

Education, Children and Young People Committee
Wednesday 1 October 2025
28th Meeting, 2025 (Session 6)

Restraint and Seclusion in Schools (Scotland) Bill

Introduction

1. Daniel Johnson MSP introduced the [Restraint and Seclusion in Schools \(Scotland\) Bill](#) on 17 March 2025. The Education, Children and Young People's Committee has been designated as the lead committee for this Members' Bill at Stage 1.
2. The Bill aims to minimise the use of restraint and seclusion of children and young people in schools and creates statutory guidance and duties in relation to the use of restraint and seclusion in schools.
3. This is the third evidence session on the Bill and the Committee will take evidence from the following witnesses—
 - Lynne Binnie, Service Lead for Inclusion, Edinburgh City Council and Co-Chair of the Inclusion Network, the Association of Directors of Education in Scotland (ADES)
 - Tom Britton, Edinburgh Local Association Assistant Secretary, Educational Institute of Scotland (EIS)
 - Dr Pauline Stephen, Chief Executive and Registrar, The General Teaching Council for Scotland (GTCS)
 - Mike Corbett, National Officer, NASUWT
 - Gavin Calder, Chief Executive Officer of Harmony School, and Board Member, the Scottish Council of Independent Schools (SCIS)

Background

4. SPICe has produced [a background briefing on the Bill](#) which is published on the website. SPICe has also produced a briefing paper for this session which is attached at **Annexe A**.

Evidence

Call for views

5. The Committee issued a call for views on the provisions of the Bill which ran from 28 May until 11 July 2025 and 125 responses were received.
6. The [responses to the call for views have been published on the website](#). A [SPICe summary of the responses received](#) has also been published on the website.

Oral evidence

7. At its meeting on 24 September 2025, the Committee took evidence from the following witnesses—

Panel 1

- Dr Simon Webster, Head of Research and Policy, Enable
- Kate Sanger, Family Carer and Co-creator of Communication Passport
- Suzi Martin, External Affairs Manager, National Autistic Society Scotland.

Panel 2

- Sarah Leitch, Director of Development, British Institute of Learning Disabilities
 - Nicola Killean, Children and Young People's Commissioner for Scotland
 - Ben Higgins, CEO, Restraint Reduction Network.
8. Meeting papers and a transcript from that meeting, including written submissions from witnesses, are published on the [website](#).

Written evidence

9. The following witnesses have provided written evidence which are attached at **Annexe B**—
- ADES
 - EIS
 - GTCS
 - NASUWT
 - SCIS

Scottish Government position

10. The [Scottish Government wrote to the Committee on 26 June 2025](#) attaching its memorandum on the Bill. It states—

“The Scottish Government is clear that restraint and seclusion should only ever be used as a last resort to prevent injury. The 2024 guidance reaffirms this position. The Scottish Government welcomes the alignment between the Member’s Bill’s provisions and key areas of the 2024 guidance. The Scottish Government considers this helpful as schools and education authorities are currently updating local policies to reflect the 2024 guidance.”

11. The memorandum sets out a number of areas which should be explored during consideration of the Bill and goes on to state that “For the reasons given, the Scottish Government will support the general principles of the Bill.”

Approach in England, Northern Ireland and Wales

12. The Committee wrote to the UK Government, the Northern Ireland Assembly and the Welsh Government seeking information on their approach to restraint and seclusion in schools. The Committee asked for information on the following—

- What guidance is provided to education providers on the use of restraint and seclusion in schools and whether it is statutory guidance?
- Are there specific training providers and programmes in relation to the use of restraint and seclusion in schools?
- What data is collected in relation to the use of restraint and seclusion in schools and is this collated centrally?
- Are there any formal reporting duties to parliament in relation to restraint and seclusion in schools data?

13. Responses from the [Northern Ireland Assembly](#) and the [Welsh Government](#) have been published on the website.

Previous committee consideration

14. The Committee previously considered national guidance on restraint and seclusion under petition [PE1548](#) by Beth Morrison. The petition called on the Scottish Parliament to urge the Scottish Government to—

1. Introduce National Guidance on the use of restraint and seclusion in all schools; this guidance should support the principles of:

- Last resort - where it is deemed necessary, restraint should be the minimum required to deal with the agreed risk, for the minimum amount of time;
- Appropriate supervision of the child at all times, including during “time out” or seclusion;
- Reducing the use of solitary exclusion and limiting the time it is used for (e.g. maximum time limits);
- No use of restraints that are cruel, humiliating, painful and unnecessary or not in line with trained techniques;
- Accountability of teaching and support staff for their actions; this should include recording every incident leading to the use of seclusion or restraint and monitoring of this by the local authority;
- Regular training for staff in how to avoid the use of restraint;
- Where restraint is unavoidable training in appropriate restraint techniques by British Institute of Learning Disability accredited providers and no use of restraint by untrained staff.

2. Appoint a specific agency (either Education Scotland or possibly the Care Inspectorate) 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.

15. In October 2022, the Committee agreed to close the petition under Rule 15.7 of Standing Orders on the basis that national guidance had now been developed to

minimise the use of physical intervention and seclusion in Scottish schools and the petition had achieved its key aim.

Other committee consideration

Delegated Powers

16. The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill at its meetings on 10 and 24 June 2025 and [reported to the lead Committee](#) on 25 June 2025, under Rule 9.6.2 of Standing Orders.

Financial Memorandum

17. The Finance and Public Administration Committee issued a call for views on the Financial Memorandum (FM) and received four responses which have been [published on the website](#). It is expected that the Finance and Public Administration Committee will report to the lead Committee on the FM in due course.

Next steps

18. The Committee will continue to take evidence on the Bill at its next meeting on 29 October 2025.

Committee Clerks
September 2025

Annexe A

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Education, Children and Young People Committee
Wednesday 01 October 2025

Restraint and Seclusion in Schools (Scotland) Bill

Introduction

The Committee is the lead Committee at Stage 1 on the [Restraint and Seclusion in Schools \(Scotland\) Bill](#) (“the Bill”). The Bill is a Member’s Bill and was introduced by Daniel Johnson MSP on 17 March 2025.

Last week the Committee took evidence from two panels and there was a focus on the experience of children, young people and their families experiences in the current system.

This week the Committee will take evidence from representatives of teachers, local authorities and independent schools.

The Bill

The Bill aims to improve the regulation and monitoring of the use of restraint and seclusion in Scottish schools. The Bill's provisions would apply to all school pupils.

The Bill defines restraint and seclusion and it has four further substantive sections. These will create duties:

- on Scottish Ministers to issue guidance on the use of restraint and seclusion in schools
- on schools to inform parents/carers if their child is subject to restraint or seclusion
- to record and report on the use of restraint and seclusion in schools
- on Scottish Ministers to maintain a list of approved training providers on the use of restraint and seclusion in schools.

Reports of current practice

The current policy and guidance on the restraint and seclusion of pupils is set out in the Scottish Government’s guidance, [Included, engaged and involved part 3: A relationships and rights-based approach to physical intervention in schools](#) (“IEI3”), which was published in November last year. Prior to that, the guidance on the use of “De-escalation and Physical Intervention” was included in [Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions](#). There is also wider guidance on the restraint of children in a range of settings in the 2005 (updated in 2014) guidance [Holding Safely](#).

Parliament has considered the issue of the use of restraint and seclusion over the past years, through petitions and other work. Campaigners have been particularly motivated by personal experiences of their children being injured at school following the use of restraint or seclusion.

Respondents to the Committee's call for views included individuals and organisations reporting that children are experiencing inappropriate use of restraint. The submission from the Scottish Commission for People with Learning Disabilities reported that:

“We are aware of many testimonies from people with learning disabilities and their parents and carers which describe the trauma, distress and injury that the use of restraint and seclusion in schools can cause. Furthermore, we are concerned that children and young people with learning disabilities may be a group who are disproportionately at risk of restraint and seclusion, potentially involving multiple breaches of their human rights.”

On 24 September, the Committee took evidence from witnesses who echoed these submissions. Kate Sanger told the Committee that sometimes children's injuries following restraint practices could be significant and included: severe bruising, broken teeth and broken bones. She said that the use of restraint commonly does not appear to be used as a last resort. She reported that her organisations had received reports from 81 families unhappy with restraint being used on their children in the first month of the current academic year. Suzi Martin from National Autistic Society Scotland (“NASS”) said that her organisation is hearing of increased numbers of cases – she suggested that schools may be inadvertently acting unlawfully. Ben Higgins from the Restraint Reduction Network said that they have seen schools where children “are dragged” to seclusion rooms.

The first panel last Wednesday said that restraint and seclusion disproportionately affected children with learning disabilities. Ms Sanger said that her organisation has found that most children who have been restrained are aged 6 and 7.

Talking about mechanical restraint, Kate Sanger said that restrictive chairs are used to restrict children's movement inappropriately “on a daily basis”. In reference to chemical restraint, Ms Sanger said that parents had reported that schools have said that without the use of medicine children would not be able to attend.

Coalition for Racial Equality and Rights' submission said, “there may be specific race equality concerns requiring consideration - both intersectionally and in their own right”. It referenced research by the Mental Welfare Commission that found that “more people who were Black or of mixed or multiple ethnicity were perceived as a greater risk to themselves and others, whereas all categories of white people were more often perceived as a risk to themselves”. CRER argued that “this racialised perception of risk/threat is highly relevant to restraint within schools”.

Teachers that responded to the Call for Views said that restraint and seclusion is used as a last resort in response to dysregulated and dangerous behaviour. One teacher wrote:

“I work in a Complex Needs Provision where a number of children have physical behaviour and I'm personally injured most days at work as are many of my colleagues but restraint is still only used as a last resort or in cases of emergency.”

There was also from individual teachers that staff are afraid to intervene due to fear of complaints or disciplinary action, one said:

“We are very conscious of the laws regarding student restraint, and as a result many teachers simply will not do it, even at the risk of injury themselves. The fear of complaints and allegations is simply too high.”

The EIS’ submission said:

“This link between unmet ASN need and rising levels of violence and aggression in schools is clear, with over 94% of respondents to an EIS National Branch Survey on Violence and Aggression, published in November 2023, confirming that unmet need exacerbates violent and aggressive behaviour. Members also referenced the difficulties in trying to de-escalate the behaviours of pupils with more complex additional support needs, whilst also trying to teach classes of up to thirty-three children.”

Definitions

The Bill would create definitions for both restraint and seclusion. These definitions are key to how the Bill would work in practice. They would determine the type of intervention that would be covered by the statutory guidance and the reporting duties under the Bill.

The Bill’s definitions are:

- a) “restraint” means anything done by a member of the staff of an education provider with the intention of restricting the physical movement of a child or young person, including restricting their freedom of movement or ability to move independently,
- (b) “seclusion” means anything done by a member of the staff of an education provider with the intention of isolating a child or young person from other children or young people and preventing them from leaving the place where they are isolated.

The Bill also provides that the statutory guidance would be able to “elaborate” on these definitions. EIS’s submission suggested replacing “elaborate” with “exemplify” in the Bill to avoid unintended expansion of scope.

These definitions closely match the definitions in IEI3. The definitions of restraint and seclusion used in that guidance are:

- Restraint: “An act carried out with the purpose of restricting a child or young person’s movement, liberty and/or freedom to act independently”.
- Seclusion: “An act carried out with the purpose of isolating a child or young person, away from other children and young people and staff, in an area in which they are prevented from leaving.”

[The Scottish Government’s memorandum](#) stated:

“Creating definitions in primary legislation, which it is noted closely align with those used in the 2024 guidance, could assist further with this policy aim. However, such a broad definition of restraint in primary legislation could risk, in the Scottish Government’s view, defining practices that are not of obvious concern as restraint (examples include holding a child’s hand as they cross a road or the use of hoists or other ‘moving and handling’ equipment for children with complex healthcare needs). Clarification in the supporting statutory guidance, as envisaged by the Member, may not allow such practices,

currently termed ‘physical interventions’ within the 2024 guidance, to be excluded from the Bill’s definition of restraint. The Scottish Government therefore believes there to be merit in exploring whether a narrower definition of restraint that includes the practices of the highest concern, such as physical and mechanical restraint, would achieve the aims of the Bill.”

Within responses to the call for views, concerns about the breadth of the definition tended to be in the context of over-reporting matters and incidents that are not of concern. Last week, the Commissioner for Children and Young People Scotland (“the Commissioner”) noted that the Bill does not create new offences. While it is possible that courts could refer to national guidance to help determine the usual professional practice standard when considering professional negligence in civil cases, it is not clear how this would be a risk for “practices that are not of obvious concern”.

In the context of what should be reported by schools, some local authorities wanted to see clarity on what would need to be reported. For example, Highland Council asked “Where is the dividing line between a child being taken by the hand and guided to an area and a physical restraint?” South Lanarkshire Council said that its local reporting processes include, “includes incidents such as breaking up fights where a staff member has intervened” and that there should be clarity over whether the Bill intends to cover such incidents.

