Included, Engaged and Involved Part 3: A Relationships and Rights-based Approach to Physical Intervention in Schools

Fairness

Equality

Participation

Inclusion

Scottish Government
Riaghaltas na h-Alba

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Foreword

The safety and wellbeing of our children and young people in schools is paramount. As Cabinet Secretary, ensuring that every child is protected from all forms of harm and abuse is something that I take very seriously.

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, impacted by both the COVID-19 pandemic, and other pressures including the cost-of-living crisis. I have heard that directly from our teachers and support staff – the Scottish Government's Behaviour in Scottish Schools Research 2023 provided the detailed evidence on many of the issues we face.

Our schools are responding to the challenges posed by an increasing complexity of need in our young people and those arising from worsening behaviour. The incorporation of the UNCRC and our children's rights focus means that our goal must be to improve relationships and behaviour in our classrooms whilst ensuring restraint and seclusion is only ever used as a last resort. I do not underestimate the scale of this task and I have set out the actions we will take in our Relationships and Behaviour Action Plan.

This new guidance, the third part of our Included, Engaged, and Involved series, advises, rightly, that prevention and early intervention must be our primary approach – meaning that we want to address the underlying causes of any distressed behaviour that poses a risk to the safety and wellbeing of others. By doing so, we can help schools deliver a safe and supportive learning environment and prevent the need for restraint and seclusion.

While the guidance rightly has a focus on prevention, it is vital that our school staff are supported to intervene confidently and appropriately when the need arises. Given the implications of using restraint and seclusion, the guidance advises on relationship-based approaches that can be used in their place.

This guidance was developed in collaboration with the Physical Intervention Working Group. I am grateful to all members for their time and commitment, and to the Association of Directors of Education in Scotland for chairing the group. I am confident that this guidance will support schools to continue the work they are doing to deliver a learning environment where all children and young people are protected, cared for, and in which their rights and needs are respected.

Jenny Gilruth MSP
Cabinet Secretary for Education and Skills

Introduction

'Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.'

(Article 19, United Nations Convention of the Rights of the Child)

1. This guidance forms the third part of the Included, Engaged and Involved series and should be read alongside Part 1: promoting and managing school attendance and Part 2: preventing and managing school exclusions. This guidance replaces the advice on physical intervention and seclusion in part 2. Its purpose is to improve children and young people's learning experiences in school by:
   - promoting positive relationships, behaviour and wellbeing;
   - minimising the use of restraint and seclusion and eliminating their misuse;
   - ensuring children and young people's rights are understood, respected and complied with in all decisions around the use of physical intervention, restraint and seclusion.
2. This non-statutory guidance applies to all education authority, grant-aided and independent schools in Scotland. There is an expectation that education authorities, the managers of grant-aided schools and the proprietors of independent schools will, with the input of trade unions, use this guidance to review and revise existing local policies on the use of physical intervention, restraint and seclusion. These "education providers" should ensure all staff are aware of this guidance and the local policy on physical intervention, which should include details of how the use of restraint and seclusion will be minimised.
3. The guidance reflects the application of the different legal frameworks for education authority, grant-aided and independent schools. Where advice and legislation apply to all three, they are collectively referred to as "education providers". Where the application differs, references are made to the relevant type/s of schools. The term "public authorities" is used in the Human Rights Act 1998 and the UNCRC (Incorporation) (Scotland) Act 2024 and is explained, in the context of this guidance, in Annex C. If there are any ambiguities in the application of the different legal frameworks for grant-aided and independent schools, they may wish to take legal advice.
4. Physical intervention, restraint and seclusion are defined as:
   - Physical intervention: Physical contact carried out with the purpose of providing support to or preventing the actions of a child or young person.
   - 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, in an area from which they are prevented from leaving.

5. In light of the legal implications associated with the use of restraint and seclusion, education providers should take legal advice on the use of any practices falling within the definitions of restraint and seclusion outlined in this guidance when reviewing and revising their physical intervention policies. As part of this process, it is important that education providers reflect on the definitions and key features of restraint and seclusion within this guidance and review the use of any practice, irrespective of its name, that could amount to restraint or seclusion.

