



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

Response from Together (Scottish Alliance for Children's Rights)

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 550 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Members' individual responses should also be taken into account.

Introduction

Together welcomes the opportunity to comment on proposed legislation to end the inappropriate use of restraint and seclusion in Scotland's schools. We would like to recognise the tireless efforts of Calum and Beth Morrison who, over the past 13 years, have passionately campaigned to protect children from the trauma such practices cause. We thank Daniel Johnson MSP for the opportunity to share our views.

Our response offers a children's human rights perspective. It draws on key articles of the UN Convention on the Rights of the Child (UNCRC), evidence from children and young people, from Together's members and the 2018 investigation by the Children and Young People's Commissioner Scotland.¹ Our response also reflects on recommendations and guidance from the UN Committee on the Rights of the Child ('UN Committee') in the form of [Concluding Observations](#) and [General Comments](#).

We believe the proposed Bill offers a crucial opportunity to protect children – often children whose rights are already most at risk – from significant violations of their human rights. While the proposals cover the use of restraint in schools, we hope they will act as a catalyst for legislation to end the misuse of restraint in other settings – such as justice, residential care and health settings.

Aim and approach

Question 1: Which of the following best expresses your view of the proposed Bill? Please explain the reasons for your response.

Fully supportive.

Together fully supports the aims of the proposed legislation, namely to end the inappropriate use of restraint; improve recording and monitoring of incidents; improve information for parents and carers; and to embed mandatory, rights-based training for teachers. We believe the Bill also offers an important opportunity to ensure accessible, child-friendly information and complaints procedures in line with the Council of Europe Guidelines on child-friendly justice.²

¹ CYPSC (2018). No Safe Place: restraint and seclusion in Scotland's Schools. <https://www.cypcs.org.uk/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

² Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. <https://www.coe.int/en/web/children/child-friendly-justice> [Date accessed: 15.09.23].

We know that restraint and seclusion are traumatic for children and young people.^{3 4 5} We also know that, despite current guidance that restraint should only be used as a last resort to protect the safety of the child or others,⁶ it continues to be used in response to low level incidents and to protect property.⁷ The 2018 investigation by the Children and Young People’s Commissioner Scotland (CYPCS) highlighted that restraint and seclusion are disproportionately used against disabled children, including those with learning disabilities and autism.⁸ This contravenes guidance from the UN Committee on the Rights of the Child that the education of disabled children must make sure that they feel “*respected by others as a human being without any limitation of dignity.*”⁹ As the consultation paper notes, the CYPCS investigation also revealed significant gaps in recording and monitoring.¹⁰

In December 2022, Together submitted a report to the UN Committee which outlined our members’ ongoing concerns around the inappropriate use of restraint and seclusion, noting: ¹¹

“Scottish Government must work at pace to introduce statutory guidance clarifying accountability, reporting and monitoring across multiple settings. Training and quality assurance standards are important to proactively support children, enabling them to communicate how they are feeling and to avoid feeling distressed.”¹²

Our report also called for the establishment of clear, accessible complaints procedures for children and families.

In June 2023, the UN Committee urged Scotland to “*take legislative measures to explicitly prohibit, without exception, the use of...solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools and alternative care and health-care settings*” (emphasis added).¹³ The UN Committee called on Scotland to develop *statutory* guidance to ensure that restraint is only ever used as a measure of last resort and exclusively to prevent harm to the child or others, and to monitor its implementation.¹⁴ It also called on governments to provide “regular training for teachers on relevant guidance” so that they act in a child-sensitive manner.¹⁵

³ CYPCS (2018). No Safe Place: restraint and seclusion in Scotland’s Schools. <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

⁴ PABSS (2020). Reducing Restrictive Intervention of Children and Young People. <https://www.challengingbehaviour.org.uk/wp-content/uploads/2021/03/reducingrestrictiveinterventionofchildrenandyoungpeoplereport.pdf> [Date accessed: 15.09.23] – 86.5% of families involved in the research reported their child had been physically injured by restrictive intervention.

⁵ Enable (2022). In safe hands yet? <https://www.enable.org.uk/about-us/reports-and-resources/in-safe-hands-yet> [Date accessed 15.09.23].

⁶ See “physical intervention” in Scottish Government (2017). Included, engaged and involved part 2: preventing and managing school exclusions. <https://www.gov.scot/publications/included-engaged-involved-part-2-positive-approach-preventing-managing-school/pages/1/> [Date accessed: 15.09.23].