EIS’s submission warned that the Bill’s definitions of restraint and seclusion are “very wide” and could include routine use of specialist equipment in special schools, leading to “significantly increased workload and bureaucracy.” AHDS’s submission agreed and said that they “interpretations which would create unsustainable bureaucratic demands and appear to cut across wholly normal and non-contentious techniques used to respond to specific incidents and help to support children to learn and grow as part of their school experience”. It said:

“The definition set out in the draft Bill is so expansive such that it would include situations which need not be reported to parents (as it is common in schools to take a child to another part of the school to manage behaviour or reflect on a situation – this would be considered to be seclusion under the current definition and would frequently be wholly unnecessary to report to parents.)”

Suzi Martin from NASS said that a range of restrictive practice should be covered – she drew the distinction between something that is supportive and enabling or something that is preventing a child from doing what they want to do. She also said that the guidance and training would support understanding of restraint and seclusion.

The Commissioner said that the definition should be clear and should be consistent across all sectors, including care services. The definition, she said, should make it clear to professionals when the legal threshold for use of such practices are met. She said that restraint should only be used as a last resort and to prevent harm to that child or someone else. Ben Higgins from the Restraint Reduction Network said that professionals require clear guidance and that “clearly there is a duty of care” to prevent harm, he said that any restrictive practice must be justified, proportionate, and the least restrictive option must be used. Mr Higgins said that there will seldom be a “crystal-clear line” and that different professionals may have different views.

Dr Webster from Enable noted that seclusion is a form of detention and requires to be treated seriously. Suzi Martin from NASS argued that seclusion includes being

removed from classmates although not necessarily in a locked space; she gave an example of a child who was commonly required to work away from their classmates.

Use of seclusion

Last week the Committee explored whether seclusion should be included in the Bill at all, given that some respondents had questioned the legality of the practice. CLAN Childlaw's response to the Committee's call for views was particularly concerned with seclusion. It said:

"A deprivation of liberty can occur where a person is confined to a place that they cannot leave. The definition of seclusion in both the Bill and the Guidance specifically includes the condition that the child must not be able to leave the place that they have been isolated in. There is no legal process for authorising a deprivation of liberty within the school context. This means that every time a school chooses to place a child in isolation (in whatever form that takes) they risk depriving a child or young person of their liberty, in a manner not prescribed by law – thus breaching the child's fundamental human rights. Despite the serious nature of the decision making there are no external safeguards or protections suggested by the Bill or in the current guidance that would ensure procedural fairness in the decision making around this issue."

IEI3 suggests that schools should be cautious in using seclusion. It said:

"Seclusion, similar to other types of restraint, places an additional level of temporary restriction on an individual child or young person's freedom of movement. While much will depend on the circumstances of each individual case, the use of seclusion also carries the risk of overstepping the line and depriving a child or young person of their liberty. There is no legal process for authorising a deprivation of liberty in a school context. This means that the use of an act which goes beyond a restriction of movement and deprives a child or young person of their liberty would, in that context, not be prescribed by law, and the education provider may be acting unlawfully. ...

"Seclusion should only ever be used in an emergency to avert an immediate risk of injury to a child or young person, or others, where no less restrictive option is viable (i.e. as a last resort). It should end as soon as the immediate risk of injury is reduced." (Paras 72 and 74)

Last week the Commissioner noted that seclusion can be a restriction of liberty, and she said that she suspected that there was under-reporting of the practice. Ben Higgins from the Restraint Reduction Network said that there should be better clarity of language, and there is a difference between a child removing themselves from a situation and where a child is forcibly removed to a room and unable to leave.

Other sectors

Another concern is that the Bill would solidify different regimes for education and other children's services, for example those services regulated by the Care Inspectorate. The Scottish Government's memorandum noted "the contrast between the school reporting position and residential care accommodation and secure care accommodation services." Nevertheless, its [position as set out in answer to a question in March](#) is that "any scaffolding and support for children and young people in relation to restraint and seclusion, is best considered and addressed by each area

independently to ensure that any support, training, guidance and reporting meets their needs in those particular settings.”

Last week, the Commissioner said that she had written to the Mental Welfare Commission, Care Inspectorate and HMIE to develop a shared definition of restraint and seclusion. She said that, for children who go between different settings, it is important that there are consistent approaches. Ben Higgins from the Restraint Reduction Network said that it is right to focus on education in the Bill but agreed that there should be consistent understanding – he said that a rights-based approach should support consistency.

GTCS’ submission said that there should be a focus on creating a coherent and holistic “child protection and safeguarding landscape to ensure that roles and responsibilities are clear, and that appropriate checks and balances are in place”. ADES’ submission suggested that:

“any Statutory Guidance applies across all settings where children and young people could potentially experience restraint. It is not clear why a legal framework on restraint and seclusion would apply only to schools and not to early years establishments and other child care settings, residential care settings, secure care, justice and mental health services.”

The need for statutory guidance

As noted above, Government published non-statutory guidance in November 2024 – this followed [a threat of a judicial review from the EHRC and CYCPS in 2019](#). The intention was that the Government would consider placing the guidance on a statutory basis should the guidance prove to be ineffective. [The Cabinet Secretary has said](#) that the Scottish Government would “monitor the progress and development of the guidance throughout the year to ensure that it is being used effectively”. She said that the review would be completed by “autumn 2025”. COSLA’s submission indicated that a review is expected to take place from November 2025

The policy memorandum accompanying the Bill stated—

“Available evidence would suggest, in the absence of statutory guidance, incidents of seclusion and restraint have not reduced in the time that non-statutory guidance has been in place.” (Para 51)

NASUWT’s submission included a briefing on the development of IEI3, which it described as being “completely unfit for purpose”. NASUWT was a member of the Physical Intervention Working Group, which was tasked with developing the current guidance. It reported that “consensus agreement [within the working group] to proceed to publication via the working group was not reached”. NASUWT said that it has “repeatedly and publicly insisted that clearer and better quality guidance is urgently needed”. It said—

“Where the law and any tensions in definitions remain unresolved, by implementing a statutory duty the Scottish Government would be placing undue pressure on schools, local authorities and teachers. Where there is a lack of clear information, different employers will also interpret the legislation differently. There are clear implications in terms of additional workload and distraction for teachers from their core role of teaching and learning.”

Falkirk Council’s submission said, “There has been very little time to embed IEI Part 3 and that more time should be given for this to be embedded rather than make this statutory at this time.” EIS’s submission said—

“A range of national guidance, of which ‘Included, Engaged and Involved’ forms part, supports multi-agency approaches to facilitate early intervention, inform local policies, reduce risk and promote the wellbeing of children and young people. Although the current guidance on restraint and seclusion is non-statutory, it is nevertheless underpinned by statutory provisions, with which education authorities and therefore, schools are bound to comply.

“The EIS is concerned about the impact which the implementation of statutory guidance could have on the development of the relational approaches which underpin GIRFEC.”

SCIS’ submission stated that it “supports the principle of statutory guidance on the use of restraint and seclusion in schools” SCIS suggested that this could help “to ensure that appropriate techniques of restraint and seclusion are used only as a last resort ... that staff are adequately trained ... and that young people’s voices are heard, and they are treated with dignity and respect.”

On 24 September, Ben Higgins from the Restraint Reduction Network said that the 2024 guidance was represented an improvement. Suzi Martin from NASS said that “having a legal framework, guidance and training will be more supportive for staff than the absence of all that” and would give teachers more confidence when intervention is required.

Kate Sanger suggested that the current guidance is not being implemented – she concluded that the approach of using non-statutory guidance, over many years, is not working and statutory guidance is required. Dr Webster from Enable expressed confusion as to why greater statutory protection of children in this area has taken so long. The Commissioner said that statutory guidance is required to support consistency.

Communication with parents/carers

The policy memorandum accompanying the Bill states—

“Evidence, including details of many experiences provided directly to the Member, clearly demonstrates that parents are not being told timeously and as a matter of course that seclusion or restraint has been used on their child. Parents have reported to the Member that they are regularly not being informed by schools at all and often learn of an incident from their child if they come home upset, or from observing injuries sustained by their child. In the absence of a statutory requirement to inform parents (including guardians and carers), the Member contends that it is challenging to see how this situation will improve.” (Para 52)

IEI3 provides guidance on informing parents. In relation to informing parents/carers IEI3 reflects the Bill; it also suggests a different timescale for reporting to the Local authority/manager of the school and for completing a full written record of the incident. The guidance says:

“Parents and carers of the child or young person who was subject to restraint or seclusion should be notified at the earliest possible opportunity. This must take place as soon as possible during the school day and, exceptionally, within 24 hours of restraint or seclusion being used where it has not been possible to make contact or unless alternative contact arrangements have been agreed. The use of restraint and seclusion should be reported to the education authority, the managers of the grant-aided school or the proprietors

of the independent school within two working days, with the full written record shared within five working days.”

The view that parents/carers are not always informed was reflected in the evidence the Committee heard on 24 September. Kate Sanger told the Committee that parents/carers would only know that their child had been restrained after noticing the injuries of children. She described situations where parents/carers are not told that their child has been restrained and injured as “unbelievable” and that there potentially serious consequences of this. Sarah Leitch from BILD said that it was not clear why restraint or seclusion is not consistently reported to parents/carers. She questioned whether this was because the use of these techniques has become commonplace in some settings.

In terms of the timescales for notification, Kate Sanger said that parents/carers should be notified as soon as possible. She said that post incident reviews could happen later, but that for particularly non-verbal children, prompt communication is vital. Dr Webster from Enable said that 24 hours is “quite a long time”, he said parents/carers being told quickly would allow them to support their child. Suzi Martin said that the outside limit should be “before the start of the next school day”, with further provision to ensure that at the end of the school week or school term there is not undue delay.

Ben Higgins from the Restraint Reduction Network said that parents/carers should be informed whenever the child experiences any form of harm, he argued for parents/carers to be informed the same day – albeit, recording and review could take place over a longer time period to allow for more useful reflective practice. ADES’ submission said that the timescales in the Bill are reasonable and suggested that “any statutory guidance ensures same day contact with parents regarding an incident even if actual investigation or recording can’t happen on the same day.”

Some respondents said that there may be rare occasions when reporting incidents to parents/carers could create a risk of harm to the pupil (e.g. NASUWT and the Promise). Where this is a concern, NASUWT suggested that the timescale of 24 hours may be challenging to meet.

NASUWT argued that a member of the senior leadership team should contact the parent/carer. It reported that there have been incidences where “members of staff have used restraint or force reasonably and lawfully, yet found themselves subject to reprisals from parents”. NASUWT said that details of the member of staff who used restraint should not be disclosed.

The Bill provides that the statutory guidance under Section 2 would include guidance on the process for making complaints and the information that should be provided on these avenues. The policy memorandum noted that in some, serious, circumstances, parents or carers may wish to explore and utilise complaints mechanisms. It said—

“The Member believes that the duty to inform and record could increase take-up of existing complaints processes. However, he also considers that it is likely that with improved processes and practices in place as a result of the guidance, for example more mediation at school and education authority level, most issues could be addressed at this level without the need for the tribunal or other processes.”

The Committee explored the current complaint mechanisms. Kate Sanger said that “very often” parents/carers are told that there is nowhere to complain to. She said

that accountability should be used to support improved approaches and learning lessons from any incidents.

Post incident

Part of the statutory guidance under the Bill would cover “action to be taken following an incident resulting in the use of restraint or seclusion”. IEI3 also includes guidance on post-incident support and review. It says:

“Following the use of any type of restraint, including seclusion, post-incident support should be offered immediately to the child or young person, staff members and any others involved. Support should then be followed by a learning review, conducted on another day, but within a prompt timescale.”

The Commissioner noted that there should be a plan if restraint or aids are likely to be used and that parents/carers should be involved in this plan. EIS’s submission agrees; it said—

“Parents would not only require to be informed [of any use of restraint and seclusion] but would be key participants in a subsequent meeting to create or review a Child’s Plan. This is a central aspect of GIRFEC and indeed, of the processes outlined in the current non-statutory guidance.”

Recording and reporting

The Bill would require education providers to record all incidents of restraint or seclusion. It also provides that Scottish Ministers annually report on this data. On 24 September, Suzi Martin from NASS said that it is difficult to know the extent to which restraint and seclusion is used across Scotland because the data is not available. EHRC’s written submission supported the provisions in the Bill. It said:

“The reason for recording, analysing and monitoring data is to better understand what is happening at school, education authority and national level, in order to identify opportunities to improve practice and support for children and young people and for staff.”

Dr Webster from Enable said that national reporting will be able to support systemic analyses. Suzi Martin suggested that the reporting of restraint and seclusion is an accountability measure which would “lift the lid” on the issued and encourage schools to reduce the practice. Ben Higgins from the Restraint Reduction Network said that data is part of the package to support reducing restrictive practices. He said that there should be local publicly available data to see where this practice is reducing or not. Mr Higgins also said that mechanical restraint should be recorded.

