



The Scottish Parliament
Pàrlamaid na h-Alba

Published 11 March 2026
SP Paper 1063
34th Report, 2026 (Session 6)

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

Delegated powers in the Restraint and Seclusion in Schools (Scotland) Bill (as amended at Stage 2)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
<https://www.parliament.scot/documents>

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: info@parliament.scot

Contents

Introduction and 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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



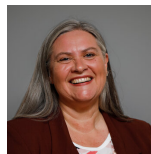
Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction and overview of the Bill

1. At its meeting on 10 March 2026, the Delegated Powers and Law Reform Committee considered the delegated powers in the [Restraint and Seclusion in Schools \(Scotland\) Bill](#) ("the Bill") as amended at Stage 2.
2. The Committee previously considered the delegated powers in the Bill at Stage 1 at its meetings on 10 and 24 June 2025. Thereafter it published a [report](#) on 25 June 2025. The Committee was content with the powers in the Bill as introduced.
3. This is a Member's Bill which was introduced by Daniel Johnson MSP on 17 March 2025. The lead committee was the Education, Children and Young People Committee. As this report is after Stage 2, it is addressed to the Parliament.
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 pupil has been subject to the use of restraint and seclusion, there is a duty to inform parents of the pupil. There is also a duty to record and report on the use of restraint and seclusion.

Delegated Powers

5. On introduction, the Bill conferred one power to issue guidance on the Scottish Ministers.
6. At Stage 2, that power has been revised along with four new powers being added. In addition, a new provision, section 6A, has been added to clarify that the affirmative procedure will apply to the new powers in sections 4(3A) and 4(4A).
7. The Member in charge of the Bill has prepared a [Supplementary Delegated Powers Memorandum](#) (“SDPM”) covering the amended guidance-making power and the other powers added at Stage 2.

Review of relevant powers

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

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: None

Revised or new power: Revised

Provision

8. Section 2(1) is the main provision of the Bill. It requires the Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools.
9. A list of matters that must be included in the guidance is set out at section 2(2). Section 2(6) lists those bodies or persons who must be consulted before guidance is issued.

Committee consideration

10. In its Stage 1 report, the Committee accepted that the power was intended to give guidance statutory status, and that the Bill contains the list of matters to be included in the guidance as well as identifying those bodies or persons who must be consulted before guidance is issued.
11. At Stage 2, a new criterion to be included in the guidance was added at section 2(2)(za). The guidance must now also include what is meant by significantly restricting physical movement for the purpose of the definition of restraint in section 1(1)(a). The SDPM explains that this new mandatory element of the guidance reflects the addition of “significant” to the definition of restraint in section 1(1)(a). The SDPM also notes that although section 2(4) permits the Scottish Ministers to elaborate upon the definitions of “restraint” and “seclusion” in section 1, it is now necessary to include what is meant by significant restraint in the guidance.
12. As this offers a new mandatory requirement which will apply to all education providers, the Committee is content with this additional element to be included in the guidance.
13. At Stage 2 there have been two minor changes to the requirement to consult in section 2(6). In section 2(6)(b) it is the “parents of pupils” who are to be consulted rather than “parents of children and young people in schools” which was the wording at introduction. Next section 2(6)(ca) has been added so that children and young people must also be consulted.
14. Although these changes to section 2(6) are not discussed in the SDPM, the Committee is content with the changes and welcomes the widening of the group of bodies and persons who must be consulted before guidance is issued.

- 15. The Committee is content with the changes to the guidance-making power in sections 2(2) and 2(6). The Committee also welcomes the widening of the group of bodies and persons who must be consulted before guidance is issued.**

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

16. Section 4 of the Bill requires education providers to record all incidences of the use of restraint and seclusion in their schools.
17. Section 4(3A) was added at Stage 2 to enable the Scottish Ministers to make regulations which make provision for education providers to report incidences of the use of restraint and seclusion in schools to a person specified in those regulations. Section 4(3B) list matters that may be included in regulations. This includes the timescale for reporting and the form and content of report. Regulations may also include the information to be sent to a specified person, and the timescales, form and content of that information.
18. Any regulations made would be subject to consultation before they are laid and will be subject to scrutiny under the affirmative procedure.

