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26 June 2025

Dear Convener

CALL FOR VIEWS: RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL

I am enclosing a memorandum setting out the Scottish Government's position on the general principles of the above Bill, introduced by Daniel Johnson MSP on 17 March 2025.

I hope this memorandum assists the Committee in its consideration of the Bill. I look forward to continuing to engage constructively with the Committee and Mr Johnson on this important issue.

I am copying this letter to the Finance and Public Administration Committee in response to their call for views on the Bill's Financial Memorandum.

Yours sincerely,

JENNY GILRUTH

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MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE

Introduction

1. This memorandum has been prepared by the Scottish Government to assist the consideration by the Education, Children and Young People Committee of the Restraint and Seclusion in Schools (Scotland) Bill (“the Bill”), which was introduced by Daniel Johnson MSP on 17 March 2025.

Background

2. The Bill as introduced:
 - provides definitions of restraint and seclusion in an education context;
 - requires Scottish Ministers to issue statutory guidance on the appropriate use of restraint and seclusion; imposes a duty on education authorities, proprietors of independent schools and managers of grant-aided schools (collectively described as ‘education providers’ in the Bill), to have regard to such guidance; provides a detailed list of what such guidance must include;
 - requires education providers to inform parents of the use of restraint or seclusion on their child as soon as possible (and no later than 24 hours after the occurrence of the incident);
 - requires education providers to record all incidents of restraint or seclusion in their schools;
 - requires the managers of a grant-aided school and the proprietors of an independent school to report the number of incidences of restraint and seclusion in their schools to the education authority in whose area the school is located;
 - Requires education authorities to report to Scottish Ministers the number of incidences of restraint and seclusion in schools in its area;
 - requires Scottish Ministers to publish a report and lay it before Parliament on an annual basis, detailing the number of incidents of restraint or seclusion in schools in Scotland; and
 - requires Scottish Ministers to maintain a list of training providers on the use of seclusion and restraint that meet standards set by the Scottish Government, and to publish the list.
3. The most important provisions of the Bill are:

Section 1: The Bill defines restraint and seclusion in broad terms. Further detail regarding the various forms of behaviour that constitute these practices will be set out in the statutory guidance that would be issued under the Bill.

Section 2: The Bill requires Scottish Ministers to issue (and keep under review) guidance on the use of restraint and seclusion in schools, thus putting it on a statutory footing. Education providers are required to have regard to this guidance, which must include: details of appropriate and inappropriate forms of restraint and seclusion; advice on alternatives to restraint and seclusion, emphasising de-escalation techniques to prevent or minimise the use of restraint and seclusion; processes to follow after an incident including informing parents. This section also specifies the types of stakeholders that must be consulted before publication and any subsequent revisions. These include: trade unions representing school

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staff; bodies representing the interests of parents; education providers; the Children and Young People's Commissioner Scotland; and other voluntary organisations.

Section 3: The Bill outlines a duty on education providers to inform parents of the use of restraint and seclusion on their child within 24 hours.

Section 4: The Bill creates a duty for education providers to record instances of restraint and seclusion. Grant-aided and independent schools are required to report restraint to the education authority in whose area they are situated. Each education authority must report the number of instances of restraint and seclusion in schools in its area to Scottish Ministers. Ministers in turn are obliged to present an annual report to Parliament for scrutiny, with data used to help identify areas for improvement.

Section 5: The Bill requires Scottish Ministers, through statutory guidance, to specify training standards for school staff. A list of approved training providers and their courses must be included to bring clarity to training requirements.

Section 6: The Bill defines key terms such as "child," "education authority," "parent," and "young person" based on the Education (Scotland) Act 1980. The term "school" includes primary, secondary and special schools in all three sectors (public, grant-aided, independent), but excludes nursery schools.

Section 7: The Act will come into force 6 months after receiving Royal Assent.

Consultation

4. The Scottish Government notes that Mr Johnson consulted on his proposals between June and September 2023 and that the following responses were received in relation to his Bill provisions:

General aim of the Bill

- His published analysis noted that a 'significant majority of respondents (128, or 92.09% of those that responded to the question) supported the proposed Bill, with 112 (87.77%) fully supportive, and 16 (11.51%) partially supportive. Only a small proportion (9, or 6.47%) were opposed in principle, with 3 (2.16%) partially opposed and 6 (4.32%) fully opposed.'

Should guidance be statutory?

- 139 respondents (93.92% of the total) answered this question. 122 of those (87.77%) were supportive, with 116 respondents (83.45%) fully supportive and 6 (4.32%) partially supportive. A total of 10 respondents (7.19%) were opposed, with 2 respondents partially opposed (1.44%) and 8 (5.76%) fully opposed.

Should data on restraint and seclusion to be published?

- 138 (93.24%) of the total number of respondents answered this question. Of those, 113 (81.88%) were fully supportive, while 10 (7.25%) were partially supportive. A total of 4 respondents (2.90%) were partially opposed, while 2 (1.45%) were fully opposed. 5 respondents (3.62%) gave a neutral response, and 4 (2.90%) selected that they did not wish to express a view.

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Should parents, carers and guardians be provided with details of every incident?

- 135 (91.22%) of the total number of respondents answered this question. Of those, 121 (89.63%) were fully supportive, while 7 (5.19%) were partially supportive. A total of 3 respondents (2.22%) were partially opposed, while 1 (0.74%) was fully opposed. A response of 'neutral' was given by 2 respondents (1.48%), while 1 did not wish to express a view (0.74%).