⁷ Together (2023). State of Children’s Rights Report. https://www.togetherscotland.org.uk/media/3266/socrr23_final.pdf [Date accessed: 15.09.23].

⁸ CYPCS (2018). No Safe Place: restraint and seclusion in Scotland’s Schools. <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

⁹ [CRC/C/GC/9](https://www.unhcr.org/refugees/article/43c4e624/crc-c-gc-9): Para: 64.

¹⁰ CYPCS (2018). No Safe Place: restraint and seclusion in Scotland’s Schools, pp37-38. <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

¹¹ Together (2023). State of Children’s Rights Report, p37. https://www.togetherscotland.org.uk/media/3266/socrr23_final.pdf [Date accessed: 15.09.23].

¹² Enable (2022). In safe hands yet? <https://www.enable.org.uk/about-us/reports-and-resources/in-safe-hands-yet> [Date accessed 15.09.23].

¹³ [CRC/C/GBR/CO/6-7](https://www.unhcr.org/refugees/article/43c4e624/crc-c-gbr-co-6-7): Para: 30(a).

¹⁴ [CRC/C/GBR/CO/6-7](https://www.unhcr.org/refugees/article/43c4e624/crc-c-gbr-co-6-7): Para: 30(b).

¹⁵ [CRC/C/GBR/CO/6-7](https://www.unhcr.org/refugees/article/43c4e624/crc-c-gbr-co-6-7): Para: 47.

Calls to end the inappropriate use of restraint are not new. The UN Committee on the Rights of the Child issued similar recommendations in 2016, followed by the UN Committee on the Rights of Persons with Disabilities in 2017 and Committee against Torture in 2019.^{16 17} These international recommendations build on very many years of campaigning by children, young people, parents/carers and supporting organisations at local and national level.¹⁸ The proposed Bill is necessary to deliver upon these calls, and ensure children's rights are fully complied with as Scotland moves to incorporate the UNCRC and other human rights treaties (notably the Convention on the Rights of People with Disabilities) into domestic law.¹⁹

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

After hearing evidence from children, young people and organisations during the UK's 2023 review, the UN Committee concluded that *legislative* action was necessary to address their concerns.²⁰ We support the UN Committee's conclusion.

Question 3: What is your view on the proposal that guidance on restraint and seclusion should be statutory? Please explain the reasons for your response, including setting out what you consider any statutory guidance should cover and how it should be enforced.

Together supports the proposal that guidance on restraint and seclusion should be statutory. We know from children and young people that they continue to experience inappropriate use of restraint despite what is set out in the current, non-statutory guidance.²¹ The UN Committee appears to have recognised this reality by specifying that Scotland should develop *statutory* guidance.²² We believe that placing the guidance on a statutory footing will help to ensure it is adhered to and that children's rights are accordingly upheld.

The statutory guidance should have children's human rights at its heart. It should recognise the interconnectedness and indivisibility of children's rights – including the right to participate in decisions that affect them (Article 12), to be protected from harm (Articles 19 and 37) and to recover from trauma (Article 39). It is crucial that the guidance upholds children's right to information and to access justice. The guidance should require child-friendly information and accessible complaints procedures that meet their needs.²³ Children should be supported to have a role in shaping the guidance and in monitoring its implementation.

As recommended by the 2018 CYCPS investigation, the use of restraint and seclusion should be scrutinised through existing inspection regimes (such as by Education Scotland and the Care Inspectorate).²⁴ Children and young people should be supported to shape these processes. The proposed legislation should fall within the scope of the *UNCRC (Incorporation) (Scotland) Bill* to ensure that children have access to remedy and redress if their rights are breached.

¹⁶ [CRPD/C/GBR/CO/1](#): Paras: 36-37.

¹⁷ [CAT/C/GBR/CO/6](#): Para: 23 (in justice contexts).

¹⁸ See for example the work of Positive & Active Behaviour Support in Schools (PABSS) - <https://www.pabss.org/> [Date accessed: 20.09.2023].

¹⁹ See [UNCRC \(Incorporation\) \(Scotland\) Bill](#) and [proposals for a new Human Rights Bill for Scotland](#).

²⁰ [CRC/C/GBR/CO/6-7](#): Paras: 30(a)-(b).

²¹ Enable (2022). In safe hands yet? <https://www.enable.org.uk/about-us/reports-and-resources/in-safe-hands-yet> [Date accessed 15.09.23].

