the use of physical intervention and seclusion in Scottish schools and the petition has achieved its key aim’⁸. Its predecessor Committee had previously corresponded regularly with the Cabinet Secretary for Education and Skills⁹. In the most recent letter from the Minister to the Education, Children and Young People Committee’s Convener dated 5 December 2022, the Government sets out its proposals as put out to consultation in 2022. Firstly, to publish the Consultation Summary; secondly for the Physical Intervention Working Group to then consider any further amendments to the draft guidance and potential resourcing requirements; and, thirdly a review of the guidance one year after its publication. There is also an undertaking to explore ‘options to strengthen the legal framework in this area, including placing the guidance on a statutory basis’.

⁸ Record of decision to close the petition is [here](#)

⁹ Correspondence is available [here](#)

Also in October 2022, additional concerns were raised in a report by Enable. They stated that:

“draft guidance produced by the Scottish Government is not fit for purpose, and that despite high profile work on this issue since 2018, there remains a lack of training for education staff, no monitoring of the incidents of seclusion and restraint used against children in our schools, and no identified regulator responsible for monitoring its use in education’.

The charity’s findings are published in a progress report entitled in safe hands yet? . The report calls on the Scottish Government to:

- Introduce statutory guidance, which, clarifies accountability structure.
- Confirm mandatory training requirements in alternatives to restrictive practice for all education staff supporting children who have additional support for learning needs arising from learning disability, autism, and neurodivergent, or who are looked after.
- Invest in a nationally developed, locally available training programme for education staff and families to achieve this.
- Collect data nationally from local education authorities, in line with the EHRC recommendations.

At the time of drafting this consultation, the Scottish Government is considering the results of the consultation on its guidance that closed on 25 October 2022. A recent answer to one of my Parliamentary questions in this area confirmed the latest position from the Scottish Government (response to PQ S6W-14741 dated 18 April 2023):

The Scottish Government held a public consultation on the draft of the new physical intervention in schools guidance in 2022 (Physical intervention in schools: draft guidance - gov.scot (www.gov.scot)).

The consultation closed at the end of October. We are carefully considering all responses received and recognise that there are calls for further legislation in this area. A consultation analysis report is currently being prepared for my consideration by education officials.

Alongside the publication of the guidance, and in line with our original commitments, we are exploring options to strengthen the legal framework in this area during the course of this parliamentary term. This includes the option of placing the guidance on a statutory basis.

In summary, there remains dissatisfaction from key stakeholders with the pace of progress of the Government’s work, the lack of confirmation of a statutory footing for the latest guidance, and the fact that this guidance does not provide for what they consider

to be key complementary policies. For example the Government does not envisage a regulatory body for monitoring and reporting and does not stipulate required training standards.

Restraint and Seclusion outside of Scotland – case studies from Northern Ireland and Australia

Northern Ireland

Other devolved nations in the United Kingdom have made meaningful progress in this policy area. The Northern Ireland Commissioner for Children and Young People (NICCY) made several recommendations for policy, guidance, and legislation in the Northern Irish Department of Education (DE) and the DE responded to each recommendation provided. A selection of these responses can be found in the table below.¹⁰

NICCY Recommendations from <i>Neither Seen Nor Heard Report</i>	DE Response
<p>The Department of Education must create legislation which should include:</p> <ul style="list-style-type: none"> ● A provision to ban the use of seclusion in education settings ● A provision to ban the use of any techniques which inflict pain on children ● A definition of restraint and clarity that this should only be used as a last resort 	<ul style="list-style-type: none"> ● Statutory guidance issued by the DE will provide clarity on the definition of seclusion and its use in educational settings ● Corporal punishment was abolished in educational settings in 2003. Statutory guidance issued by the DE will provide further clarity that the use of any restraint must not inflict pain on children or young people. ● Statutory guidance issued by the DE will provide a definition of restraint and clarify that this should only be used as a last resort and not as a means of maintaining

¹⁰ [Review of restraint and seclusion in educational settings published | Department of Education \(education-ni.gov.uk\)](http://education-ni.gov.uk)