6. The guidance promotes best practice in ensuring all children and young people are safe and protected within a nurturing environment where additional support needs are provided for and well understood. The guidance outlines the preventative approaches that should be in place to minimise the use of restraint and seclusion and outlines alternative strategies that can be used in their place. Where restraint is used, the guidance offers best practice advice on rights-based decision making and gives examples of the necessary safeguards that must be in place to ensure lawful practice and protect the wellbeing of children and young people and staff. The guidance reflects education providers' duty of care to children and young people and staff in relation to their health, safety and wellbeing. Finally, the guidance offers advice on post-incident support for children and young people and others involved and outlines expectations for reporting, recording and monitoring the use of restraint and seclusion.

7. The guidance contributes to the delivery of the Scottish Government's national outcomes for children and young people, education, health and human rights.

The need to minimise the use of restraint

8. The need for the UK to "adopt appropriate measures to eradicate the use of restraint for reasons related to disability within all settings" was noted by the UN Committee on the Rights of Persons with Disabilities in 2017.

9. The Children and Young People's Commissioner Scotland's "No Safe Place" report, published in 2018, highlighted inconsistencies in the definitions of restraint and seclusion in local policy and practice, and the lack of a standard approach for recording incidents. The importance of addressing the children's rights implications of restraint and seclusion in Scotland's schools was again highlighted within ENABLE Scotland's "In Safe Hands?" Campaign. In both reports, children and young people highlighted the trauma they suffered as a result of restraint and seclusion in school. They also highlighted that children and young people with additional support needs are more likely to be subject to the inappropriate use of restraint and seclusion.

10. In 2019, the Equality and Human Rights Commission published their Human Rights Framework for Restraint, which sets out advice for policy makers on the human rights implications of using restraint and seclusion.

11. In 2020, the Independent Care Review published seven reports forming The Promise, which includes the following commitment:

    "Schools in Scotland must also not exacerbate the trauma of children by imposing consequences for challenging behaviour that are restrictive, humiliating and stigmatising. This includes seclusion or restraint…"

12. Similarly, the Additional Support for Learning Review, published in 2020, emphasises that "early intervention and preventative approaches reduce the need to consider exclusion, physical intervention and seclusion…"

13. This guidance seeks to address these issues and provide clarity on best practice for Scotland's schools. Minimising the use of restraint in schools is possible. An example of a school's journey away from the use of restraint is included on Education Scotland website.

Children and young people's rights

14. The United Nations Convention on the Rights of the Child (UNCRC) sets out the fundamental rights and freedoms of all children and young people. The Scottish Government is committed to Scotland being the best place in the world for a child to grow up.

15. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the 2024 Act") intends to deliver a proactive culture of everyday accountability for children's rights (up to the age of 18) across public services in Scotland. Since July 2024, it has been unlawful for public authorities to act incompatibly with the incorporated UNCRC requirements when acting under powers conferred by or under Acts of the Scottish Parliament or common law. The 2024 Act gives children, young people and their representatives the power to go to a court or tribunal to enforce their rights.

16. The UNCRC forms the basis of our national approach for supporting children, Getting it right for every child (GIRFEC). Under the 2024 Act, the use of restraint and seclusion on children and young people have significant implications for their rights, in particular with respect to the following incorporated articles:

    - Article 2 (non-discrimination)
    - Article 3 (the best interests of a child)
    - Article 12 (respect for the views of the child)
    - Article 19 (protection from violence, abuse and neglect)
    - Article 23 (children with a disability)
    - Article 24 (health and health services)
    - Article 28 (right to education)
    - Article 29 (aims of education)
    - Article 37 (inhumane treatment and detention)
    - Article 39 (recovery from trauma and reintegration)

17. Relevant legal safeguards are also included in the European Convention on Human Rights ("ECHR", which is incorporated into law by the Human Rights Act 1998). In particular:

    - Article 3: Freedom from torture and inhuman or degrading treatment
    - Article 5: Right to liberty and security
    - Article 8: Respect for private and family life, home and correspondence

- Article 14: Protection from discrimination

18. Furthermore, the provisions of the Equality Act 2010 ("the 2010 Act") and the United Nations Convention of the Rights of Persons with Disabilities are relevant to practice in this area (see Annex C).

