

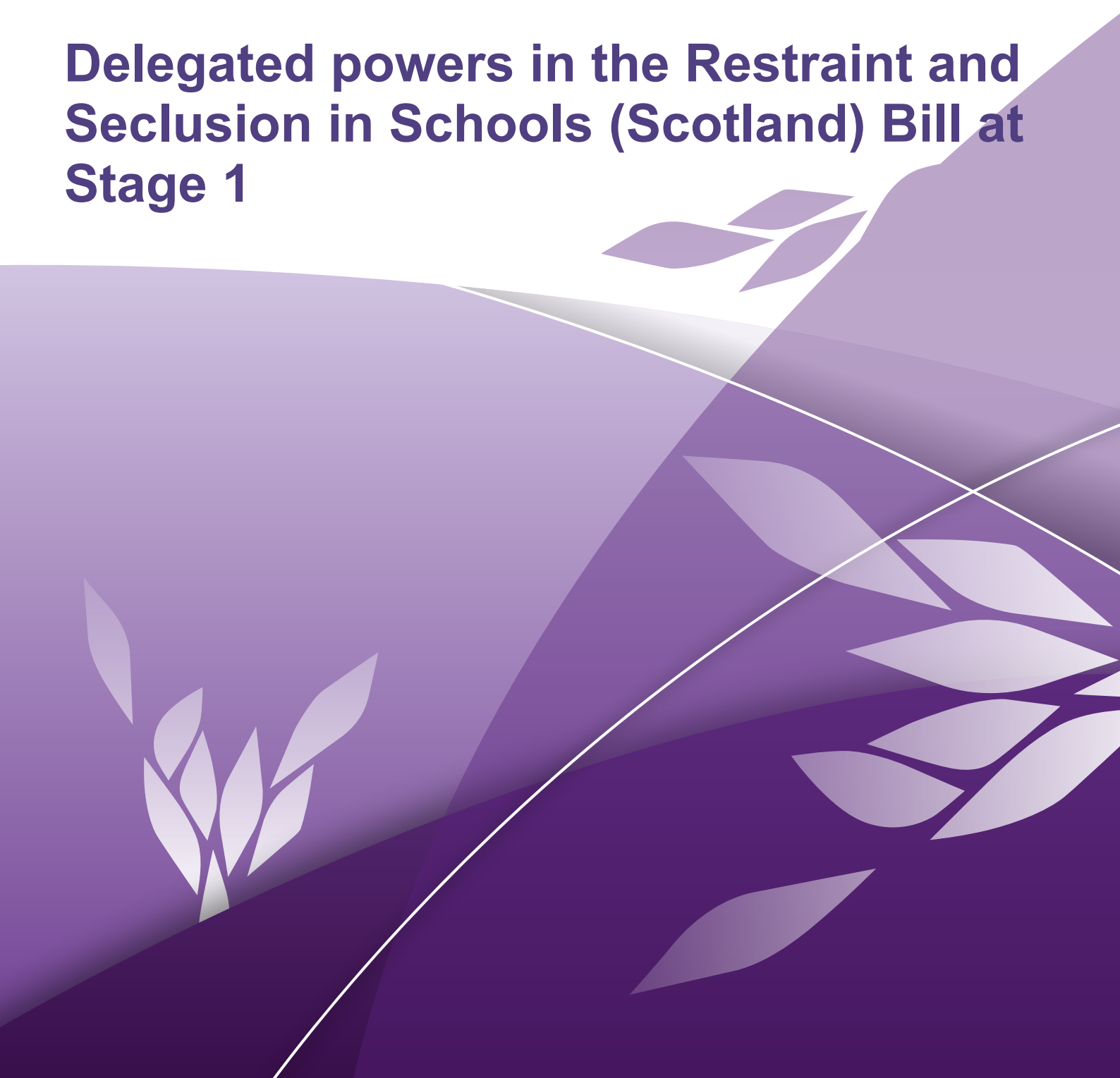


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Restraint and Seclusion in Schools (Scotland) Bill at Stage 1



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Contents

Introduction	1
Overview of the Bill	1
Delegated Powers	2
Review of relevant powers	3

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 10ⁱ and 24 June 2025, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers in the Restraint and Seclusion in Schools (Scotland) Bill ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

Overview of the Bill

3. This is a Member's Bill which was introduced by Daniel Johnson MSP on 17 March 2025. The lead committee is the Education, Children and Young People Committee.
4. The Bill makes provision about the use of restraint and seclusion in schools. It requires the Scottish Ministers to issue guidance about the use of restraint and seclusion in schools. Education providers must have regard to that guidance. Where a child has been subject to the use of restraint and seclusion, there is a duty to inform parents of the child. There is also a duty to record and report on the use of restraint and seclusion.