<ul style="list-style-type: none"> Requirement for mandatory recording and reporting of all incidents of restrictive practices by educational settings; and that <p>The Education Authority undertakes an annual review on the use of restrictive practices across all settings which should include: the number of children who experienced restrictive interventions; the number of times each pupil experienced a restrictive practice; the type of de-escalation techniques and restrictive interventions used; how children and parents were involved and what support/training may be further required.</p>	<p>good order and discipline.</p> <ul style="list-style-type: none"> The DE will commission a periodic review and publish a report on restrictive practices in educational settings. <p>The DE will secure agreement that the Education and Training Inspectorate will examine if the use of supportive and restrictive practices, by educational settings, follows any related statutory guidance issued by the DE.</p>
<p>The DE should issue mandatory guidance on the use of restrictive practices in educational settings detailing the legislative and policy context, and outlining the roles, responsibilities and accountabilities of school staff, external professionals, Principals, Board of Governors, the Education Authority (or other Governing Bodies) and the DE itself.</p>	<p>The DE will issue statutory guidance on the use of restraint and seclusion in educational settings under Article 18 of the Education and Libraries (Northern Ireland) Order 2003 which places a duty on the Board of Governors of a grant-aided school to determine the measures to be taken at the school (by the Board of Governors, the staff or other persons) to protect pupils from abuse</p> <p>The statutory guidance will:</p> <ul style="list-style-type: none"> Be based on underlying principles Detail legislative and policy context, provide clear definitions of restrictive practices aligned as far as possible with those of the Departments of Health and Justice Outline roles, responsibilities and accountabilities of the people involved across the whole process Will provide for mandatory recording and reporting of all incidents of restrictive practices by educational settings; Include exemplars of positive,

	<p>preventative, and early intervention practices identified by the Education and Training Inspectorate</p> <ul style="list-style-type: none"> ● Include details of training and resources available for educational settings ● Outline requirement for educational settings to immediately inform parents/carers of any incident followed up with a formal report which should include measures to support the child and staff ● Outline whistleblowing procedures
The DE must establish regional standards on restrictive practices in schools including how to minimise their use and eliminate the use of seclusion.	The statutory guidance will have a rights-based, child-centred focus, with an overarching aim that all children and young people in educational settings are protected from harm.
Complaints	
Within the revised guidance document for schools, the DE should outline standards for responding to complaints, in line with Complaints Standards set out by the Northern Ireland Public Service Ombudsman (NIPSO). Guidance should also provide guidance for staff to raise concerns.	The statutory guidance issued by the DE will outline the complaints process and link to the Department’s Safeguarding and Child Protection Guidance which includes advice on the escalation of safeguarding and child protection concerns.
Training	
Teacher training institutions and the Education Authority (EA) should provide mandatory training	

Australia: Victoria

In regard to monitoring and reporting, the Government of Victoria in Australia has made effective progress. Their policy is broken down into the following sections:

Report the incident

- Staff members involved in the incident must immediately notify the principal or their delegate.
- Every incident of physical restraint or seclusion with a 'low' or 'medium' severity rating must be reported as an incident on eduSafe Plus, the department's online incident reporting and hazard management system. Every incident of physical restraint and seclusion with a 'high' or 'extreme' severity rating must be reported to ISOC on 1800 126 126 who will lodge the eduSafe Plus report¹¹.
- Notify parents/carers. The principal or their delegate must, as soon as practicable (for example, within the same school day), inform parents/carers following an incident in which physical restraint or seclusion has been used with their child¹².

Provide support to those involved

- Following the use of physical restraint or seclusion, appropriate supports must be offered to all affected students, including, but not limited to, physical and psychological needs and ongoing monitoring and recovery support.

Document the incident

- Schools must document every incident of physical restraint and seclusion. Written records must be added to the Computerised Administrative System Environment for Schools (CASES21).

Reflect, review and plan

- Following an incident of physical restraint or seclusion, the school must consider any preventative and de-escalation strategies that might reduce the likelihood of an incident happening again.¹³

The Victoria State Government model demonstrates a thorough process for controlled reporting, recording and monitoring. In turn, this works to ensure that there is a

¹¹ Victoria's Education and Training system, Action required after an incident of physical restraint or seclusion.

¹² [Restraint and Seclusion: Policy | education.vic.gov.au](https://www.education.vic.gov.au/Restraint-and-Seclusion/Policy)

¹³ ibid

minimised risk to the child, a preservation of the rights of the child and an upholding of the staff's duty of care. A statute on recording, reporting, and monitoring would ensure that this process could effectively take place in Scotland.