Some respondents to the Committee’s call for views, including some local authorities were concerned that the publication of national data would create ‘league tables’ without this data being contextualised. Aberdeen City Council said that the “additional layer of accountability ... is unlikely to improve outcomes locally” and it would prefer reporting to be to local committee structures. South Lanarkshire Council said, “the figures in isolation suggest that physical intervention is always a negative when it may be the only option to prevent injury to other pupils or to avoid police intervention”. EIS’ submission argued against taking an “accountability and oversight” approach and the possibility of ‘league tables’, it said:

“This is unhelpful; it detracts from the focus of support for children and young people; and could, in a system where performativity is pervasive, conversely

result in practice which would discourage recording and reporting, as a result of concern about how a local authority or school might be perceived.”

ADES “broadly welcomed” data on restraint and seclusion being collated and reported nationally. It suggested that “minimum reporting expectations that are made explicit in any future guidance to ensure reporting mechanisms does not increase staff workload“. EIS also said that “recording processes should not be overly bureaucratic or time-consuming”. On 24 September, Sarah Leitch from BILD said that the reporting of incidents should not be too onerous and that the type of information required can be prescribed. IEI3 [sets out the information that should be recorded following the use of restraint and seclusion currently.](#)

EIS was keen that the reporting of incidents would lead to greater support being made available to the setting. It said:

“Reporting to education authorities must also be about more than accountability drivers. It must result in positive action for the child, young person and those in the school community. Schools are frustrated by the infinite loop of recording and reporting, identifying supports and mitigation measures which are then not supported by resource at authority level. ... Unless a commitment is given to the allocation of sufficient additional resources, then reporting and recording are unlikely to effect meaningful change and will only serve to increase the workload of teachers, senior management teams and other school staff.”

Independent Schools and dual reporting

The Bill would require independent and grant-aided schools to report the number of incidents to the local authority in which they are situated. The Scottish Government's memorandum suggested that there were two issues that may have to be considered during scrutiny of the Bill or in the production of the resulting statutory guidance:

- Whether grant-aided and independent special schools should report to the local authority which placed the child in the school, which may not be the local authority in which the school is situated.
- How to manage any possible dual reporting of residential care accommodation and secure care accommodation services - i.e. the reporting envisaged in the Bill in addition to duties to report to the Care Inspectorate.

SCIS' submission was also concerned with the suggested reporting mechanism for independent schools. It said—

“Most SCIS member schools have children within them from several different local authorities and are registered as independent with the Registrar of Independent Schools or with the Government as Grant-Aided Special Schools. It therefore it is not the most appropriate model for SCIS schools to be reporting into individual local authorities, which have no jurisdiction with regards to those schools (except in the case of some partner provider nurseries). ... [We] suggest that instead of reporting to a local authority, it might be more appropriate to widen the remit of the Care Inspectorate or to make this a function of the newly independent HMIE.”

SCIS also noted that the “majority of SCIS mainstream schools and all SCIS registered special schools, liaise with the Care Inspectorate in relation to their

nurseries or their residential provisions” and are “accustomed to reporting on all restraint and seclusions that take place” to the Care Inspectorate.

Role of the inspectorate

The guidance under Section 2 of the Bill would include guidance on “the inspection of the practice of restraint and seclusion”.

ADES’ submission noted that “Education Scotland Inspections now include restraint and seclusion under safeguarding and there is scope for this to be made more rigorous.” Kate Sanger said inspectors need greater understanding on the issues of restraint and seclusion to enable it to “ask the right questions” of schools.

The inspectorate has also been suggested as the body that should collate and analyse data on restraint and seclusion, and to respond to any concerns about over-use or inappropriate use in certain schools or areas.

The Commissioner said that HMIE could have a role in ongoing monitoring and ensuring that local authorities and schools have the correct processes in place. She noted that the Care Inspectorate monitors the use of restraint in real time, rather than waiting for annual reporting mechanisms. GTC Scotland’s submission suggested that the lack of clear follow-up mechanisms is lacking from the Bill, it said:

“While the Bill sets out the requirement for education providers to record and report incidences of restraint and seclusion, there does not appear to be a provision for what happens if this is not done appropriately or accurately. This relates to an issue we have been highlighting for some time about who regulates education service providers.”

ADES’ submission suggested that:

“Any data to be collected by an independent regulatory body which has oversight of all data collated about children and young people’s experiences of physical interventions. This would enable follow up visits to schools and local authorities, ensure consistency of approach within and across education and other settings, and allow the data to be analysed in order to support and challenge practice.”

Training

The Bill would require the Scottish Government to maintain a list of approved training providers on the use of restraint and seclusion. This will link to the statutory guidance produced under Section 2, which would need to include guidance on the training of staff. The Explanatory Notes accompanying the Bill explained that the list is “intended to be the authoritative source of appropriate training for school staff, particularly those in roles involving contact with children and young people who are likely to be subject to restraint or seclusion”. (Para 16)

There are a number of organisations that currently accredit or certify courses in how and when to undertake physical restraint. For example, the [Restraint Reduction Network has developed training standards](#) and these are certified by Bild Association of Certified Training under licence.

On 24 September, Kate Sanger suggested that training would provide teachers and staff more options to prevent the need for restraint. She that training should focus on understanding the reasons for dysregulated behaviour and that each individual child. Suzi Martin from NASS suggested that there should be a basic understanding of

autism and learning disability for all staff. She also said that there should be a strong focus on de-escalation techniques. The Commissioner stressed that any training should be focused on restraint reduction. Sarah Leitch from BILD said that currently teachers can be trained in restraint techniques, but not necessarily in de-escalation. Ben Higgins from the Restraint Reduction Network also said that it was important to hear the lived experience of restraint from parents/carers or young people to inform practice.

NASUWT's submission supported "a standardised training programme on the use of reasonable force, restraint or other restrictive practices, which would ensure all trained individuals have the same knowledge and skills to seek to resolve a situation before it escalates". NASUWT agreed that any training should focus on "de-escalation techniques as a first response, to try and minimise the likelihood of or avoid the need to use restraint".

Ben Higgins suggested a training needs analysis to understand who needs what in a setting; Sarah Leitch from BILD said that this kind of analysis is crucial. Mr Higgins said that most staff would not need training in restrictive practice, but that more individuals may need training on de-escalation techniques. He also said that anyone who is trained on restrictive techniques must have had training on de-escalation as well. GTC Scotland's submission agreed that training should be contextual and "account needs to be taken of the very different contexts in which teachers teach, and learners learn".

Mr Higgins noted that that restraint is potentially very dangerous and that there should be greater focus on quality assurance of training in the Bill. Suzi Martin also said that the training should be regulated and quality assured. Sarah Leitch from BILD said that good quality training will help to support the interests of all individuals involved in restraint, including staff. She said that better training would reduce the incidents of restraint which would create better working environments.

SCIS said:

"In SCIS residential schools there is a high level of training from approved providers. Only staff fully trained in using those techniques taught are permitted to 'hold' children safely. It is the position of SCIS that this should be the case in primary and secondary schools in Scottish education with a list of approved trainers such as CALM available, and mandatory, for identified staff in schools."

On 24 September, Dr Webster from Enable referred to [#Included In the Main](#), which found that staff in schools do not feel sufficiently supported or trained. Unison suggested that classroom assistants and ELC staff should receive appropriate training. It said:

"It is school support staff and early years workers who are most in contact with and who primarily hold the relationship with children presenting or with the potential to present with dysregulated and complex challenging behaviours. The Government's 2023 Behaviour in Schools report confirmed this. These are also the staff with the lowest pay and status and least access to training and support. Yet these are the staff who are held directly accountable."

In response to the Committee's call for views, some local authorities questioned how the proposals might impact on their own procurement processes. They also noted that some local authorities use a 'train the trainer' approach and questioned how the

proposals might affect this approach. (e.g. Falkirk Council). COSLA's submission said, "this provision appears to potentially remove the ability of schools and education authorities to determine which training providers they use and potentially prevent in house training".

EIS' submission expressed "significant concerns" about the Bill and whether it would lead to "introduction of mandatory training for all teachers and school staff". It stated:

"Many teachers would be appalled at the prospect of having to undertake training on the use of restraint and seclusion, techniques which they may regard as contrary to the relational approaches advocated above. In such cases, mandatory training may be sufficient to make them question their future in the profession, particularly when there is already a culture of fear and anxiety ... This directive approach may also act as a disincentive for new teachers to enter the profession, adding to the recruitment and retention issues with which we are grappling on a global basis."

Resources and culture

The Scottish Government's memorandum suggested that there would not necessarily be significant additional costs of the Bill. It said:

"Aside from a duty on education authorities to report restraint and seclusion to Scottish Ministers, which will have resource implications not currently set out in the Financial Memorandum, the Bill's provisions reflect the existing non-statutory policy position set out in our [IEI3]. It is therefore not clear, to the Scottish Government, what additional implementation costs education authorities would incur as a result of the Bill."

Some of the debates and commentary around the Bill argue that a wider lack of resource in the schools sector contributes to the use of restraint or seclusion. On 24 September, Dr Webster from Enable suggested that education staff may feel the need to resort to restraint or seclusion due to a lack of resource and later he said that supporting the staff and the environment to better meet the needs of disabled children and young people will also benefit all children.

EIS's submission said that a lack of resources is "the major barrier to implementation of effective practice in this area". It said:

"The Scottish Government must commit to the allocation of sufficient staffing, time and resources to support the implementation of early intervention measures and restorative practice, to allow for effective multi-agency and parental cooperation, to facilitate professional learning and collaboration and to ensure sufficient time is available for teachers, families and other professionals to build the meaningful relationships, which will be key to successful implementation of this approach. Given the importance of de-escalation and early intervention strategies, in the context of increasing volume and complexity of need in children and young people and against a backdrop of rising incidents of violence and aggressive behaviour in schools, additional investment is needed as a matter of urgency."

Ben Higgins from the Restraint Reduction Network said that restraint reduction is essentially a culture change programme which promotes better relational approaches and minimises restraint. He suggested that schools should move away from punitive cultures. Kate Sanger said that staff in schools sometimes respond to

children in a negative way and escalate the situation. She said that better support for teachers and understanding could help prevent this.

Suzi Martin from NASS said that the issue of inappropriate use of restraint and seclusion is systemic, rather than due to individual teachers or staff. She also said that there is a need for greater specialist support in mainstream settings. The Commissioner said that the focus should be on reducing restraint and this would require consistency, good data and good leadership.

IEI3 also addresses the culture in schools and teachers. It said, “a school’s culture, ethos and values are critical to promoting positive relationships, behaviour and wellbeing.” It also suggested that teachers have a responsibility to support positive cultures:

“Building positive relationships is one of the fundamental skills expected of teachers. This is reflected within the General Teaching Council for Scotland’s (GTC Scotland) Professional Standards. Building positive relationships is also an important part of curricular learning and helps promote a school community’s connectedness, resilience and inclusive culture.”

EIS argued that the Bill would have a negative impact on culture in schools. It said:

“[The] adoption of statutory provisions which will be legalistic in nature could militate against a culture of openness, collegiality and partnership working, rather engendering a culture of fear and leading to increased anxiety and feelings of isolation in teachers and school staff.

“... teachers and school staff are already afraid or reluctant to intervene in some situations, for fear of potential legal or disciplinary consequences, particularly if the escalation of the incident was sudden and unexpected with no apparent trigger. Incidents of this nature can escalate quickly, are emotionally charged and traumatic for all involved. However, failure to act could also leave the teacher or member of staff in a precarious position. “If the Bill is enacted, then a culture of fear and anxiety will inevitably become entrenched and lead to defensive practice which will do nothing to deliver meaningful outcomes for children and young people or to foster the positive relationships between teachers, school staff, pupils and their families, central to GIRFEC policy and an Empowered School system.”

Ned Sharratt, Researcher (Education and Culture), SPICe

Date: 25/09/2025

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The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Annexe B

Response from ADES

Do you agree with the Bill's approach?

ADES broadly welcomes the Bill's approach which would offer further clarity on the expectations regarding the use of restraint and seclusion including the recording and reporting, sharing information with parents/carers, approaches to escalation and complaints, as well as the quality and depth of training. This would provide assurance to all staff who respond to both deliberate and distressed behaviour, and ultimately to protect children and young people. The Bill provides a secure framework for leaders of inclusion within Local Authorities and affords better compliance, and protection to both our children and families and our staff in their daily practice.

ADES would like to suggest that any Statutory Guidance applies across all settings where children and young people could potentially experience restraint. It is not clear why a legal framework on restraint and seclusion would apply only to schools and not to early years establishments and other child care settings, residential care settings, secure care, justice and mental health services.

Do you think the timescale for informing parents is reasonable?

The timescale for informing parents is reasonable and in line with the approaches adopted in the majority of Local Authorities. ADES would suggest any statutory guidance ensures same day contact with parents regarding an incident even if actual investigation or recording can't happen on the same day. A robust approach is required to ensure effective management of any follow up actions.

Do you agree all incidents of restraint or seclusion in schools should be recorded, collated and reported to Parliament annually?

ADES broadly welcome data being reported to Parliament annually.

ADES would like to ensure that there are minimum reporting expectations that are made explicit in any future guidance to ensure reporting mechanisms does not increase staff workload.

ADES would like to suggest that any data to be collected by an independent regulatory body which has oversight of all data collated about children and young people's experiences of physical interventions. This would enable follow up visits to schools and local authorities, ensure consistency of approach within and across education and other settings, and allow the data to be analysed in order to support and challenge practice.