ⁱ Katy Clark MSP submitted apologies for this meeting.

Delegated Powers

5. The Bill confers one power to issue guidance on the Scottish Ministers.
6. The Member has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the power in the Bill and why no procedure is proposed.
7. At its meeting on 10 June 2025, the Committee agreed to write to the Member about:
 - Section 2(1) – a power requiring the Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools.
8. The Committee [wrote](#) to the Member on 11 June and received a [response](#) on 17 June 2025.

Review of relevant powers

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

Power conferred on: the Scottish Ministers

Power exercisable by: guidance

Parliamentary procedure: none.

Provision

9. Section 2(1) of the Bill requires the Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools. Matters that must be included in the guidance are listed at section 2(2):
 - (a) appropriate and inappropriate forms of restraint and seclusion,
 - (b) alternatives to restraint and seclusion,
 - (c) action that might be taken to prevent or minimise the use of restraint and seclusion,
 - (d) matters to be taken into consideration with a view to safeguarding children and young people subject to restraint or seclusion,
 - (e) legal requirements, and any other legal considerations, that might apply or be relevant to the use of restraint or seclusion,
 - (f) action to be taken following an incident resulting in the use of restraint or seclusion,
 - (g) the recording, reporting and monitoring of incidents involving the use of restraint or seclusion,
 - (h) inspection of the practice of restraint and seclusion,
 - (i) the training of staff in the use of restraint and seclusion,
 - (j) compliance with the duties under this Act,
 - (k) processes for the making of complaints about the use of restraint and seclusion, and the provision of information about the making of such complaints, and
 - (l) action to be taken to resolve or remedy complaints.
10. Section 2(4) allows the guidance to elaborate upon the definitions of “restraint” and “seclusion” but the guidance cannot amend those definitions.
11. Before issuing guidance, section 2(6) requires the Scottish Ministers to consult:
 - (a) education providers,
 - (b) persons or bodies appearing to the Scottish Ministers to be representative of the

interests of parents of children and young people in schools,

(c) any trade union appearing to the Scottish Ministers to be representative of the staff in schools,

(d) the Commissioner for Children and Young People in Scotland, and

(e) such voluntary organisations and other persons as the Scottish Ministers consider appropriate.

12. Section 2(7) requires education providers to have regard to the guidance. Section 6(1) defines education providers as:

(a) in relation to a school under the management or control of an education authority, that education authority,

(b) in relation to an independent school, the proprietor of the school,

(c) in relation to a grant-aided school, the managers of the school.

Committee consideration

13. In the DPM, the Member explains that the purpose of the Bill is to ensure that the guidance on the use of restraint and seclusion has statutory status. The Member explains that the Scottish Government has published guidance on physical intervention in schools but that this is non-statutory. The Member also highlights that there is no legal requirement for education providers to have regard to it. Finally, the Member explains that he considers statutory guidance is more likely to influence how education providers approach the use of restraint and seclusion in schools.

14. The Committee asked the Member whether any consideration has been given to whether the matters which are to be contained in guidance should be in regulations instead.

15. The Member responded by noting that the key policy aim of the Bill is to give statutory status to guidance about restraint and seclusion practices.

16. The Member also responded that he expects the existing non-statutory guidance which has been issued by the Scottish Government will be updated and published as statutory guidance under the provisions of the Bill. The Member reiterates that he expects that giving guidance statutory status will not require compliance but that having that status will give it greater weight which is more likely to influence how restraint and seclusion is approached by education providers.

17. The Member concludes in his response that while it might be possible to give the Scottish Ministers the power to set out the matters which the guidance is to cover in regulations, maintaining the list of matters that are to be contained in guidance on the face of the Bill gives the Parliament the opportunity to debate those matters, and, the Member states, greater oversight than if they were included in regulations.

18. The Member has offered a clear policy position in his response that the expectation is that the purpose of the Bill is to take existing non-statutory guidance and raise its status to that of statutory guidance. The Member expects that the weight that will

then be placed on the guidance will produce closer adherence to the guidance by education providers. As such, the Committee accepts the guidance making power in principle.

19. The Member also expects the guidance under the Bill to reflect that which already exists in guidance issued by the Scottish Government.

20. **The Committee accepts the further reassurance offered by the Member that the power to require guidance is expected to be used to give statutory status to existing guidance. The Committee also accepts the power lists those matters that must be included in guidance, and that the guidance is subject to consultation with education providers and other relevant bodies. Finally, the Committee also accepts that the guidance is not subject to any parliamentary procedure.**