What the proposed Bill will seek to do

This section aims to set out what the proposed legislation could look like, and I would very much welcome your views on the model outlined below, and also any alternative or complementary approaches that you would like me to consider in developing the detail on the provisions of the Bill at a later stage.

The proposed Bill will focus on a series of key points:

- Putting guidance on restraint and seclusion on a statutory basis
- Creating a requirement to record, report and monitor incidents
- Ensuring that parents and carers are informed about every incident of restraint
- Establishing a means for complaints about seclusion and restraint to be highlighted to an existing Government body
- Creating a requirement for mandatory training for teachers and teaching assistants which ensures certain practices are not permitted

The proposed Bill, including the statutory guidance established by it, will be based on the underlying principles below.

Principles of Statutory Guidance		
Children's Rights Centred	Understanding Behaviours and what they are communicating	Understand what restrictive practices should NEVER be used
Understand what supportive practices are and when these should be used	Understand behaviours of concern and the development of behaviour support plans	Understand the last resort circumstances when restraint or seclusion might be permissible
Have measures in place that ensure the recording of supportive practices in pupils care plans	Planning and training that prevents escalation and addresses crisis situations if they arise	Have measures in place to ensure mandatory recording and reporting of restraint

Issue(s) with current Scottish Government guidance	Members Bill Recommendations
Is non-statutory and therefore merely sets out a set of expectations rather than governing how schools and other settings must behave.	Putting regulations and guidance on restraint and seclusion on a statutory basis.
Has no requirement to notify families about the use of restraint, or to record or report it, which perpetuates the current situation whereby the use and scale of restraint is unknown.	Creating a requirement to record and report every incident and notify parents, carers, or guardians after every incident.
Has no implementation plan to deliver the change required.	Creating a standardised, nationally developed training programme, delivered at local level, which must be undertaken by those in an education setting, specifically teachers, teaching assistants
Lacks any guidance on issuing an official annual report on datasets for restraint and seclusion in schools.	An existing body will take responsibility as a national inspectorate, responsible for overseeing restraint and seclusion practice, publishing an annual report and with the powers to scrutinise schools use of restraint and seclusion. I would envisage that Education Scotland, or the body established to replace it, would be a likely candidate for this role.

What follows is an outline of the underlying principles of the proposed Members Bill which seek to address the calls listed in the table above.

1. Putting guidance on restraint and seclusion on a statutory basis

Once Scotland's restraint and seclusion guidance is on a statutory footing, there is an onus on education authorities and therefore schools to comply with the law. The statutory guidance will seek to define restraint and seclusion as well as what can reasonably be understood to qualify as 'last resort'.

Third Parties should in most cases follow the said guidance unless they have a very good reason not to. There may be some situations where the guidance must be followed without exception. Further guidance on when no exception will be allowed will be clarified in additional guidance.

I would welcome views in responses to this consultation as to what the guidance should contain, which elements you consider must be enforceable and how accountability should work in practice in terms of enforcement of the guidance. For example, what should be the potential consequences where statutory guidance is not followed and how should this work in practice?

2. Creating a requirement to record and report incidents

In Scotland, when an institution must use its restraint and seclusion policy, they currently have no mandatory requirement to record the incident/restraint intervention. At present, the guidance for schools is:

“As soon as the child is under control, staff should cease any physical contact. All incidents of physical intervention or restraint should be logged, dated and signed in a log kept for that purpose.”¹⁴

The ambiguity in the requirement for recording and reporting the use of restraint means cases go unreported. Based on previous recommendations, including from the CYPC Scotland, and based on my own policy development I consider that:

- Education Authorities must record all incidents of restraint and seclusion in schools on a standardised national form
- Anonymised statistical data should be reported to an existing body, potentially Education Scotland.
- This body should analyse and publish this data as part of its statistics.

Education authorities should ensure that all recording forms at school level include sections for de-escalation techniques considered and attempted - they should be incorporated into the assessment and planning processes in place under Additional Support for Learning legislation and Staged Intervention processes, as well as the

¹⁴ Scottish Councils of Independent Schools, Guidance of Child Protection, page 9

Getting It Right for Every Child (GIRFEC) National Practice Model and SEEMis data management system.

3. Creating a requirement to inform parents and carers of every incident of restraint

This consultation document proposes the introduction of mandatory incident reporting and communicating with parents, guardians and carers about what restraint methods have been used. This will help create and improve the culture around the use of restraint and seclusion. It will also help parents, carers and guardians to have the information required to raise a complaint where necessary.