What do you think about maintaining a list of training providers on the use of restraint and seclusion in schools?

ADES welcome the Scottish Government maintaining a list of providers where they are satisfied with the content and where the training provider is certified as meeting the Restraint Reduction Network Standards. It is unclear within the current Bill as to whether the Scottish Government would require the mandatory use of these training providers. Concerns with this would be around the long-term financial cost and compliance with procurement processes. There would need to be clarity on the value added of training only being done by external providers.

Any other comments?

- It is not helpful to introduce statutory guidance only for schools and no other settings; this will not align practice across settings.
- It is unclear in residential schools whether this guidance would apply to physical interventions in the care setting or whether the statutory duties would apply to physical intervention in the education setting by education staff.
- Education Scotland Inspections now include restraint and seclusion under safeguarding and there is scope for this to be made more rigorous.
- Consideration should be given to a registration scheme where all schools using physical intervention must register with the Care Inspectorate or Education Scotland and be subject to unannounced inspections which focus specifically on restraint and seclusion. This would align education settings with the way restraint and seclusion is monitored in children's care settings and ensure safeguarding requirements could be put in place if necessary.
- A single oversight body to scrutinise the use of restraint in schools and other settings should be considered.

Response from EIS

About the Organisation

The Educational Institute of Scotland (EIS), the country's largest teaching union, representing almost 65,000 members across all sectors of Education and at all career levels, welcomes the opportunity to respond to the Call for Views on the Restraint and Seclusion in Schools (Scotland) Bill.

Before commenting on the principle of the Bill, it is important to recognise the current context in which children and young people are learning, and teachers and school staff are working in Scotland's schools.

In the last ten years, the level and complexity of additional support needs (ASN) has increased significantly, with the latest official data indicating that 40.5% of learners have an identified ASN – in a class of thirty-three, that's more than thirteen children with an additional support need. Across the country, we now have tens of thousands more children and young people in our classrooms with cognitive, social, emotional or behavioural support needs, and in many cases, a combination of needs that are even more complex to respond to.

Resourcing for ASN, however, has not kept pace with this increased requirement for support, and the number of specialist ASN teachers and Special Schools has continued to fall, while access to wider specialist support from allied professionals such as Educational Psychologists, mental health, speech and language, and English as an Additional Language services, has become even more limited.

The impact of the pandemic, more than a decade of austerity, the cost of living crisis, and associated rampant poverty, coupled with the systemic underfunding of Education as a vital public service, have undoubtedly exacerbated the situation. In this context, teachers and school staff are struggling to respond to an array of increasingly complex support needs, this contributing significantly to their already excessive workload. At the same time, they face increased levels of violence and aggression, much of which has emerged because insufficient levels of staffing and other resources have meant that the additional needs of children and young people are not being met despite the best efforts of hard-pressed school staff. Large class sizes only intensify the challenges faced by the insufficient number of teachers who strive, on a daily basis, to deliver quality education for the children and young people in their classes.

This link between unmet ASN need and rising levels of violence and aggression in schools is clear, with over 94% of respondents to an EIS National Branch Survey on Violence and Aggression, published in November 2023, confirming that unmet need exacerbates violent and aggressive behaviour. Members also referenced the difficulties in trying to de-escalate the behaviours of pupils with more complex additional support needs, whilst also trying to teach classes of up to thirty-three children.

Against this backdrop, efforts to deliver inclusive practice are significantly hampered by underinvestment in Education and the gap between GIRFEC policy and practice

has now been described by the Scottish Parliament's Education, Children and Young People Committee as 'intolerable'.

The consequences are stark. The learning experience of pupils in schools is being damaged and the situation is contributing to increased levels of stress, anxiety and depression in teachers, many of whom carry the emotional burden associated with the inability to properly meet the individual additional support needs of their learners, through no fault of their own, or report feeling unsafe in their workplace due to the risk of violence and aggression.

Teachers also report reduced morale owing to the feeling of failing young people and their families; the feeling of their efforts being futile; feeling blamed for repetitive unacceptable pupil behaviour; feeling unsupported; and feeling ongoing worry for vulnerable children.

Teachers have also reported increased stress and risk of personal injury, because of exposure to violent incidents, and to abuse and aggression towards them from learners who require more support but are not getting it. Unsurprisingly this is having an impact on teachers beyond their working hours and into their personal lives, with many referencing lack of sleep, headaches and generalised anxiety.

The current climate of under-investment in ASN is also affecting the whole learning population. As well as the negative impact that unmet need has on the morale and self-esteem of the young people who have such needs, learners more generally also experience higher levels of anxiety due to more stressful environments developing when children do not receive the requisite support- stress caused by disruption to learning, for example, when a class requires to be evacuated as a result of a violent incident- and the impact of witnessing their peers' aggressive or violent behaviour, often a manifestation of distress that would have been much less likely to occur had the requisite support been available in school and outwith school.

Commenting in the foreword to 'Included, Engaged and Involved Part 3: A Relationships and Rights-Based Approach to Physical Intervention in Schools', in November 2024, the Cabinet Secretary for Education and Skills acknowledged that 'since the Children and Young People's Commissioner Scotland published their report on the use of restraint and seclusion in schools in 2018, relationships and behaviour in our schools have changed'. Referencing the Behaviour in Scotland's Schools Research 2023, she highlighted the complexity of the challenge and whilst acknowledging that the focus of the updated guidance should be on prevention, she also emphasised that 'it is vital that our school staff are supported to intervene confidently and appropriately when the need arises'.

Physical intervention, including restraint and seclusion, in schools is a complex and emotive issue. Children, young people, teachers and school staff all have the right to learn, and work, in educational environments that are safe, free from violence and aggression, and where the rights of all are equally upheld. Acknowledging these complexities and the current context, the EIS has the following comments to offer in relation to the Restraint and Seclusion in Schools (Scotland) Bill

Do you agree with the Bill's approach?

No, the EIS does not agree with the approach adopted in the Bill on the following grounds:

- Concerns about the impact of statutory guidance

Whilst the EIS believes that it is important to provide clarity for all in the school community in relation to the use of physical intervention, including restraint and seclusion, it does not support the introduction of statutory guidance.

Scotland already has a strong legislative and policy framework, underpinned by a commitment to upholding children's rights, to which local authorities and schools must adhere. The Children and Young People (Scotland) Act 2014 sets out the duties and responsibilities of Scottish Ministers and of public authorities in embedding 'Getting It Right for Every Child' (GIRFEC) policy. The supporting statutory guidance outlines the continuum of wellbeing needs, citing child protection at the acute end of this spectrum. A range of national guidance, of which 'Included, Engaged and Involved' forms part, supports multi-agency approaches to facilitate early intervention, inform local policies, reduce risk and promote the wellbeing of children and young people. Although the current guidance on restraint and seclusion is non-statutory, it is nevertheless underpinned by statutory provisions, with which education authorities and therefore, schools are bound to comply.

The EIS is concerned about the impact which the implementation of statutory guidance could have on the development of the relational approaches which underpin GIRFEC. We have long believed that the focus of guidance on physical intervention in schools should be on the promotion of positive relationships, behaviour and wellbeing; on prevention and early intervention; on minimising the use of restraint and seclusion; and in the adoption of a rights-based approach, which acknowledges the rights of all in the school setting. A central feature of such an approach is the development of positive relationships between teachers and school staff and children, young people and their families.

Relational approaches are the bedrock to establishing trust and openness, and in building a culture in which teachers and school staff can work with pupils and their families to identify preventative strategies and supportive practices. This is especially important in the current context, as staff are increasingly struggling to cope with the increased levels of violent, aggressive and distressed behaviour of children and young people, against a backdrop of large class sizes, rising additional support needs, crippling poverty, and cuts to education staffing and budgets. When such behaviour requires intervention, staff should be able to discuss this openly with pupils, parents and partner organisations to review the support provided and plan accordingly. This needs time, staffing and resourcing and given the importance of de-escalation and early intervention, significant additional investment in Education if the guidance is to be implemented effectively, without adding to the already excessive workloads of teachers.

We are concerned that adoption of statutory provisions which will be legalistic in nature could militate against a culture of openness, collegiality and partnership working, rather engendering a culture of fear and leading to increased anxiety and feelings of isolation in teachers and school staff.

Reports from our members strongly suggest that teachers and school staff are already afraid or reluctant to intervene in some situations, for fear of potential legal or disciplinary consequences, particularly if the escalation of the incident was sudden and unexpected with no apparent trigger. Incidents of this nature can escalate

quickly, are emotionally charged and traumatic for all involved. However, failure to act could also leave the teacher or member of staff in a precarious position. If the Bill is enacted, then a culture of fear and anxiety will inevitably become entrenched and lead to defensive practice which will do nothing to deliver meaningful outcomes for children and young people or to foster the positive relationships between teachers, school staff, pupils and their families, central to GIRFEC policy and an Empowered School system.

Indeed, it is likely to exacerbate the stress and anxiety of the teaching profession. In the EIS 2023 all-member survey, 72.5% of respondents stated that they were stressed all of the time or frequently. OECD research and subsequent commentary has highlighted the clear link between teacher wellbeing and students' outcomes. We cannot, therefore, ignore the potential impact of such negative practice on teachers, school staff and ultimately, the children and young people in our schools.

- Concerns about the rationale for change

Whilst we appreciate the importance of having clarity about the rights and responsibilities of all in the use of physical intervention, guidance in this area must be inclusive and supportive, based on principles of professional trust and openness. Statutory guidance, by its nature, is unlikely to achieve this, and the numerous references, in the Policy Memorandum accompanying the Bill, to an anticipated increased use of complaints processes would appear to signal the apparent adoption of a more adversarial approach.

The Policy Memorandum sets out the policy objectives of the Bill, referencing the importance of preventing or minimising the use of restraint and seclusion in schools. The EIS agrees that restraint and seclusion should be measures of last resort, only used by those trained in their use and as part of a whole school approach, which focuses on prevention and early intervention. These are fundamental principles which are already the basis of the current Scottish Government non-statutory guidance.

However, the Policy Memorandum goes on to outline that the primary reasons for advocating for legislative change is to ensure that parents, carers and guardians are 'informed of any incidents of seclusion or restraint as soon as possible'. The EIS also supports a duty to inform – a feature of the current non-statutory guidance - and believes that open and transparent engagement is fundamental to the relational approaches, outlined in GIRFEC.

Our concern, however, lies in the rationale underpinning the duty to inform which appears to be based on a lack of trust and concerns about a perceived lack of uptake in resolution or complaints processes.

Paragraph 6 of the Policy Memorandum states:

'The Member believes that existing resolution processes are not functioning as effectively, or being used as frequently as they should, partly because they are not informed of incidents of seclusion and restraint.'

Paragraph 43 provides:

'The duty will also provide parents with reassurance that there are no incidents taking place that they are not being informed about.'

And paragraph 44 states:

‘The Member believes that the duty to inform and record could increase take-up of existing complaints processes.’

Whilst we appreciate that given the sensitive nature of these incidents, there may be occasions in which parents, carers and guardians wish to raise or escalate concerns, the apparent deficit-based approach outlined in these statements is not conducive to building a culture of trust, collaboration and mutual respect and is misaligned not only with the relational aspects of GIRFEC but with the ethos of an Empowered Schools system. It is in sharp contrast to the position advocated in the Scottish Government guidance which clarifies that ‘this process is not about apportioning blame or finding fault with practice, but about what can be adapted or changed to reduce the likelihood of the distressed behaviour occurring in future’.

This commentary also fails to adequately recognise that the duty to inform already exists in the current guidance, which was published in November 2024. In the absence of any review of this aspect of the current guidance, meaningful commentary on its implementation in practice is difficult.

- Concerns about the timing of the Bill

Indeed, we would question the timing of the introduction of the proposed legislation, some four months after refreshed non-statutory guidance from the Scottish Government was published, the impact of which has yet to be assessed and considered. The Scottish Government has committed through the remit of the Physical Intervention Working Group to review the effectiveness of implementation of this guidance one year from the date of publication as part of the process. In responding to the publication of the Scottish Government’s non-statutory guidance, the EIS acknowledged the importance of providing clarity for all in the school community in relation to the use of physical intervention, including restraint and seclusion. We referenced the need for all involved - children, young people, their families and the teachers and practitioners, who support them - having clarity and confidence in the practice being adopted through the application of such guidance and the legal underpinning of any intervention. We believe that clear and unambiguous non-statutory guidance, supported by sufficient additional resources, will provide the reassurance and certainty which all stakeholders need, without adversely impacting the development of strong, open relational approaches. We would, therefore, recommend that the Scottish Government’s non-statutory guidance is given time to embed, is backed by sufficient resources and its impact assessed in light of the acknowledged changed and challenging circumstances which our schools are facing.

- Resources

However, it is worth noting that the debate around whether guidance should be statutory or non-statutory in some way removes the focus from the major barrier to implementation of effective practice in this area – that of resourcing.

