
Children and Young People's Commissioner Scotland



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Human Rights Framework



Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Human Rights Framework

UNCRC General Comment Number 8

“...there are **exceptional** circumstances in which teachers and others... may be confronted by **dangerous** behaviour which justifies the use of reasonable restraint to control it.”

“...there is a clear distinction between the use of force motivated by the need to **protect** a child or others and the use of force to punish. The principle of the **minimum necessary** use of force for the **shortest necessary** period of time must always apply.”

“Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and **proportionate** to the situation...”

Investigation findings



- Nobody knows how many children are being restrained or secluded - or both - in Scotland.
- Nobody knows how many children are injured as a result of restraint or seclusion
- Local authority guidance on restraint and seclusion is inconsistent and highly variable in content and quality.
- Where guidance did exist, it often did not tell staff clearly what they need to do to respect children's rights
- At national level, the Scottish Government had produced just 2 pages of guidance on restraint and seclusion

State obligations



Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by **lacking effective means of implementation of obligations** under the Convention. Such omissions include the **failure to adopt or revise legislation and other provisions**, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children. It is also an omission when measures and programmes are not equipped with **sufficient means to assess, monitor and evaluate progress or shortcomings** of the activities to end violence against children.

Key recommendations



National Guidance taking account of:

- Legal framework, children's human rights, definitions, assessment of need, planning (including statutory plans), de-escalation, review and reflective practice, child protection and safeguarding, recording and monitoring, case examples

Reflects Scottish Government's role as the primary duty bearer in human rights terms

Responsibility to put in place a robust legal and policy framework to protect children's rights and support staff

Key recommendations



National Recording and Reporting

- All LAs to record data consistently
- Reported to Ministers
- Published as official statistics

Ensures Ministers know whether they are fulfilling their legal obligations.

Recognises restraint and seclusion as an issue of legitimate public interest

Allows for identification and dissemination of good practice

Key recommendations



Legal Action – SG Commitments

- Produce human rights-based guidance on restraint and seclusion;
- Review the effectiveness of that guidance;
- Involve children, young people and their families in the drafting and review of the guidance
- Consider statutory action should the guidance prove to be ineffective and;
- Develop and introduce a standard dataset to be implemented across Scotland

Restraint in other areas

“Scotland must strive to become a nation that does not restrain its children.”

– *Independent Care Review*

“It is important to be clear that in Scotland pain inducing restraint can be used in YOIs and prisons”

– *Rights Respecting? Scotland’s approach to children in conflict with the law (Lightowler 2019)*

“We think it is important to be clear in law, policy and practice that restraint and seclusion are not treatment, and that these can cause trauma for a child.”

– *Report of the Independent Review of Learning Disability and Autism in the Mental Health Act*

2016 Concluding Obs



Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children.

Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort.

Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education, custody, mental health, welfare and immigration settings.

Together Recommendations



Scottish Government should:

- Ensure restraint and seclusion are used against children exclusively to prevent harm to the child or others and only as a last resort across all settings and services for children;
- Produce, implement and monitor national, human rights-based guidance on restraint and seclusion in educational settings;
- Collect and publish disaggregated data on the use of restraint and seclusion across all settings and services for children.

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