I would welcome views on what key information parents, carers and guardians should receive as standard. For example, details could be provided as standard of the staff involved in seclusion and restraint, the de-escalation methods used (including whether reference was made to the child's plan or co-ordinated support plan), the supportive practices considered as an alternative to restraint, where the restraint took place, how long it lasted, whether the staff involved have had relevant training etc.

There needs in my view to be a statutory requirement to provide a sufficient amount of information to enable parents, carers and guardians to pursue the matter should they be concerned about the action taken in the school.

Numerous routes for further action exist at present for parents, guardians and carers to raise an issue relating to seclusion and restraint. They can raise the matter with the school direct. In addition, they can, in theory, make a complaint at education authority level, make complaints to the Additional Support Needs Tribunals for Scotland (ASNTS), make a complaint to the Children and Young People's Commissioner Scotland, make a complaint to the Care Inspectorate (where the incident takes place in a residential school), take legal action for example on the grounds of assault, or raise the matter as a child protection issue with social work or the police.

For example, in relation to the ASNTS, a claim alleging discrimination in relation to physical interventions in a school led to numerous recommendations to the school by the Tribunal including a formal apology, externally provided training for staff and reviewing policies to ensure they are in line with national guidelines¹⁵.

However, in practice, in order for any of these routes to be open to parents, carers or guardians at all, they must have knowledge of this often complex system in order to navigate it. They must also be equipped with the relevant information to be able to pursue the matter further. My proposals would ensure they are equipped with the

¹⁵ [FTS/HEC/21/AC/0072/MERITS | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#)

relevant information. As set out below, this sort of in-depth information would assist the monitoring body in establishing which schools to inspect.

4. Creating a means for complaints about seclusion and restraint to be highlighted to an existing Government body

An existing body, for example Education Scotland or its replacement, should take on the role of national inspectorate in relation to seclusion and restraint and should have the powers to inspect all schools' approach to restraint and seclusion.

This body will be accountable to the Scottish Government education department and have the power to ensure schools are following the statutory guidance. Additionally, a national annual report based on collated data will be produced by this government body and be published.

School teachers and staff have a duty of care for all pupils at their institution. By mandating the requirement of a school to report to a national inspectorate and the production of an annual report I am seeking to create a culture of accountability around the use and implementation of restraint and seclusion to ensure practices become more humane and progressive. In addition, parents and carers would have the capacity to raise a complaint with this body, which would enable the body to establish where issues are arising and undertake targeted inspections wherever necessary.

This will involve the authority to visit schools on mandatory inspections and also to monitor a school's use of restraint and seclusion based on the data provided by the relevant education authority. As stated in the *'No Safe Place: Restraint and Seclusion in Scotland's Schools'* report¹⁶ commissioned by the Children's & Young People's Commissioner for Scotland there is currently no coherent system in Scottish schools to monitor the use of restraint and seclusion in schools. Without this process to monitor, investigate and analyse information relating to restraint and seclusion use, at both a local and national level, concerns about cultural practices and trends will go undetected by the Scottish Government and unaddressed.

I appreciate that, at present, Education Scotland can look at the use of physical restraint during the course of school inspections. The draft guidance from the Scottish Government on physical restraint states that:

116. In line with the "How Good Is Our School?" self-evaluation framework^[49], inspectors will request pre-inspection information from the school. For all school inspections, this includes information on the use of physical intervention. Pre-inspection questionnaires to stakeholders are also issued, which include

¹⁶ [No Safe Place: Restraint and Seclusion in Scotland's Schools | Restraint and Seclusion in Scotland's schools - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)

questions about children and young people's wellbeing, safety and the extent to which they feel respected and supported. During the inspection, inspectors gather and triangulate other evidence relevant to the context of the school. For example, looking at records of restraint, talking to staff about the impact of professional learning and discussing with children and young people how well they are supported in school. Inspectors may comment on the use of physical intervention under Quality Indicator 2.1 (safeguarding and child protection). They may also report on any outcomes for children and young people including the application of guidance under Quality Indicator 3.1 (ensuring wellbeing, equality and inclusion).