Guidance alone will not deliver the changes needed to realise the policy ambition of preventing or minimising the use of restraint and seclusion in schools. The Scottish Government must commit to the allocation of sufficient staffing, time and resources to support the implementation of early intervention measures and restorative

practice, to allow for effective multi-agency and parental cooperation, to facilitate professional learning and collaboration and to ensure sufficient time is available for teachers, families and other professionals to build the meaningful relationships, which will be key to successful implementation of this approach. Given the importance of de-escalation and early intervention strategies, in the context of increasing volume and complexity of need in children and young people and against a backdrop of rising incidents of violence and aggressive behaviour in schools, additional investment is needed as a matter of urgency.

The imperative for additional resourcing is acknowledged in the Policy and Financial Memoranda, accompanying the Bill. However, if additional resources were allocated to the non-statutory guidance, then this may alleviate some of the criticisms which are levelled about implementation and which are being used to justify the introduction of legislation.

Violent incidents or distressed behaviour in children and young people, which in some cases will necessitate physical intervention, stem from an underlying need. We will continue to let down the pupils who are displaying this behaviour – as well as the adults and pupils who are victims of it or witness to it, unless additional resources are forthcoming to deliver safe and inclusive learning and teaching environments for students and staff alike.

- Implementation and Drafting

In addition to concerns about the principle of the Bill, the EIS would also highlight the following issues in terms of practical implementation and drafting:

- ☐ Definition of ‘restraint’ and ‘seclusion’ – the EIS is concerned that the current definitions of ‘restraint’ and ‘seclusion’ contained in section 1 of the Bill are very wide. In terms of restraint, the current definition could extend to actions designed to restrict physical movement to prevent harm to a child or young person or may also include the use of specialist equipment, particularly in Special Schools, to restrict the ability to move independently where this would otherwise cause harm. In the latter example, the duty to record and report every occasion when a piece of specialist equipment is used as part of a Child’s Plan would not appear to be proportionate and would significantly increase workload and bureaucracy for staff.

- ☐ Section 1(3) defines ‘member of staff of an education provider’ as ‘including anyone acting under the authority of an education provider’. The Explanatory Notes make it clear that the definitions of ‘restraint’ and ‘seclusion’ would include such actions if undertaken by ‘any contractors or other persons allowed into schools to provide services or work at events’. Further clarification would be welcomed as to whether this would extend to volunteers, approved to assist in schools or on school trips or outings. It is important that the scope of the legislation is clear for all involved.

- ☐ Section 2(4) provides that guidance ‘may elaborate’ upon the definitions of restraint and seclusion provided in section 1. The use of the word ‘elaborate’ could suggest that guidance could develop these statutory definitions. We would question if this is the intention and suggest that the word ‘exemplify’ might be a more appropriate alternative.

□ Whilst the Bill is clear that the definition of 'school' does not include the reference to a 'nursery school' contained in section 135 of the Education (Scotland) Act 1980, we are unclear as to whether a nursery class within a school would be covered by the provisions of the Bill. Clarification of this would be welcomed.

Do you think the timescale for informing parents is reasonable?

"The time period specified in section 3 of the Bill within which parents should be informed of an incident of restraint or seclusion reflects the timescale outlined in the current non-statutory guidance and would seem reasonable.

With the adoption of appropriate prevention and early intervention strategies, backed by sufficient resources, it would be hoped that incidents involving the use of restraint and seclusion would be kept to a minimum.

Where they arise, the EIS would fully expect that this would necessitate the review of any interventions in place for the child or young person and consideration given to whether the support provided is appropriate and sufficient to meet need. Parents would not only require to be informed in these circumstances but would be key participants in a subsequent meeting to create or review a Child's Plan. This is a central aspect of GIRFEC and indeed, of the processes outlined in the current non-statutory guidance.

Do you agree all incidents of restraint or seclusion in schools should be recorded, collated and reported to Parliament annually?

The EIS believes that it is important that incidents should be recorded – a requirement that it is outlined in the current non-statutory guidance and in The National Guidance for Child Protection in Scotland 2021 which states at paragraph 4.158:

'Recording. Any use of restraint and/or seclusion (variously defined in Scotland but by which is meant shutting a child somewhere alone and not allowing them to leave), should also be recorded as one critical way of ensuring that practice is rights-compliant and appropriately monitored and scrutinised.'

Section 2(2)(g) of the Bill provides that guidance produced must include guidance on 'the recording, reporting and monitoring of incidents involving the use of restraint or seclusion'. It does not further specify the nature of this guidance. However, it must be read in conjunction with section 4 of the Bill, which places a duty on education providers to record all incidences of the use of restraint or seclusion in its schools. This requirement will, by necessity, imply that schools must also record and report the information to the education authority, if the education authority is to discharge this duty. Education authorities are responsible for the delivery of education in their areas and as such, they would be in a position to monitor statistical data.

These provisions clearly set the requirement to report, monitor and reflect on the use of restraint and seclusion at institution and authority level. However, there would have to be a clear rationale articulated as to why this data were being gathered, including information about what will happen with this information and how it will impact on the delivery of positive outcomes for children and young people. The

purpose of recording, reporting and monitoring should be clear, otherwise this is likely to add to staff anxiety and stress.

The Policy Memorandum, accompanying the Bill, adopts a restrictive focus on accountability, suggesting that 'data held at education authority level could provide valuable insights to aid education authorities in identifying areas for improvement in particular schools'.

The Scottish Government's non-statutory guidance, on the other hand, is more expansive in outlook, providing that whilst recording and monitoring ensure accountability, they will also promote reflection and the consideration of preventative approaches; ensure that duties of care towards children, young people and staff are met; and meet individual needs, improving wellbeing and reducing emotional and physical distress.

Whilst these objectives may be the intended purpose of recording, reporting and monitoring, however, simply complying with these duties alone will not ensure that these objectives are met. Individual needs will not be met, wellbeing not improved, and emotional and physical distress not reduced, unless positive steps are adopted to implement strategies in practice to address the root cause of the behaviour, which necessitated the intervention; with time and resources being given to enable teachers, school staff and allied professionals to support these needs.

Smaller class sizes, reduced class contact time for teachers (in line with the EIS 20:20 campaign), more time for parental and multi-agency engagement, partnership working and reflection are key factors which will contribute to the delivery of these outcomes. Whilst recording, reporting and monitoring have a role in assisting reflective practice, facilitating professional dialogue and identifying next steps, alone they will not affect positive change – and indeed, if overly bureaucratic, will actively undermine these processes and the time available to support children and young people.

Whilst we understand the imperative to record the use of restraint and seclusion, we are concerned about the potential impact which an overly bureaucratic process would have on teachers' already excessive workloads, and ultimately on their health and wellbeing.

Research on workload conducted by the EIS highlights that teachers are already working in excess of 11 hours over contracted hours every week. The views highlighted within the EIS 2025 all-member survey demonstrate the urgency needed to tackle teacher workload. 67% of respondents said that they were dissatisfied or very dissatisfied with workload, with only 3.7% saying that they can complete all their tasks in their contracted hours.

Our members report feeling worn down and exhausted by the lack of trust in their professional judgment and the relentless bureaucracy which they are required to produce but which has no impact on outcomes for children and young people. This, coupled with a lack of time to engage with colleagues, families and other professionals, and a lack of additional expert support for children and young people, only compounds the stress which they feel, impacting negatively on morale.

We believe that recording processes should not be overly bureaucratic or time-consuming. Recording should be straight-forward and accessible so that it can be completed by the staff member post-trauma, at a place of their choosing and that the content should inform next steps, which are supported by the allocation of resources, to lead to positive outcomes for children and young people.

Reporting to education authorities must also be about more than accountability drivers. It must result in positive action for the child, young person and those in the school community. Schools are frustrated by the infinite loop of recording and reporting, identifying supports and mitigation measures which are then not supported by resource at authority level. These recording and reporting procedures must be more than paper exercises, with teachers, staff and senior management teams, as well as pupils and their families, seeing the positive impact of their interventions. Unless a commitment is given to the allocation of sufficient additional resources, then reporting and recording are unlikely to effect meaningful change and will only serve to increase the workload of teachers, senior management teams and other school staff.

In relation to reporting to the Scottish Parliament, the Policy Memorandum states that the publication of the data 'will enable parliamentarians and others to scrutinise the levels of restraint and seclusion in schools, including any trends suggesting an increase or a decrease'. The rationale is rooted in accountability and oversight measures. However, there is a danger that this could lead to the creation of national league tables of local authority's restraint and seclusion figures and local league tables in relation to individual schools. This is unhelpful; it detracts from the focus of support for children and young people; and could, in a system where performativity is pervasive, conversely result in practice which would discourage recording and reporting, as a result of concern about how a local authority or school might be perceived.

The EIS notes that the new Office of HM Chief Inspector will have the ability to consider the level and impact of restraint and seclusion practice through its inspection and scrutiny role. Following the passage of the Education (Scotland) Bill, the Chief Inspector will report on an annual basis to the Scottish Parliament, and so, there would be a medium through which Parliament can have oversight of any emerging issues in this regard, without the necessity of a separate reporting function.

What do you think about maintaining a list of training providers on the use of restraint and seclusion in schools?

The EIS has significant concerns that as currently drafted, the Bill does not make it clear whether implementation would lead to the introduction of mandatory training for all teachers and school staff.

Section 2(2)(i) of the Bill states that the new guidance will provide guidance on the training of staff in the use of restraint and seclusion. Paragraph 47 of the Policy Memorandum would suggest that there will be some form of training in restraint and seclusion for all school staff. It provides:

'In addition, the guidance will detail the required standards for the training of school staff. The Member envisages this will include distinct levels and forms of training for people in different roles... The Member appreciates that these measures will need to

be accompanied by adequate time being available to school staff to ensure that such training is undertaken on a regular basis.'

This would be a worrying departure from the status quo, where only teachers who elect to undertake training in restraint and seclusion will use this form of intervention.

One of the fundamental reasons people enter the teaching profession is because they care about children and young people and want to use their knowledge and skills to build positive relationships, to support learners in achieving the best possible outcomes in life. Many teachers would be appalled at the prospect of having to undertake training on the use of restraint and seclusion, techniques which they may regard as contrary to the relational approaches advocated above. In such cases, mandatory training may be sufficient to make them question their future in the profession, particularly when there is already a culture of fear and anxiety as highlighted in response to question 1 above. This directive approach may also act as a disincentive for new teachers to enter the profession, adding to the recruitment and retention issues with which we are grappling on a global basis.

Furthermore, in a profession which is predominantly female, proposals to introduce mandatory training may give rise to significant health and safety concerns. What consideration has been given, for example, to the impact of requiring female teachers to restrain male pupils, who may be physically taller and stronger, particularly when we are striving to eliminate gender-based violence in our schools?

Clarity in relation to this important issue is required.

Whilst there may be benefits in maintaining a list of training providers on restraint and seclusion for those who wish to attend on a voluntary basis, it would be important to ensure that those on this list maintain high standards of delivery. A system of quality assurance or accreditation would be key to ensuring that the training delivered is current and appropriate for the school context. Whilst there is reference to an approval process in section s5(1) of the Bill, it is not clear whether there will be ongoing monitoring of the quality of provision.

Any other comments?

Whilst the Bill advocates guidance which focuses on the rights of the child or young person who has been subject to restraint or seclusion, in a rights-based, trauma-informed system, it makes no reference to how children and adults who have been subjected to harm can be supported and measures adopted, to provide confidence and reassurance that they will be safe from further harm. The EIS is unclear as to how the Bill and the guidance emanating from it will balance competing rights and interface with health and safety legislation.

The Bill and supporting documentation also fail to recognise the extent of the impact which the use of restraint or seclusion can have on the mental health and wellbeing of staff. Involvement in what can be violent incidents is traumatic but there is no reference to additional supports which staff may need, particularly as these incidents occur in the context of their employment.

Teachers are often left, without support or intervention, to manage the behaviour of a pupil who is distressed, whilst supporting the other children in the class, who may be upset as a result of witnessing the behaviour.

The Financial Memorandum, accompanying the Bill, appropriately sets out a range of potential costs resulting from implementation of the Bill. Paragraphs 34 of this document highlights that in order to thoroughly implement the requirements of the statutory guidance, there will need to be a review of processes at both education authority level and individual school level. Paragraph 35 then explores a range of considerations which must be taken into account, including the resource implications of adopting de-escalation techniques and the need for one-to-one support on different occasions. It references the cost of production and review of the guidance; the cost of training; of time for staff to engage; of the additional actions which may be required following an incident; of the increased investment needed to support recording, reporting and monitoring; and of the collation and potential publication of data.

The EIS agrees that sufficient resourcing to account for these factors will be key to effective implementation of any guidance, in this area. Indeed, when commenting on the publication of the non-statutory guidance, the EIS was clear that it would not impact practice unless accompanied by resourcing. We called for time, staffing and resourcing and given the importance of de-escalation and early intervention, significant additional investment in Education to ensure the guidance was implemented effectively.

It is disappointing, therefore, that the Cabinet Secretary for Education and Skills has failed to acknowledge the need for these essential resources either at the time of publication of the Scottish Government guidance or in responding to the Call for Views and has questioned what additional implementation costs education authorities would incur as a result of the Bill.