²² [CRC/C/GBR/CO/6-7](#): Para: 30(b).

²³ See: Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. <https://www.coe.int/en/web/children/child-friendly-justice> [Date accessed: 15.09.23].

²⁴ CYPCS (2018). No Safe Place: restraint and seclusion in Scotland's Schools, Recommendation 19. <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

Question 4: What is your view on the proposal that incidents should be recorded by schools and reported as standard to a body responsible for monitoring incidents? Please explain the reasons for your response, including which existing body you consider would be best placed to perform the monitoring role and how the monitoring role would work in practice.

Fully supportive.

The 2018 CYPCS investigation highlighted severe shortcomings in recording of incidents of restraint and seclusion. Such data is essential to understand the extent of the issue and whether children's rights are being upheld: "[r]ecording of incidents of restraint and seclusion is recognised internationally as a critical means of ensuring that practice is appropriately monitored and scrutinised, as well as fully rights compliant."²⁵

In its 2023 Concluding Observations, the UN Committee urged Scotland to "[r]egularly collect, analyse and publish disaggregated data on the use of...seclusion, restraint, solitary confinement and isolation on children".²⁶ The proposed approach would help Scotland deliver on this recommendation.

Together recognises Education Scotland's existing role in inspecting Scotland's schools but recognises that additional skills and expertise might be needed to properly fulfil this role.

Question 5: What is your view of the proposal for parents, carers and guardians to be provided with details of every incident to allow concerns to be escalated wherever necessary? Please explain the reasons for your response including what information parents, carers and guardians should be entitled to.

Fully supportive.

Parents and carers play an important role in supporting their children to access their rights. At the same time, children, parents and carers cannot access justice if they do not know that rights have been breached or if they are prevented from accessing information that is essential to their claim. The 2018 CYPCS investigation highlighted that parents and carers often struggled to achieve justice as their accounts were dismissed as anecdotal, while children and young people were not interviewed by police or other authorities due to assumptions based on their age and/or disability.²⁷ Providing parents/carers with details of incidents affecting their child would help to address these existing barriers to accessing justice.

It is essential that the proposed legislation (and statutory guidance) similarly considers the rights of the child or young person to access child-friendly information and to child-friendly complaints procedures if things go wrong. In General Comment No.9 on the rights of disabled children, the UN Committee noted that "*the lack of access to a functional complaint receiving and monitoring mechanism is conducive to systematic and continuing abuse*".²⁸ The UN Committee called on countries to establish an "*accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles*".²⁹ The proposed legislation (and statutory guidance) should support the provision of child-friendly information in a range of

²⁵ CYPCS (2018). No Safe Place: restraint and seclusion in Scotland's Schools, p5. <https://www.cypcs.org.uk/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

²⁶ [CRC/C/GBR/CO/6-7](#): Para: 12(c).

²⁷ CYPCS (2018). No Safe Place: restraint and seclusion in Scotland's Schools, p12. <https://www.cypcs.org.uk/wp-content/uploads/2020/02/No-Safe-Place.pdf> [Date accessed: 15.09.23].

²⁸ [CRC/C/GC/9](#): Para: 42.

²⁹ [CRC/C/GC/9](#): Para: 43(g).

formats to help children understand what they can expect from the adults around them, where they can get help and what they can do if they feel their rights have not been upheld.³⁰

Question 6: What is your view of the proposal to require data on restraint and seclusion to be published? Please explain the reasons for your response including details of what data should be collated, who should be responsible for publishing it and how regularly.

Fully supportive.

The publication of data is essential to allow wider scrutiny by children, young people, parents, carers and the wider community. In its 2023 Concluding Observations, the UN Committee was clear that data on the use of restraint and seclusion should be published.³¹ It called on government to strengthen data-collection systems across all issues impacting on children's rights, and that such data should be disaggregated by age, sex, disability, geographic area, ethnic origin, nationality and socioeconomic background.³²

Together believes that data should be reported to and published by a central body for ease of access. Data should be published regularly – at a minimum on a quarterly basis - to allow any concerning trends to be identified and addressed as quickly as possible. It is important that both qualitative and quantitative data are collected and analysed, recognising the importance of understanding children's experiences and views on the use of restraint. It is important to ensure that children's rights to privacy (Article 16) is upheld when data is published. This may mean redacting certain information if not doing so would have risked identifying an individual child or group of children.

Question 7: What is your view of the proposal to require all teachers and teaching assistants to complete mandatory training on restraint and seclusion? Please explain the reasons for your response including details of what training should involve and how it could be delivered in practice.