In practice, school inspections can happen infrequently and inspections seek to cover a huge range of areas to monitor the performance of a school. Therefore, physical restraint can receive little focus in these processes. In addition, given the patchy collation of information on seclusion and restraint at present then it is likely that in many circumstances the relevant data cannot be provided to Education Scotland to inform this work. For this and other reasons I do not consider the current approach to inspections to have a sufficient focus on seclusion and restraint.

Using the model outlined above, I consider that the Government body, presumably Education Scotland or its replacement, would receive the necessary information to identify any particular education authorities, or particular schools, where there was a cause for concern in relation to the frequency or nature of incidents. In addition, the body would have the power to undertake focussed inspections specifically looking at seclusion and restraint. I would welcome views in responses to this consultation on this model.

5. Creating a requirement for mandatory training for teachers and teaching assistants which ensures certain practices are not permitted

The final key point that is covered in this consultation is the establishment of mandatory standardised training for all teachers and support staff in Scotland and making this a requirement for all those staff going forward. This will ensure that certain practices are not permitted, such as enforced seclusion. This could be achieved through quality assurance of training, required training content for courses, with a list of approved training providers or a nationally licensed training product. It must take place regularly across authorities. The benefits of standardising teacher training and making it in-line with the new statutory guidance include:

- Standardising knowledge and skills - from the outset, staff in the educational setting will begin with the same knowledge and understanding of the same appropriate practices. If one of the wider staff members is unsure about the implementation of restraint and seclusion, then they can easily speak with a

fellow staff member and get a clear understanding of the standardised rules. On this basis, there should be no different interpretations of these rules.

- Reducing errors and improving retention - standardising teacher training on restraint allows for the methods and training material to be the same across the sector. This will help increase retention of key guidance and skills, increase the efficiency of training, and ensure that any individual interpretation of restraint and seclusion is prohibited.
- Easier to maintain and control - this makes it easier for the body tasked with the duty of national inspectorate for restraint and seclusion to monitor training practices, minimise malpractice and ensure best practice.
- Consistency across all Scottish councils - standardising the training across all council administrations will help establish a common understanding of the statutory guidance, which is regular across all Scottish authorities and in turn, reduces the risk of malpractice. It also helps maintain national collaboration and consistency of practice.

I would welcome views on the content of mandatory training, how it should be implemented in practice including the roles and responsibilities of the Scottish Government, the General Teaching Council of Scotland and Education Scotland (or its replacement).

Equalities

In assessing the likely impact of these proposals on equality, I believe that safeguarding and promoting the rights of school age children and young people in relation to the use of restraint and seclusion in schools would have a positive effect. This view is supported by ENABLE Scotland and the Children and Young People's Commissioner for Scotland, which have both advocated for the introduction of a rights-based national policy and guidance on the use of restraint and seclusion.

As set out earlier in this consultation document, the United Nations Convention on the Rights of Persons with Disabilities includes the right to equality and the right of children with disabilities to enjoy all of their liberties. Further, it prohibits unlawful deprivation of this liberty, and inhuman or degrading treatment or punishment. The rights of children with a disability or disabilities also extends to the right to education and the protection of physical and mental integrity. These rights should also be read in conjunction with the UN Convention on the Rights of the Child.

Young people with learning disabilities, and specifically those who display challenging behaviour, are disproportionately subject to restraint and seclusion. Under current arrangements there is an inconsistent approach to restraint and seclusion with the risk

of the infringement of rights. By introducing statutory guidance which clarifies accountability structures, establishes mandatory training requirements, and improves data collection, the proposed Bill would contribute to improved, safer access to mainstream education for pupils with disabilities.

The measures included in my proposed Bill would serve to safeguard children and young people's rights in relation to restraint and seclusion by ensuring that such measures are only applied appropriately and safely in specific circumstances, which could help aid progress towards the elimination of discrimination against people with a disability or disabilities.

The proposals also seek to further the advancement of opportunity for young people with disabilities in education by encouraging the fostering of good relations between pupils with disabilities and those without by underpinning the ambition to educate pupils together where appropriate.

The proposed Bill would have a positive impact on the right to protection from harm and equality of opportunity for school age citizens with or without disabilities. It would not create any new inequality for those with protected characteristics; rather, it would have a positive impact on people with disabilities and of school age by promoting their rights of equality of educational opportunity.