This response also fails to appreciate that the fundamental issue in terms of managing distressed and violent behaviour lies not with whether guidance on restraint and seclusion is statutory, but on the systemic underfunding of Education. The adoption of effective early intervention and de-escalation strategies, in accordance with GIRFEC policy, are key to minimising the use of physical intervention in schools. And yet we know from the plethora of evidence, from parliamentary inquiries and most recently from the Audit Scotland Report on Additional Support for Learning, that there is a significant gap between GIRFEC policy and its effective implementation in practice, stemming from the significant under-provision of resources and general inaccessibility of sources of support for children and young people.

It is not always possible to access the most appropriate support when required to ensure interventions can be adopted at an early stage, preventing the escalation of more distressed behaviour. In the 2025 EIS National Member Survey, just over 1% of respondents said that they could always access frontline support for pupils at the point when need was identified. We know there is a significant backlog to access specialist support from Child and Adolescent Mental Health Services ('CAMHS') but also, as demand increases, on access to support for perceived 'routine interventions' which might otherwise support children and young people.

We know that some schools are electing to use Scottish Attainment Challenge (SAC) funding, and in particular, Pupil Equity Funding (PEF) to secure support, such as inhouse counselling and play therapy, to meet the needs of the children and young people in their school communities. Whilst this funding is welcome, it is no substitute for the provision of sustained and significant core funding, needed to ensure that there is equity of provision across Local Authority areas and that early intervention strategies can be implemented to provide support for all children and young people who need them.

These issues in terms of resourcing and addressing the backlog of children and young people waiting to access appropriate support must be considered and addressed to facilitate the effective implementation of guidance to reduce the incidence of violent, aggressive and distressed behaviour witnessed in our schools and minimise the use of physical intervention in all its forms, including restraint and seclusion.

The Financial Memorandum estimates the total costs of implementation of statutory guidance in the first year as ranging between £1,695,171 to £3,323,541, with similar costs recurring year on year. These figures are predicated on an assumption that every school will require 2 to 4 days of teacher time a year. It is unclear how this assumption has been determined but it would appear to be a conservative estimation.

Having due regard to the requirements set out in the non-statutory guidance (which would be largely replicated in the statutory guidance if the Bill were passed) and the context in which schools are operating, the EIS believes that implementation costs would be significantly more, requiring greater investment in the time of teachers and school staff and in allied professionals.

Scottish Government and local authorities need to be honest about the size of the challenge we face with regards to ASN provision, violence and aggression in schools and how we address it. The £28 million allocated in the 2024/25 budget for ASL was welcome but it will not come close to meeting need.

Scotland needs a long-term resourcing strategy – including action to reduce class sizes and significantly enhance the availability of specialist ASN support and expertise within schools. To continue to dodge the issue of resources and to tinker around the edges of fixing the problem does a huge disservice to many.

It is letting down children and young people who are displaying violent, distressed and aggressive behaviours; the children and young people witnessing this behaviour and the teachers and school staff who every day simply are doing their best to meet the diverse range and complexity of needs in their classrooms.

If the Scottish Government is serious about minimising the use of restraint and seclusion in our schools, it needs to invest in education – invest in children and young people, their families, and in teachers and school staff. Prevention, early intervention and health and safety are not cost-neutral – but they will deliver better outcomes for children and save money in the long term in health, social care and the criminal justice system.

The importance of supervision and pastoral support is well recognised in the context of social work. Similar support structures with ring-fenced time should also be available for teachers, with risk assessments undertaken to ensure that appropriate mitigation measures are in place. Provision should be made to allow the member of staff time away from the classroom after involvement in such an incident to recover, particularly if they have been injured. Only if the mental health and wellbeing of teachers and staff is supported will they be able to provide the support which children and young people in their settings require. Employers owe a duty of care to keep staff safe and specific consideration should be given to risk assessment and safety planning to protect individual staff members from further harm. Resources must also be provided to ensure that the mitigation measures identified in the risk assessment can be implemented in practice.

As highlighted in the introductory section, pupils have the right to learn and teachers and school staff have the right to work in a safe environment, free from violence and aggression.

Response from GTCS

About the Organisation

The General Teaching Council for Scotland (GTC Scotland) is the independent regulator for teachers in Scotland. We were established in 1965 to ensure standards for the teaching profession in Scotland. We work to maintain and enhance trust in teaching. It is a legal requirement for all teachers and college lecturers working in Scottish schools or colleges to register with us.

Our role is to regulate teachers and college lecturers on our register. We do this by setting and upholding the standards for entering and remaining in the teaching profession, setting the conduct expected of teachers and college lecturers, accrediting and setting minimum entry requirements for programmes of initial teacher education and facilitating the ongoing professional learning process, Professional Update.

Our functions are set out in the Public Services Reform (General Teaching Council for Scotland) Order 2011.

Do you agree with the Bill's approach?

In our response to the initial consultation on this Bill, we highlighted that using legislation to address single issues could risk complicating the child protection and safeguarding landscape within education. Identifying and recording instances of physical restraint and/or seclusion is only one part of a wider system that needs to work cohesively to address all child protection and safeguarding issues.

We are in favour of introducing overarching and comprehensive statutory guidance, similar to the guidance that is in place in England that is aimed at keeping children safe in schools and colleges.

Through our professional regulation work, specifically our Fitness to Teach process, we have gained insight into some issues in relation to physical restraint and seclusion in schools. In our Fitness to Teach Insight report (gtcs.org.uk/documents/fitness-to-teach-insight-report), 'failures related to safe handling of learners and alleged physical assault' was one of the allegation themes we identified when analysing conduct cases where we took regulatory action.

As is noted in the Policy Memorandum, third sector organisations and the Children and Young People's Commissioner Scotland have long highlighted that restraint and seclusion are regular parts of the day for learners with additional support needs. While the Bill will apply to all learners equally, this is an important factor to consider to ensure that children's rights are realised and no one is unfairly treated.

Do you think the timescale for informing parents is reasonable?

We have no response to this question as it is outside our statutory remit, which is set out in The Public Services Reform (General Teaching Council for Scotland) Order 2011.

Do you agree all incidents of restraint or seclusion in schools should be recorded, collated and reported to Parliament annually?

While the Bill sets out the requirement for education providers to record and report incidences of restraint and seclusion, there does not appear to be a provision for what happens if this is not done appropriately or accurately. This relates to an issue we have been highlighting for some time about who regulates education service providers.

We believe that the real focus and need is to address coherently and holistically, the child protection and safeguarding landscape to ensure that roles and responsibilities are clear, and that appropriate checks and balances are in place.

We have used the platform provided by the education reform programme to promote the need for clear system regulation. For the education system to work well, individual bodies need to work in partnership where respective roles and remits are clear and understood. This relies, for instance, on effective information sharing to ensure each part of the system can play its distinct role. It requires trust that partners will do what is expected of them and manage situations effectively where mistakes have been made, or things have gone wrong.

While amendments related to safeguarding and child protection were not moved at Stage 3 of the Education (Scotland) Bill proceedings, we understand that this was due to a commitment from the Cabinet Secretary to furthering exploration of issues relating to oversight in this area, as well as ensuring a common understanding of how concerns in education are raised.

Our view is that this should begin with reinstating work to clarify respective roles in the system for child protection and safeguarding and to determine appropriate information sharing arrangements. We would also like to reiterate that consideration be given to who has oversight of how different organisations are working together to ensure child protection and safeguarding.

A joined-up approach is key to ensuring a trusted and effective system that the public are confident in.

What do you think about maintaining a list of training providers on the use of restraint and seclusion in schools?

Access to effective professional learning is something we raised in our previous response. We note that section 2(5) of the Bill highlights that “Guidance under this section may make different provision for different purposes, including different provision for different education providers or different schools”. We also highlighted in our previous response that while we agree with a national approach to professional learning, account needs to be taken of the very different contexts in which teachers teach, and learners learn.

Education, learning and development throughout a teacher’s career needs to be designed and resourced appropriately to support the enhancement of professional expertise. Career-long professional learning is a requirement for all teachers to maintain their registration with GTC Scotland. While we do not prescribe what form professional learning should take, we do require teachers to use the Professional

Standards to structure their ongoing learning and development, based on what they identify as areas of need.

While having this information available will be a useful resource, consideration must also be given to how to address wider systemic issues that can lead to improper use of physical restraint and seclusion, which have been highlighted in the Policy Memorandum. Specialist additional support needs knowledge, for example, is an area of development that has been identified in our Fitness to Teach work.

We note that the Bill refers to 'training' as opposed to professional learning. Clear processes will be required to ensure training providers are adequately quality assured. Such training needs to be considered in the spectrum of professional learning teachers undertake in regards to relational practices, classroom management and behaviour de-escalation practices to name a few. It is important that development activities are coherent.

In this context we also would ask for consideration to be given to who is the right body to collate and hold such a list. Education Scotland may be a more appropriate body to have this list as the national education agency.

Any other comments?

In relation to this issue, as well as in matters of child protection generally, we are committed to identifying and highlighting areas where improvements can be made and lessons learned. We would welcome the opportunity to discuss any of the issues we have raised in this response further and to share relevant details of the work that we do to set and regulate standards for teachers.

Response from NASUWT

About the Organisation

The NASUWT welcomes the Education, Children and Young People Committee's call for views on Restraint and Seclusion in Schools (Scotland) Bill.

The NASUWT is the largest UK-wide teachers' union representing teachers and school leaders in all sectors of education.

Do you agree with the Bill's approach?

NASUWT agrees that, to date, there has been a clear and complete abdication of responsibility on the part of the Scottish Government in providing appropriate guidance for schools. NASUWT has repeatedly and publicly insisted that clearer and better quality guidance is urgently needed.

However, the Union is concerned that the proposals set out in the Bill do not take sufficient cognisance of the nuances in this policy area, nor do they address some of the key challenges which were discussed in the Physical Intervention Working Group or raised more broadly in responses to the Scottish Government's most recent physical intervention in schools guidance.

Where the law and any tensions in definitions remain unresolved, by implementing a statutory duty the Scottish Government would be placing undue pressure on schools, local authorities and teachers. Where there is a lack of clear information, different employers will also interpret the legislation differently. There are clear implications in terms of additional workload and distraction for teachers from their core role of teaching and learning.

Do you think the timescale for informing parents is reasonable?

NASUWT, as a UK wide union, has stated in previous representations to the Department for Education in England that there should be no automatic presumption that parents should be informed of all incidents where restraint has been used.

NASUWT casework and member engagement activity has shown that reporting incidents to parents may place some pupils at risk of significant harm. All guidance should therefore set out the importance of evaluating these risks before any disclosure is made and in doing so this may impact the ability to meet a 24 hour deadline.

Where a decision is made to report an incident involving use of restraint or some other physical intervention to parents, it must make clear that this responsibility falls to a member of the setting's senior management team. It must not be the responsibility of the member or members of staff involved in the incident. NASUWT casework has highlighted instances where members of staff have used restraint or force reasonably and lawfully, yet found themselves subject to reprisals from parents.

Given its duty of care to its employees, no setting should place a member of its staff in this position.

To protect the member of staff further, if parents are informed, the member of staff who used restraint or another form of restrictive intervention, should not be disclosed to the parents. The NASUWT would argue that the circumstances of the incident can be conveyed to parents without identifying the staff member or members involved.

Do you agree all incidents of restraint or seclusion in schools should be recorded, collated and reported to Parliament annually?

Notwithstanding the NASUWT's clear position that not every incident should be reported to parents if there is a risk of harm, the Union does support schools to record and report every significant incident of use of force.

Given the staff and pupil welfare issues that may arise from such incidents, it is critical that accurate records are kept.

NASUWT recognises that as well as recording data, the key is to use this data to monitor and identify patterns.

In the policy memorandum it states:

'The requirement to publish data deliberately sits at a national level, with the responsibility falling to the Scottish Ministers. This avoids any situation where school level data is published and individuals become recognisable from the data, or schools' data can be compared to each other in public. Education authorities and the inspectorate would have access to school level data across an education authority'

NASUWT is in favour of a national recording and reporting system for behaviour issues: schools must have a simple, fit-for-purpose reporting procedure and school leaders should take appropriate steps to ensure staff report all incidents of violence and abuse. The Union is therefore not against systems of national reporting, though such data should form part of a wider package of information reported, however further detailed consideration would need to be given as to the extent to which individual schools and pupils could be identifiable through national data as well as the risks of FOI requests leading to league tables being posted by national newspapers which would likely place pressure on schools to under-report.

What do you think about maintaining a list of training providers on the use of restraint and seclusion in schools?

The introduction of a national, standardised training programme on the use of reasonable force, restraint or other restrictive practices would ensure consistency and effectiveness. It is unreasonable for schools to have to source this training on an individual basis as opposed to a national provision, especially given the nature of the issues the training is expected to cover.

Furthermore, without scrutiny of this training, there is no quality assurance to guarantee schools are being trained appropriately in this critical issue, which could lead to risks when discharging these responsibilities.