Committee consideration

19. In the SDPM, the Member explains the reason for taking the power is that it is intended to provide the option of establishing a role for a designated national body, such as His Majesty's Inspectorate of Education (HMIE), to be included in the reporting framework at a later stage.
20. The SDPM also explains that discussions are ongoing between the Cabinet Secretary and the soon-to-be appointed Chief Inspector of HMIE about its future remit. The Member further explains that a requirement for schools to report each incident to a national oversight body would align with the existing Care Inspectorate's incident report arrangements, and with the proposed reporting requirements from the Mental Welfare Commission.

- 21. The Committee is content with the new power at section 4(3A) in principle, and that it is subject to the affirmative procedure. The Committee also welcomes that the Scottish Ministers must consult on draft regulations before laying them before the Parliament.**

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

reporting

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

22. Section 4(4A) was added at Stage 2. It enables the Scottish Ministers to make regulations to specify types of restraint or seclusion which need not be recorded under section 4(1) or reported to the Scottish Ministers under section 4(2) or (3), or to a person specified in regulations made under section 4(3A).
23. Any regulations made would be subject to consultation before they are laid and will be subject to scrutiny under the affirmative procedure.

Committee consideration

24. The SDPM explains that the power provides the Scottish Ministers with flexibility to avoid disproportionate administrative burdens by excluding minor interventions that do not materially contribute to safeguarding oversight. It further explains that this is intended to ensure that the reporting system remains targeted and proportionate.
25. The power is not limited to minor interventions as described in the SDPM. During the Stage 2 debate the Member explained the intention behind the power is to address those “benign and reasonable practices” which the Bill does intend to capture. The Bill is intended to capture the very serious practices of restraint and seclusion. The Member explained to the lead committee that there must be balance and nuance and that if any practices are inadvertently caught by the definitions, then it is important to have the ability to fine tune or recalibrate them.
26. The Committee takes the view that the power, as set out in the Bill, together with the intention of the amendment as described in the SDPM, and in the Member’s evidence to the lead committee, provides sufficient limits in how the power is to be interpreted. Any regulations will be subject to consultation, and scrutiny under the affirmative procedure will provide sufficient checks on the exercise of the power.
27. **The Committee is content with the new power at section 4(4A) in principle, and that it is subject to the affirmative procedure. The Committee also welcomes that the Scottish Ministers must consult on draft regulations before laying them before the Parliament.**

Section 6B: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation; otherwise negative

Revised or new power: New**Provision**

28. Section 6B was added at Stage 2. It is an ancillary power which enables the Scottish Ministers to make regulations which provide for incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, or in connection with or for giving full effect to the Bill or any of the regulations made under it.
29. Regulations under section 6B will be subject to the affirmative procedure if they amend primary legislation, otherwise they will be subject to the negative procedure.

Committee consideration

30. The SDPM explains that this is a standard ancillary power to allow the Scottish Ministers to make provision to give full effect to the Act or subordinate legislation made under it.
31. The Committee considers that this power is similar in terms to other ancillary powers that the Committee has scrutinised in most Bills. The extent of the power is restricted as it can only be used for the purposes of giving full effect to the Bill as enacted and any provision made under it. The power also allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.

- 32. The Committee finds the power acceptable in principle and is content with the specified parliamentary procedures which are dependent on whether or not the power is exercised to amend primary legislation.**

Section 7(2): Commencement regulations**Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: None****Revised or new power: New****Provision**

33. The Bill as introduced provided that all provisions of the Bill would come into force at the end of a period of 6 months after Royal Assent.
34. At Stage 2, a new power to commence sections 1 to 5 by regulations was added. Sections 6, 6A, 6B and 8 will come into force on the day after Royal Assent.

Committee consideration

35. The new power in section 7(2) to commence sections 1 to 5 by regulations is a

standard provision which is common in Bills seen by the Committee.

Commencement regulations can make transitional, transitory and ancillary provision, as well as make different provisions for different purposes. As is common for commencement regulations, there is no procedure attached to the regulations.

36. Section 7(4) requires regulations under section 7(2) to be made no later than 31 July 2028. While this provision is unusual, the Committee welcomes its inclusion as it provides a clear deadline by which the provisions of the Bill must be commenced.

- 37. The Committee accepts the new power in section 7(2) in principle and is content that it will not be subject to any parliamentary procedure.**