Sustainability

When developing any new policy proposal, it is important to assess the extent to which the proposed legislation can be delivered in a manner conducive with the principle of sustainability. This extends beyond consideration of environmental impacts – the creation of a strong, healthy, and just society for future generations, and progress towards a sustainable economy, should also be considered as positive outcomes of sustainable policymaking.

The measures set out for inclusion in my proposed Bill would protect the rights of pupils by law, providing clarity and a system for complaints, escalation and legal rights. As set out previously, data suggests that those with disabilities will be most likely to benefit, as restraint and seclusion is most often applied to children with this particular protected characteristic. Conferring greater protections on pupils more likely to face seclusion and restraint would not favour or confer any unfair advantages; rather, it would provide greater protection and improve the rights of those with disabilities, serving to promote fairness and prevent injustices, unfairness, or inequalities (in a narrow field) by applying, in law, consistent principles and procedures to be applied by the relevant public authorities for all pupils.

Further, the proposed Bill could positively benefit future generations by contributing to the normalisation of mainstream education for many pupils with disabilities by

cementing the rights of these pupils and better informing and training those charged with their protection and education. Greater guidance and training for staff would also likely result in fewer instances of inappropriate or traumatic treatment caused by seclusion or restraint, which would benefit future generations by exposing fewer young people to unnecessary adverse experiences relating to restraint and seclusion that they carry with them into adulthood. This will also have an associated positive impact on their families.

It is important to consider how the proposed Bill would positively impact the work of teachers and other staff in educational facilities, in addition to its impact on pupils. The introduction of statutory guidance should have a positive effect on education professionals by providing them with a standardised training structure and clear and consistent guidelines for a challenging aspect of their work.

Financial implications

I would welcome comments in responses to this consultation in relation to the costs associated with my proposal.

I appreciate that there will be costs that fall at school level, at education authority level, for the body responsible for monitoring the system, and at Scottish Government level. I also appreciate there may be costs associated with complaints processes, including where increased information being provided to parents and carers leads to more complaints. For example, there could be more cases raised with the ASN Tribunal.

There could also potentially be costs where more legal action is taken on the basis that information provided to parents or carers includes grounds for legal challenges, for example on the basis of assault. Court cases would impact on the resources of the Scottish Court Service and the Crown Office and Procurator Fiscal Service.

There will be costs incurred for several elements of my policy and a number of these are explored below. Please feel free to build on these points in your response and highlight other ways in which costs may be incurred:

Training teachers and teaching assistants, this will include the cost of providing the training and there will be a cost associated with the time taken away from the classroom for school staff as cover will need to be provided.

Senior school staff and administration will need to spend time recording incidences of seclusion and restraint under the new standardised system. That said schools will or should already be dedicating time to recording incidences, reviewing plans and support for high risk children and young people including producing de-escalation plans. Where sufficient planning, recording and support mechanisms are already in place I do not anticipate notable additional costs being incurred.

The body responsible for monitoring the action taken at school level to minimise incidences and ensure appropriate methods are used will require staff to effectively undertake this function and there will be a cost associated with this function.

There may also be minimal costs for the Scottish Government associated with the collation and publication of data on seclusion and restraint, including providing this data to the Scottish Parliament.

I am seeking detail in responses from those with experience in these areas who consider they can provide valuable information on the level of potential costs incurred for these different bodies for these different functions. I would also welcome comments on the benefits of the proposal and associated savings generated. I firmly believe that the benefits associated with my proposal for a Bill justify the costs and this includes the benefits of preventing the profound negative impacts on individuals and their families of the lasting trauma suffered where seclusion and restraint is used repeatedly, unnecessarily and using inappropriate methods.

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant area
- Academic with expertise in a relevant area
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously

- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. **Data protection declaration**

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please ONLY tick this box if you are UNDER 12 years of age.

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

1. Which of the following best expresses your view of the proposed Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response.

2. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

3. What is your view on the proposal that guidance on restraint and seclusion should be statutory?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including setting out what you consider any statutory guidance should cover and how it should be enforced.

4. What is your view on the proposal that incidents should be recorded by schools and reported as standard to a body responsible for monitoring incidents?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed

- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including which existing body you consider would be best placed to perform the monitoring role and how the monitoring role would work in practice.

5 What is your view of the proposal for parents, carers and guardians to be provided with details of every incident to allow concerns to be escalated wherever necessary?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response including what information parents, carers and guardians should be entitled to.