Given the importance of ensuring practitioners fully understand when the use of force is reasonable, providing examples may help to offer reassurance to schools they are discharging their responsibilities in line with national guidance.

It may also be beneficial to include the importance of utilising de-escalation techniques as a first response, to try and minimise the likelihood of or avoid the need to use restraint. To use these effectively, education staff must be trained. This is another reason why the NASUWT supports a standardised training programme on the use of reasonable force, restraint or other restrictive practices, which would ensure all trained individuals have the same knowledge and skills to seek to resolve a situation before it escalates.

It is worth stressing that a statutory requirement and guidance document on their own, would be insufficient to embed practice and would need to go hand in hand with a training, communication and support programme, as well as be built upon an IT system for recording which is fit for purpose.

Whether training should be mandatory, however, is complex. NASUWT has always argued that such training should be voluntary, given many teachers are concerned about the risk of legal/personal injury claims and their own liability. The Union believes that all staff should have a right to training, but we would recommend any national guidance stops short of mandating training.

Any other comments?

The questions posed in this consultation response are surface level at best and do not seek to address any of the considerable underlying concerns in relation to the current Scottish Government guidance or indeed the national position in relation to ASN support in schools. In order to further elucidate these matters please find enclosed as Appendices:

NASUWT MSP Briefing: PHYSICAL INTERVENTION GUIDANCE 8 NOVEMBER 2024

NASUWT MSP Briefing: ASN IN SCHOOLS 4 JUNE 2025

APPENDIX 1

PHYSICAL INTERVENTION GUIDANCE

8 NOVEMBER 2024

Introduction

1. NASUWT - The Teachers' Union - in addition to the support we are providing to our members across the UK, is committed to ensuring that Members of the Scottish Parliament remain informed of key information impacting our schools and colleges.
2. The following briefing is provided both to inform MSPs around the the publication of the national guidance document 'Included, Engaged and Involved Part 3: a relationships and rights-based approach to physical intervention in Scottish schools'.

RESTRAINT GUIDANCE FAILS TEACHERS AND PUPILS

3. Despite waiting nearly a year for the publication of this guidance, NASUWT is clear that the final document fails to offer any practical advice and help to teachers and school leaders in managing situations where school staff may feel compelled to intervene and physically restrain a pupil or pupils for their own or others' safety. There is no offer of any accompanying training or resources for schools in handling these extremely difficult situations either.
4. It has been widely evidenced, both by the Union and the Scottish Government in the recent BISSR report, that teachers are experiencing increasing levels of serious disruption and violence in their schools and are being expected to put their own and others' safety on the line, as well as their careers.
5. This is an untenable position for teachers and school leaders to be placed in by the Scottish Government. NASUWT have made it clear to ministers that we reject this guidance as being completely unfit for purpose in its current form and that they must work with us to come forward as a matter of urgency with amended advice which actually supports and protects teachers and school leaders in a practical way to deal with violent incidents safely.
6. The published guidance fails to uphold the Scottish Government's duty to ensure teachers' right to work in safety, focusing almost exclusively as it does on the rights of children who may be subject to a physical intervention. It places the onus on teachers and school leaders who utilise restraint or seclusion of pupils while allowing local authorities and ministers to evade their responsibilities for providing sufficient resources and staffing to help schools manage and minimise the need for such action.
7. NASUWT is deeply concerned that this guidance will do little to nothing to address the current patchwork of local policies and advice which frequently contradict one another and which are leading to inconsistencies in the way interventions are managed across schools. Indeed, it is a total failure of the responsibility and leadership teachers and school leaders desperately need from

their government on this critical issue of the basic safety of our school workforce and the pupils they teach.

NASUWT POLICY POSITION

8. At NASUWT Scotland Conference 2024 a motion on Seclusion and Restraint was passed and set clear policy which has been communicated via the working group. The motion states:

Seclusion & Restraint

Conference is concerned that in the absence of clear national guidance on seclusion and restraint/physical intervention, individual employers, including local authorities, are creating their own disparate policies leading to inconsistencies in the way conflicts, such as when a teacher or support staff colleague intervenes in a dispute between pupils, are managed across Scottish schools.

Conference calls on the Scotland Executive Council to lobby the Scottish Government to complete the national advice on seclusion and restraint/physical intervention expeditiously, ensuring that national advice will:

- a. be created in partnership with NASUWT to ensure guidance clearly reflects the views of teachers;
- b. include clear and agreed definitions of seclusion and restraint/physical intervention;
- c. take into account the duty of care to all in the school community by ensuring rights are not viewed exclusively through the lens of the child who may be the subject of an intervention;
- d. have been considered through an intersectional equality lens, taking, for example, appropriate cognisance of the impact of gender-based violence, and linking to the ongoing national work of the Gender Equality Taskforce in Education and Learning (GETEL) as well as the racism and racist incidents subgroup of the Anti-Racism in Education Programme (AREP);
- e. have been through a workload impact assessment;
- f. avoid placing anyone in the school community in harm's way, ensuring teachers will feel safe and supported at work;
- g. be accompanied by the right for any teacher who wishes to access appropriate training;
- h. be supported by an investment in sufficient resources for local authorities, schools, headteachers and teachers, including the provision of supervision for teachers;
- i. include a timeframe for national review and have appropriate mechanisms built in to allow for further revision as appropriate.

9. While NASUWT is a member of the Physical Intervention Working Group, consensus agreement to proceed to publication via the working group was not reached. NASUWT wrote to the Scottish Government lead in August 2024 to confirm that NASUWT did not support the publication of the proposed draft. The reason for doing so was that the working group had not managed to secure national advice which:

(1) was created in partnership with the NASUWT and reflective of the views of teachers. NASUWT have engaged actively in the process of reviewing national guidance as well as responding to the public consultation. However it has not always

been very easy to see many of our concerns or suggestions reflected in updated versions of the guidance.

(2) had clear and agreed definitions of seclusion and restraint and physical intervention. While the final wording of those definitions is clear, the practicalities of implementing those definitions within a real school context are not. As far back as 2021, NASUWT was raising concerns via the working group that 'teachers are going to get caught in the gaps of the existing legislative and guidance frameworks leaving them vulnerable'. At the moment, given the overtly policy narrative within the document, it feels more like a tick box exercise from government to limit their liability rather than a helpful, practical and useful outline for schools and teachers to support them in engaging with pupils.

(3) took into account the duty of care to all the school community by ensuring rights were not viewed exclusively through the lens of the child who may be the subject of an intervention. In this aspect the guidance falls considerably short. NASUWT have an overarching concern that rights issues are addressed almost exclusively in the guidance through the lens of the child who may be the subject of an intervention. This perspective is essential, of course, but decisions about the use of interventions involve taking into account the legitimate interests of other rights holders (i.e. other students and staff). There is the fact that considerations in relation to the rights of others is touched on almost in passing elsewhere in the document (e.g. when referencing safeguards for using staff-led withdrawal), but the need to take these rights into account should be referenced explicitly in the guidance. Given the stated commitment of the Scottish Government to the UNCRC, it will have noted the provisions of General Comment No.13 on Article 19 of the Convention which is centred on the right of children to be protected from all forms of violence. Specifically, paragraph 27 of the General Comment confirms that in cases involving violence between children, there is a duty on all responsible adults to react to and prevent such violence so that the UNCRC rights of children who are subject to such violence are respected. Similar considerations pertain where the actions of a child impacts adversely on Articles 28 and 29 on the rights of children to education.

Recognising the status of children who suffer adverse consequences as a result of the behaviour of other children as UNCRC rights-holders should be central to the approach of any government or administration that seeks to have its stated commitment to the Convention taken seriously: these children have a legitimate expectation that relevant authorities will act to uphold and protect these rights. The Scottish Government will be aware that in the context of the requirements of Article 3 of the Convention, in which relevant persons and authorities are required to act in the best interests of all children, the rights of children and adults impacted adversely by the actions of another child must be an active consideration in decision-making. It is by no means clear that the approach recommended by the CRC in relation to the rights of other children and adults has been understood correctly in the development of this guidance.

It remains important that the impact on teachers is not lost and that the need to balance rights is clear rather than an inference that children's rights obscure any adult rights.

(4) was considered through an intersectional equality lens, taking cognisance of the gender based violence as well as racism and racist incidents. Looking at GBV as an

example, the national framework provides support to those working with and in schools to develop and strengthen universal and targeted approaches to gender-based violence and states:

‘utilising restorative approaches to incidents of GBV has the potential to be unsafe or retraumatising for the person who has experienced GBV. School staff should be aware that reconciliation may not be possible or advisable in cases of GBV and should not employ strategies that may cause additional distress to any person affected’

<https://www.gov.scot/publications/preventing-responding-gender-based-violence-whole-school-framework/pages/6/>

Equally the National Action on Behaviour is clear that a priority for phase 1 of implementation is:

‘To provide clarity on the range of approaches and consequences that are available, including exclusion where there is no appropriate alternative, to empower staff to promote positive relationships and behaviour and respond to behaviour that impacts on learning and teaching or the health and safety of others’

<https://www.gov.scot/publications/national-action-plan-relationships-behaviour-schools-2024-2027/>

Yet the final document contains such tropes as "all behaviour is communication" and shows no understanding of the limits of restorative approaches. There remains far too much content on behaviour approaches and prevention which have not been revised to acknowledge the publication of the Joint National Action Plan on Relationships & Behaviour in August this year.

(5) will have been through a workload impact assessment. While a children's impact assessment (CRWIA) and Equality Impact Assessment (EIA) has been undertaken, there has been no workload consideration. The reason it is important that any advice or guidance considers the workload burdens associated with the approach outlined is that this will impact how well it will be able to be adopted within school settings. On the back of any workload audit, steps must then be taken to ensure that staff in schools have the time to fulfil the responsibilities they will have. In particular, where staff may not be clear about the expectations on restraint, it is exceptionally important that there is a meaningful framework for training and support launched alongside guidance as a package. Considering the size of the document alone, this is a workload driver and prohibits ease of reference: IEI3 is far too lengthy - teachers are looking for advice on physical intervention, what they should do if a fight breaks out, a pupil is scaling a wall or a young person brings a weapon into school. This has to be a usable document, something well-thumbed and familiar; the current length is prohibitive and mitigates against that .

(6) will avoid placing anyone in the school community in harm's way, ensuring teachers will feel safe and supported at work. There remains minimal reference to staff safety and wellbeing within the document. In fact, it was acknowledged in the guidance drafting notes that the Health and Safety at Work etc... Act 1974 was incompatible with the overall approach suggested. This document should not attempt to create a hierarchy of rights - health and safety rights must be applied and cannot be ignored. NASUWT has also consistently advocated for guidance on the use of reasonable force and restrictive practices in schools and also recommended trauma support for staff, but these are greatly underplayed in the document.

(7) should give the right for any teacher who wishes to access appropriate training. While training is mentioned in the document it stops short of an entitlement merely stating ""where a health and safety risk assessment indicates restraint as a foreseeable possibility, consideration should be given to training an appropriate number of staff.""

(8) will be supported by an investment in sufficient resources for local authorities, schools, headteachers and teachers, including the provision of supervision for teachers. This guidance places teachers and schools in an untenable position - establishing effective approaches to reducing the avoidable use of restraint and restrictive intervention requires schools to have access to high-quality sources of external advice and expertise. This includes those provided by local authorities and the NHS and is a particularly important consideration in respect of pupils with Additional Support Needs and disabilities. We know these supports are not universally in place and, without this being remedied or even acknowledged, there is an implied fault laid at the door of teachers/schools who utilise seclusion/restraint without responsibility being accepted centrally by Scottish Government and Local Authorities for providing sufficient resources and staffing to support pupils.

(9) includes a timeframe for national review and has appropriate mechanisms built in to allow for further revision as appropriate. In our 2022 consultation response we said 'it is important that there is a timeframe for national review of the guidance. It is anticipated that the public inquiry into the death of Sheku Bayoh may make recommendations for the public sector as well as the police, and so there must be appropriate mechanisms built in to the guidance to allow for further revision as appropriate'. While some accountability mechanisms are referenced in the document, including Local Authority duties and HMiE, Scottish Government has deftly avoided any commitment to a national review into their own guidance.

CONCLUSION

10. NASUWT believe the guidance is a missed opportunity. It has insufficient clarity and will leave children and staff in school at risk and vulnerable. To issue the document in this form has been a complete abdication of responsibility on the part of the Scottish Government. Further and better work must be undertaken to secure clearer, better-quality national guidance.

APPENDIX 2

ASN IN SCHOOLS

4 JUNE 2025

Introduction

NASUWT - The Teachers' Union - in addition to the support we are providing to our members across the UK, is committed to ensuring that Members of the Scottish Parliament remain informed of developing challenges in schools and colleges.

This briefing explores the key findings across Scotland from NASUWT's ASN in Schools research.

Key Findings

Just 2% of teachers in Scotland say that the pupils they teach who have additional support needs (ASN) always receive the support they are entitled to, with over a third (35%) saying these pupils rarely or never receive the support they need.

While the number of pupils with ASN in Scottish schools is rising and their needs are becoming more complex, funding, support and the number of places in specialist provision are all dwindling.