Overlap with existing powers

5. In relation to Section 4 (Duty to record and report on use of restraint and seclusion), Scottish Ministers already have the power to collect data from education authorities under Section 82 of the 1980 Act. However, this does not extend to independent or grant-aided schools, which are in scope of this Bill.
6. Whilst not a direct overlap, the Scottish Government notes that registered school care accommodation services and secure care accommodation services are required to report instances of restraint and seclusion occurring in their care service to the Care Inspectorate. This is relevant for any schools that offer these care services (primarily independent and grant-aided schools) as they would be required by the Bill to report any restraint occurring in their school education provision to the education authority in whose area the school is situated.

Financial Impact

7. The Financial Memorandum accompanying the Bill provides a summary of the estimated costs of the Bill's provisions on the Scottish Administration:
 - £44,396 for the initial production of guidance, and £44,396 for any revised versions of the guidance (it is assumed such revisions will take place every 5 years);
 - £2686 for the review of any consultation responses on the terms of the initial guidance, and £2686 for the review of consultation responses on revised versions of the guidance (it is assumed such revisions will take place every 5 years);
 - £1,628,370 to £3,256,740 each year to support the implementation of guidance (allocated to education authorities and also to grant-aided schools);
 - £5,000 to publish an initial list of training standards and £5,000 to update this list (it is assumed every 5 years); and
 - £14,719 to produce and publish an initial annual report, and £14,719 every year that follows to produce and publish an annual report.
8. The estimated annual cost for education authorities is £1,628,370 to £3,256,740 and £47,286 to £94,572 for independent schools.
9. The Scottish Government notes that the largest individual cost associated with the proposals is for annual implementation by education authorities (between £1,628,370 to £3,256,740). This has been calculated based on a cost of £333 per day based on teacher salary and on-costs divided by 190 days a year, an assumption of 2 to 4 days of a teacher's time per school covering 2445 schools. The Scottish Government has analysed these figures and notes that the £333 rate has recently been re-calculated to capture an increase in salaries and revised on-cost conditions and is now estimated at £356 per day (a 7% rise). Based on the same formula, these Year 1 implementation costs for education

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authorities could be estimated at between £1,740,840 and £3,481,680. In addition, it should be noted that the recurring costs estimated in the Financial Memorandum have not been adjusted for inflation.

10. The Scottish Government notes that schools and education authorities currently meet costs associated with any restraint training that is required and that these costs have not been referenced in the Financial Memorandum.
11. 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 [Included, Engaged and Involved Part 3: A Relationships and Rights-based Approach to Physical Intervention in Schools](#) guidance ("the 2024 guidance"). It is therefore not clear, to the Scottish Government, what additional implementation costs education authorities would incur as a result of the Bill.

Scottish Government's Position

12. 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.
13. The Scottish Government also recognises that there have been calls for legislative change in this area. Alongside the development of the 2024 guidance, we have been exploring opportunities to strengthen the legal framework in this area. This consideration has included the areas that have been included within the Member's Bill.
14. At this initial stage of consideration, the Scottish Government notes:

Section 1 (Restraint and seclusion):

- The 2024 guidance provides a standard set of definitions for use in schools to support a common understanding of restraint and the consistency of recording. 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.

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

- The Scottish Government notes the specific consultation requirements for trade unions representing school staff; bodies representing the interests of parents; education providers; the Children and Young People’s Commissioner Scotland; and other voluntary organisations. The Scottish Government believes consideration should be given to including children and young people themselves in this list of consultees.

Section 4 (Duty to record and report on use of restraint and seclusion):

- The 2024 guidance is clear that restraint and seclusion should be recorded locally and monitored at education authority level. There is currently no requirement for education authorities, independent or grant-aided schools to report the use of restraint and seclusion at a national level.
- The Scottish Government is aware of stakeholder concerns regarding this position and welcomes the opportunity to consider whether the Bill presents an opportunity to address their concerns. In considering a national reporting provision, the Scottish Government’s desired outcome is to support constructive scrutiny and transparency around the use of restraint within a robust reporting framework that avoids any data collection gaps.
- The Scottish Government is not clear from the policy memorandum why the Bill requires independent and grant-aided schools to report restraint to the education authority in which they are situated. The 2024 guidance advises these grant-aided and independent special schools to report restraint to the education authority responsible for the placement. As pupils are often placed outwith their education authority, the Scottish Government would have concerns regarding the handling of this data by education authorities without a clear justification. The Scottish Government believes there to be merit in considering whether these schools should report at a national level in the same way as the Bill requires of education authorities.
- The Scottish Government notes the contrast between the school reporting position and residential care accommodation and secure care accommodation services. Registered care services are under a legal duty from The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 to record restraint. In addition, the Care Inspectorate request reports to be submitted to them from registered care services on the use of restraint and seclusion using the powers to request information under section 53(6) of the Public Services Reform (Scotland) Act 2010.
- Scottish Government considers that, were a new national reporting approach to be agreed through the Bill, clarity would be required in the supporting statutory guidance to ensure residential schools and secure care establishments understood any dual reporting requirements whilst avoiding double reporting wherever possible.

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Conclusion

15. For the reasons given, the Scottish Government will support the general principles of the Bill.
16. The Scottish Government will also consider the detail of the provisions and may propose amendments to address any issues that are identified with the Bill.

The Scottish Government
June 2025

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