6 What is your view of the proposal to require data on restraint and seclusion to be published?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response including details of what data should be collated, who should be responsible for publishing it and how regularly.

7. What is your view of the proposal to require all teachers and teaching assistants to complete mandatory training on restraint and seclusion?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response including details of what training should involve and how it could be delivered in practice.

Financial implications

8. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- skip to next question

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

Equalities

9. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Sustainability

10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas?

If you do not have a view then skip to next question.

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

General

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:
<https://www.smartsurvey.co.uk/s/RestraintAndSeclusion/>

The platform for the online survey is Smart Survey, a third-party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here: [Privacy Notice](#)

Smart Survey's privacy policy is available here:
<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Daniel.johnson.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Daniel Johnson MSP
134 Comiston Road,
Edinburgh,
EH10 5QN

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#).

You may also contact my office by telephone on (0131) 541 2145.

Deadline for responses

All responses should be received no later than 29 September 2023. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website:

<https://danieljohnson.org.uk/safeandincluded/>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person’s consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.org.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

Annexe A – Definitions

Definitions

Restrictive Practices

Restrictive practices are defined as any activity that restricts an individual's freedom of movement. This term covers a wide range of activities including:

Physical Restraint

Any procedure where one or more adults restrict a pupil's physical movement or normal access to his or her own body. It is an intervention to be used only in crisis situations as a method of last resort when all other de-escalation methods have been exhausted, and in line with current legislation and common law. In other words, where not to do so could result in any immediate physical harm or injury to the pupil or other pupils or staff.

Reasonable Force

Is the current legislative term* defined as such force as is reasonable in the circumstances for the purpose of preventing a pupil from:

1. Committing any offence
2. Causing personal injury to, or damage to the property of, any person (including the pupil himself); or
3. Engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise."

Chemical Restraint

The use of medication for the purpose of controlling or subduing disturbed/violent behaviour, where it is **not** prescribed by a Health professional for the treatment of a formally identified physical or mental illness. This form of restraint must **never** be used in educational settings in Scotland.

Mechanical Restraint

The enforced use of mechanical aids such as belts, cuffs and restraints forcibly to control a pupil's movement to control behaviour, where they are not prescribed by a Health Professional. This form of restraint, specifically to control behaviour or as a punitive measure must **never** be used in educational settings in Scotland.

Enforced Seclusion

Placing a child or young person involuntarily in any environment in which they are alone and/or physically prevented from leaving. Physical prevention from leaving can be using a locked door, a blocked door, or an exit held closed by a staff member. Enforced seclusion is also a situation where a pupil believes they cannot leave a space although no physical block is evident. Enforced seclusion, specifically to control behaviour, must never be used in educational settings in Scotland.

Supportive Practices

Supportive practices are those used for safety, health and well-being purposes and are defined as follows:

Physical Support

Direct physical contact to assist in movement, emotional well-being, feeding and personal care needs such as changing etc.

Medication and healthcare support

The use of medication (whether orally or intravenously) and relevant healthcare interventions, including the use of equipment, that are prescribed by a registered and trained Health professional and administered for the treatment of a medical, healthcare and/or mental health condition.

Therapeutic Support

The use of aids and treatment interventions to help support physical, emotional well-being or developmental need that is used to enhance a pupil's safety and functional needs and that is used in line with an assessed need and, where appropriate, under the direction of relevant trained Health Care professionals. This guidance does not include the use of seatbelts or other mechanical support required in common law.

Supportive Space

Quieter areas or rooms of a building, or an outdoor space away from noise or other people that pupils can normally access of their own free will when needed

to refocus and regulate their emotions and can return from when they choose, or in some instance for pupils with severe learning difficulties, for whom access is timetabled as part of a multi-disciplinary approach. Pupils are not left unattended in these spaces.

Seclusion for Health Reasons

This should be in line with a plan signed off by health and social care professionals and agreed with the school and parents and would be considered supported practice in meeting the needs of an individual pupil.

Behaviours of concern

Behaviour of concern is defined as when it is of such intensity, frequency or duration as to threaten the quality of life and/or the physical safety of the individual or others.