While 92% of respondents said the number of pupils they teach with ASN has increased in the last five years and 93% said the needs of the pupils with ASN that they teach have become more complex during this time, 69% said that the level of support received by pupils they teach with ASN has decreased over the last five years.

Funding and resource pressures are evident with nearly half (47%) saying that there are pupils in their school who have been identified as needing specialist provision, but remain in their mainstream school because specialist settings are full. 43% said their local authority has reduced the number of places in specialist settings in order to manage budgets.

Over half (53%) said the number of specialist teachers employed to support pupils with ASN in their school has declined in the last five years. 62% said the number of specialist support staff has decreased during this period.

Unsurprisingly therefore, 94% said that the workload of teachers and school leaders in their school has increased as a result of underfunding for specialist services for ASN.

Only 2% of respondents say they always receive the support they need to teach pupils with ASN effectively. 46% say they rarely or never receive the support they need.

Over half (54%) of respondents who teach in specialist or alternative provision said they had been physically assaulted by a pupil in the previous year. 59% said they had been threatened with physical assault and four in five had experienced verbal abuse. Nearly half (49%) said they experienced such abuse daily or more than once a day. Two-thirds said the abuse is increasing in severity.

Only 14% said their school always takes appropriate action to address behaviour incidents when they are reported and just 4% said the same about local authorities.

Voice of Teachers

Members were asked about their experiences of ASN provision and told us:

“There is nowhere near enough time, resources, staff to ensure that ALL ASN children receive the support they are entitled to. Pupils with behaviour needs are too often supported before children with learning needs as staff look to settle the class. The presumption of mainstream is making the job impossible to manage and is failing children with ASN”

“It is a postcode lottery depending on if your local school has a good provision or not. Being able to meet all learners’ needs depends on significant goodwill on the part of the ASN teacher and PSA staff. We do it for the kids but sometimes the system works against us to be able to do it well. Staffing is a huge concern and the formula that the council works with is insufficient.”

“I am having to work 80 hour weeks just to ensure my children are able to access a curriculum as I need to prepare individualised communication resources just so they can access their personalised and individualised curriculums.”

“Presumption of mainstream has created a cost-saving disaster in schools where staff are being expected to deal with more and more ASN planning on the back of cuts to support staff and dwindling ASN provision elsewhere. Having worked in ASN schools, I know their value in preparing pupils for a positive destination, however the current model of “square peg/round hole” is leaving pupils behind.”

“Sometimes ASN needs are so complex, the other pupils in the class are excluded due to time spent dealing with ASN issues. Support staff are too thin on the ground. I cannot remember the last time I had any support in my classroom to assist - I am talking years ago, not just days/weeks.”

“Schools are having to deal with complex needs far beyond their capacity. This has a huge impact on the learning of all pupils as children show unease when there is violence or potential threats. The dysregulated pupils find the mainstream setting extremely challenging so it’s no surprise that incidents occur. Looks like we are teaching children to accept physical assaults as the norm and I wonder if domestic abuse incidents will increase in the next decade due to us having schools where nothing is done for the needs of the regulated pupils.”

“There is no in-class support whatsoever and we often have pupils with contradictory needs in the same room.”

“I feel so angry with my local authority for making my job impossible to do. There is no job satisfaction whatsoever in this current situation. It also feels that they don't care about our ASN children and that they think our pupils aren't worthy of having a chance at a successful future”

“As a PT of Guidance who has been in the role for 15 years, my job has changed beyond recognition. In the first 10 years I did not refer a single pupil on to the ASD or

ADHD pathway. 2 years ago I was involved in the referral process for 25 pupils on my caseload in one year. A significant increase. The time taken now is a real drain and consumes my working week."

"Every agency around us has had cutbacks and everywhere I turn can say no role for us but I need to keep supporting the young person. Caseload size has increased with more children with complex ASN. We are expected to write Health Care plans for children with medical needs with no medical training. We have to safety plan with children who have suicidal thoughts or plans. The levels of anxiety and poor mental health has caused an increase in daily workload compared to a few years ago. Children wanting one to one support while the increasing demand from SLT grows to breaking point. I get no supervision for the horrific situations that I have to deal with. Guidance teachers in my school can't sleep with worry about all the demands on us. The job of a Guidance Teacher has changed so much over the years and it has become unmanageable"

"Pupils in mainstream settings are traumatised by the consistent and unpredictable outbursts and lack of control by some ASN pupils which leads to further gaps in peer relationships and causes anxiety and increased risk of school refusal among some children. While often not their fault and due to their needs, some children are unable to safely be fully involved and integrated into the mainstream classrooms but the local authority, especially in more rural or island communities, lack the alternative provision which could better meet the needs of those pupils."

"The building is not fit for purpose and prevents the needs of the children being met: too noisy; rooms too small and shaped so irregularly that no zones can be created. Some rooms are like greenhouses, either freezing or roasting. With no blinds to block the sun, it also becomes too bright to work in. Lights are too bright and too many cannot be dimmed, some classes don't even control their own lights."

"I have been bitten, hit, had my clothes and jewellery damaged by children who are not intending to cause harm but who have no sense of safety. I have not had adequate training in how to deal with this and the environment of our school is not safe for these children. I constantly worry that something bad will happen to a child in my care because our building has not been adapted in any way to take account of the needs of these children."

"In the last term I have submitted at least 30 violent incident forms. I have never had any follow up or been spoken to by a member of management or been offered support after being attacked and left with black eyes and bruises, scratches, bite marks or my hair ripped out. Not once have strategies been put in to place to support the pupil or member of staff. I have been told that I work in ASN so I should expect to be abused and attacked."

"I think we are facing an ASN crisis - taught for 32 years and the sheer numbers of pupils presenting with ASN is unmanageable compared to 10-15 years ago"

"ASN funding and staffing must be commensurate with numbers of ASN pupils, staff are at breaking point and unable to meet 'girfec' standards - pupils are being failed every minute of every day"

"The presumption of mainstream only works if there is sufficient staffing to support the learners and deliver interventions which make the mainstream environment more

accessible for learners with a range of ASN. No amount of training, knowledge and upskilling people can compensate for the fact that there is insufficient funding to staff inclusion in practice. I say this as both a parent and a teacher”

“I truly believe there needs to be an overhaul of the system. Children are being placed in the wrong provision, their needs are not being met and so there is an increase in violent behaviours. Staff are not being trained and supported correctly and management are too busy ticking boxes and filling in paper work instead of supporting staff and children on the floor. Resources are stretched due to lack of budgets and again not meeting the needs of children and also making day to day teaching such a struggle when we don’t have appropriate resources.”

“I worry about who will stay in teaching in the future.”

NASUWT ASN Campaign

Delegates at NASUWT Scotland’s Annual Conference last month called for the Scottish Government and local authorities to fundamentally rethink how they fund, plan and staff ASN provision in the following motion:

ASN Support in Schools

Conference notes that Audit Scotland, in a recent briefing paper, has called for a fundamental review of planning and resourcing of additional support for learning.

Conference agrees that Scottish Government and councils must fundamentally rethink how they plan, fund and staff additional support for learning as part of core school education in Scotland.

Conference is concerned that teachers are increasingly expected to teach children with such high and complex needs in mainstream classes that they require almost one-on-one support, at the same time as teaching the rest of their class.

Conference believes that all pupils deserve to have their additional support needs (ASN) met with specialist support, yet there are concerns that the current system is failing pupils with ASN, their classmates and the teachers working to support them.

Conference calls on the Scotland Executive Council to:

- (i) engage with Audit Scotland, and thereafter Scottish Government and councils, to improve current data collection practices;
- (ii) lobby Scottish Government to disaggregate data for support assistants, setting out those who are identified to support an individual child and those who are supporting the wider school setting;
- (iii) foster links with sister trade unions representing learning support assistants (LSAs) supporting all relevant campaigns to increase LSA numbers and improve their contractual rights, including time for professional learning;
- (iv) seek increases to national funding from Scottish Government to support the necessary systemic change and
- (v) bring a motion to SNCT supporting (a) lower ratios for specialist provision and (b) calling for staffing ratios (teacher, plus support staff) formulas to be agreed for mainstream classes, which would vary dependent upon the number of ASN pupils on the register.

Actions Required

The results of our survey underline the recent damning report by Audit Scotland which heavily criticised the Scottish Government's failure to adequately fund, plan or resource its presumption of mainstream policy.

While we welcome the recent commitment from the Cabinet Secretary to look at what more might be done to support additional support needs in schools, we now need to see more detail about who and what will be involved in this review. Any discussions should certainly not be limited to just COSLA and local authorities and must include the voices of teachers.

A continued failure to get to grips with the crisis in ASN provision will have a far-reaching and long-lasting impact on young people's future life chances, the Scottish economy and on the recruitment and retention of teachers. The evidence for action and change has never been clearer.

Teachers are now routinely being placed in a situation where they are expected to teach children with such high level and complex needs that they require almost one-to-one support at the same time as teaching the rest of their class.

This is a betrayal of the duty of care which employers owe to both those pupils and to teachers. Pupils, teachers and families are being failed by the current system of ASN and the presumption of mainstream policy, under which children and school staff are being left to sink or swim.

Teachers desperately want to do their best for all the pupils they teach, but are being set up to fail by a system which is not fit for purpose.

The Scottish Government and COSLA needs to bring together the various agencies and groups who work with children and young people to develop a plan to rebuild and transform ASN provision so pupils and teachers receive the support they are entitled to expect.

Response from SCIS

About the Organisation

The Scottish Council of Independent Schools (SCIS) represents 70 schools in Scotland. Our membership is comprised of both fee-paying schools, and specialist schools for young people with complex needs.

Do you agree with the Bill's approach?

In keeping with national care guidance, and taking into account the UNCRC, SCIS supports the principle of statutory guidance on the use of restraint and seclusion in schools.

This to ensure:-

- that appropriate techniques of restraint and seclusion are used only as a last resort
- that staff are adequately trained in de-escalation techniques as a priority
- that only fully trained staff are permitted to use approved restraint techniques
- that restraint and seclusion statistics are properly reported to allow for learnings at a national level
- that any use of restraint is quickly and accurately reported to those considered as legal parents
- that young people's voices are heard, and they are treated with dignity and respect when restrictive practices have been deemed necessary.

In forming this response, we have considered several articles of the UNCRC, in particular: -

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

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

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

Article 37- children have a right to be protected from cruel, inhuman or degrading treatment or punishment, and a right not to be deprived of their liberty unlawfully or arbitrarily.

Do you think the timescale for informing parents is reasonable?

SCIS agrees that the parents, legal guardians or corporate parents of all young people involved in restraint or seclusion should be told in a timely and consistent manner. It should be noted that for some young people the legal guardian or corporate parent is the first point of contact therefore the bill should refer to informing parents, legal guardians or corporate parents within that timeframe.

Do you agree all incidents of restraint or seclusion in schools should be recorded, collated and reported to Parliament annually?

The majority of SCIS mainstream schools and all SCIS registered special schools, liaise with the Care Inspectorate in relation to their nurseries or their residential provisions. They are accustomed to reporting on all restraint and seclusions that take place to a national statutory body. It therefore seems anomalous that any use of such practices when considered to be within the sphere of education does not have any requirement for statutory reporting.

Most SCIS member schools have children within them from several different local authorities and are registered as independent with the Registrar of Independent Schools or with the Government as Grant-Aided Special Schools. It therefore it is not the most appropriate model for SCIS schools to be reporting into individual local authorities, which have no jurisdiction with regards to those schools (except in the case of some partner provider nurseries).

The fact that the statistical analysis referred to in the Bill is so inconsistent, raises questions over whether individual schools within the maintained sector should be reporting to their own local authority.

The Care Inspectorate have procedures in place to work with care establishments to understand both the prevalence, and crucially the reasons for any physical interventions, seclusions or other restrictions on the liberty of the young people. This is right and proper and is something that should ideally be in place in terms of a regulatory body in education. We would therefore suggest that instead of reporting to a local authority, it might be more appropriate to widen the remit of the Care Inspectorate or to make this a function of the newly independent HMIE.

What do you think about maintaining a list of training providers on the use of restraint and seclusion in schools?

It is already seen as a priority that staff in residential special schools and care facilities are highly trained in the use of de-escalation techniques to avoid the need to use restrictive practices. This is not the case in mainstream education in Scotland. SCIS is supportive of the fact that this training should be mandated in statutory guidance.

In our residential schools there is a high level of training from approved providers. Only staff fully trained in using those techniques taught are permitted to 'hold' children safely. It is the position of SCIS that this should be the case in primary and secondary schools in Scottish education with a list of approved trainers such as CALM available, and mandatory, for identified staff in schools.

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Any other comments?

As the bill notes, the use of restrictive practices can cause significant distress to the young person involved and this is something that has been highlighted on numerous occasions at the Scottish Child Abuse Inquiry. In-keeping with best practice and also Article 12 of the UNCRC, it is the belief of SCIS that a debrief with the young person in the aftermath of a restrictive practice must be enshrined in the guidance to allow for an understanding as to why the use of the restrictive practice was deemed necessary in an open and restorative way.