Fully supportive.

The UN Committee recently called on Scotland to “adopt a child rights-based approach to addressing violence or other disturbances in schools, including by...providing regular training for teachers on relevant guidance for addressing such disturbances in a child-sensitive manner”.³³ This builds upon guidance in General Comment No.9 that called on governments to “ensure that institutions providing care for children with disabilities are staffed with specially trained personnel”.³⁴ The proposals would help Scotland deliver upon these recommendations. The training offer should have children's rights at its heart, with children supported to shape its design and delivery, as well as have a role in monitoring its ongoing implementation. Together members are clear that training should cover inclusive communications to ensure that staff are able to listen to children and understand their views to help de-escalate a situation and avoid the use of restraint.

³⁰ See: Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. <https://www.coe.int/en/web/children/child-friendly-justice> [Date accessed: 15.09.23].

³¹ [CRC/C/GBR/CO/6-7](#): Para: 12(c).

³² [CRC/C/GBR/CO/6-7](#): Para: 12(a).

³³ [CRC/C/GBR/CO/6-7](#): Para: 47(j).

³⁴ [CRC/C/GC/9](#): Para: 43(f).

Financial implications

Question 8: Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law? Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

Decisions relating to children should always seek to maximise their rights, rather than deliver the “cheapest” option. The legislation (and statutory guidance) should emphasise the importance of child rights budgeting in line with the UNCRC.

While we accept that implementation of the new law is likely to have some cost implications – for example in establishing and delivering mandatory rights-based training for teachers – we fully support Daniel Johnson MSP’s view that:

“the benefits associated with my proposal for a Bill justify the costs and this includes the benefits of preventing the profound negative impacts on individuals and their families of the lasting trauma suffered where seclusion and restraint is used repeatedly, unnecessarily and using inappropriate methods.”³⁵

We also acknowledge that the proposals seek to embed proposals within existing structures as far as possible (for example by placing the monitoring role on an existing body). We believe this approach is more conducive to ensuring children’s rights are embedded within public authorities, as well as avoiding the additional costs associated with the establishment of ‘new’ structures.

Equalities

Question 9: Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question. Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

We believe the proposals are likely to have a positive impact on children and young people, particularly those who are disproportionately affected by restraint and seclusion. A child rights impact assessment (CRIA) should be used to gain a more detailed understanding of the impacts of the proposals (positive, negative and neutral) on particular groups of children, allowing changes to be identified and addressed at an early stage. CRIAs should not be seen as a one-off process and should be updated on an ongoing basis.³⁶

³⁵ Scottish Parliament (2023). Consultation paper: Proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill, p33. <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/daniel-johnson-final-cd.pdf> [Date accessed: 10.09.23].

³⁶ Together (2022). State of Children’s Rights Report 2022, chapter 8. https://www.togetherscotland.org.uk/media/2204/socrr-22_final.pdf [Date accessed: 20.09.23].

Sustainability

Question 10: Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas? If you do not have a view then skip to next question. Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

We know that children take a broad view of what is meant by a “healthy environment”. The Rights Detectives³⁷ have shared that a healthy environment is not only about clean air, water and access to greenspace, but also about places where they feel safe.³⁸ We believe the current proposals would have a positive impact by supporting the development of school environments in which children feel safe, loved, respected and their human dignity is upheld.³⁹

General

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

Together appreciates the opportunity to share our views on legislation to end the inappropriate use of restraint in schools. The proposals build on the cross-party commitment to children’s human rights as demonstrated in the passage of the UNCRC (Incorporation) (Scotland) Bill and would support public bodies to be confident that they are complying with children’s rights once the UNCRC Bill is commenced. We hope that the proposals will also act as a catalyst for further discussion and legislation to end the inappropriate use of restraint in other settings – such as justice, residential care and health settings.

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³⁷ The Rights Detectives are a group of children aged 12-17 that Together is supporting to influence proposals for the new Human Rights Bill. See: Together (no date). The Rights Detectives. <https://www.togetherscotland.org.uk/about-us/our-work-with-children/rights-detectives> [Date accessed: 20.09.23].

³⁸ Together (2023). The Rights Detectives, Mission Update #002, p10. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf>. [Date accessed: 20.09.23].

³⁹ Children’s Parliament (no date). Dignity in School. <https://www.childrensparliament.org.uk/our-work/dignity-in-school/> [Date accessed 20.09.23].