Annex B - Timeline provided by Beth Morrison

January 2015 PE1548 by Beth Morrison was launched in Scottish Parliament

May 2016 The UNCRC Concluding Observations Published

April 2017 John Swinney, then Cabinet Secretary for Education and Skills told Parliament Petitions Committee new guidance would be looked at again 'in a couple of years'

June 2017 Included and Engaged Scottish Government guidance published – (with 3 pages about restraint)

December 2018 No Safe Place published – Scotland's Children Commissioner

August 2019 Judicial Review – CYPSC and Scottish Human Rights

November 2019 Enable Scotland launches 'In Safe Hands'

January 2020 Working Group by Scottish Government – involved Beth Morrison

February 2020 The RRISC report (PABSS data) launched in the House of Lords
www.pabss.org/rrisc

February 2020 Debate in Scottish Parliament led by Jackie Baillie

November 2021 The Children's Equal Protection from Assault (Scotland) Bill was passed and became law – this only applies to familial settings and not to 'professional settings' like schools

June 2022 Non-statutory guidance was published for consultation

October 2022 Enable launches 'In Safe Hands Yet?'

October 2022 Children, Young People and Education Committee closed the petition

October 2022 The Morrison family launch the campaign for Calum's Law

Annex C – Further detail on United Nations Conventions

UNCRC

Article 2: all children have the rights the Convention lays out, and no child should be discriminated against.

Article 3: the best interests of the child should be a primary consideration in any action that would have an impact on them.

Article 12: children have the right to express a view and have it taken into consideration when decisions are made about them.

Article 16: children’s rights to privacy and family life should be respected, which includes the right to bodily integrity.

Article 19: children should be protected from all forms of violence and injury.

Article 23: children with disabilities should enjoy full lives in conditions that uphold their dignity.

Article 24: children should enjoy the highest attainable standard of health.

Article 28: schools should discipline children in a manner consistent with their dignity.

Article 29: children’s education should allow them to develop their personality, talents, and mental and physical abilities to their fullest potential.

Article 37: children have a right to be protected from cruel, inhuman, or

Figure 1

According to UNICEF, the UN Convention of the Rights of the Child (UNCRC) is the most complete statement of children’s rights ever produced and as a result, is the most widely-endorsed international human rights treaty in history.¹⁷ The Scottish Children’s Commissioner’s Report, *No Safe Place: Restraint and Seclusion in Scotland’s Schools* states that the UNCRC advocates that all children ‘have the right to feel safe, just as they have rights to have decisions made in their best interests and to make their views known and have those views taken into account when decisions are made to affect them... they have the right to education to dignity, to bodily integrity, and to be protected from cruel, inhuman or degrading treatment.’¹⁸

¹⁷ <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

¹⁸ *No Safe Place: Restraint and Seclusion in Scotland’s Schools* (2018)

These articles, which are outlined in the table above make up the basis for an international agreement on what constitutes the rights of a child. Any considerations to make such rights statutory in the Scottish context must take these into account.

The educational context is an example of when the power imbalance between adult and child is at its most heightened. This is because the adult is professionally placed in a position of responsibility, guardianship, and authority. However, this power becomes even further imbalanced when vulnerable children, with ASN or other disabilities are present within the context.

The Convention on the Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York. *The United Nations* states that, 'the Convention is intended as a human rights instrument with an explicit, social development dimension... it adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms.'¹⁹

<p>UNCRPD</p> <p>Article 5: the right to equality and non-discrimination.</p> <p>Article 7: the right of disabled children to enjoy all their rights and freedoms.</p> <p>Article 14: prohibits unlawful or arbitrary deprivation of liberty.</p> <p>Article 15: prohibits torture or cruel, inhuman, or degrading treatment or punishment.</p> <p>Article 17: the protection of physical and mental integrity.</p>

Figure 2

The UNCRPD includes the right to equality and the right of children with disabilities to enjoy all their liberties. It also prohibits any unlawful deprivation of this liberty, as well as inhuman or degrading treatment or punishment. The rights of the disabled child extend to the right to education and the protection of physical and mental integrity.

The Scottish Children's Commissioner's Report states that, 'despite the Scottish Government's commitment to embed these rights into policy, it is not evident that it has succeeded in fulfilling its responsibilities in relation to restraint and seclusion in schools under the UNCRC or UNCRPD.

¹⁹<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

A consideration of statutory rights for children with disabilities or additional support needs must consider all of the UN articles outlined in *Figure 1* and *Figure 2* above. They should form the basis for clarity on legal definitions contained within the statute and act as a starting point for any new legislation which aims to legislate and promote the rights of children within Scotland.