19. This human rights framework is the basis for the best practice advice in this guidance.

Guiding principles

20. Reflecting children's human rights, and the nurture principles, the key principles that should guide all policy and practice in relation to the use of physical intervention, restraint and seclusion in schools are:

    - all behaviour is communication and a child or young person's distressed behaviour may indicate unmet needs. All efforts should be made to understand and address those needs;
    - all children and young people have a right to have their views sought and taken into account in decisions about them;
    - all children and young people have the right to be cared for, protected from harm and to grow up in a safe environment in which their rights are respected and their needs met; and
    - Restraint and seclusion should not be viewed as, or become, routine practice in schools. They should not routinely form part of a child or young person's support plan. They should only be used:
        - within a culture that prioritises positive relationships, behaviour, wellbeing, and planned preventative approaches;
        - to avert an immediate risk of injury to the child or young person, or to others, where no less restrictive option is viable (reflecting the principle of last resort);
        - for the shortest time necessary and in the safest, least restrictive manner;
        - by those who are trained (except in emergency situations where no trained staff are available); and
        - where it does not degrade, punish or deprive a child or young person of their liberty.

Universal and targeted support

21. All school staff have a responsibility to identify and respond to the needs of the children and young people in their care, to promote and support their wellbeing and their readiness to learn. This forms the basis of the universal and targeted school-based support provided in mainstream and specialist education settings.

22. The Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") and the accompanying statutory Code of Practice place duties on education authorities to identify, provide for and review the support that children and young people need to benefit from their education. This legislative framework is

complemented by Getting It Right For Every Child (GIRFEC) policy. The GIRFEC values and principles, the National Practice Model and the SHANARRI wellbeing indicators provide the policy framework that supports the delivery of safe, positive, nurturing learning environments where all children and young people are included, engaged and involved. This legislative and policy framework enables the joined-up needs-based assessment, planning, implementation and review of children and young people's support, and helps prioritise early and staged interventions to support their wellbeing.

23. Education providers also have duties to make reasonable adjustments for children and young people with disabilities under the 2010 Act. The reasonable adjustments duty under the 2010 Act requires forward planning based on what may be needed for the child or young person. The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 also includes duties for education authorities to develop and publish accessibility strategies to increase children and young people's access to the curriculum, access to the physical environment of schools and improve communication with children and young people with disabilities.

Prevention

24. This section outlines how schools can use preventative approaches to avoid distressed behaviour from occurring and minimise the use of restraint and seclusion. Preventative approaches are any approaches used by a school to reduce the risk of distressed behaviour occurring. The advice within this section focusses on key areas for consideration and recognises that many factors can contribute towards preventing distressed behaviour. The areas outlined below are not exhaustive and it is recognised that the most effective preventative approaches are those tailored to the individual needs of children and young people.

25. All behaviour is communication and distressed behaviour in a child or young person may indicate an unmet need or that they are experiencing a stressor too great for them to manage. Disabled children may display behaviours related to their disability over which they cannot exercise control. The purpose of preventative approaches is to understand and, where possible, meet these needs. Schools may be required to use preventative approaches as part of the support provided to children and young people under the 2004 Act and/or the 2010 Act.

Planning preventative approaches

26. Where there is a likelihood of a child or young person becoming distressed in their learning environment, or where it has previously occurred, schools should use the statutory additional support for learning policy framework and GIRFEC policy to put in place preventative support. Specific text setting out agreed preventative approaches should feature in or link to the appropriate "support plan" at whatever staged level of intervention or planning is already in place for the child or young person. An 'introduction to planning for children and young people with additional support needs' resource is available on Education Scotland's website.

27. All support, including preventative approaches, should be kept under regular review to ensure its effectiveness. Where a child or young person has become distressed in their learning environment and no formal support plan is in place, consideration should be given to establishing one that includes preventative approaches.

28. Trauma-informed approaches are important to the success of preventative approaches. Information on how schools can use trauma-informed approaches are available on Education Scotland's website.

29. Education providers should share any agreed preventative approaches with relevant teaching staff and ahead of key transition points in children and young people's education.

Engaging children, young people and their parents in preventative approaches

30. Children, young people and their parents or carers should be actively involved in the development of preventative approaches to distressed behaviour. It is important to allow children and young people to make decisions, as far as possible, about their environment, their support and any use of preventative approaches. Children and young people will often be able to offer a unique insight and perspective into the types of preventative approaches and tools which best assist them when they are distressed. In seeking children and young people's input, it is important not to create an expectation that they should provide all the answers on how best to support them.

31. Children and young people with specific communication support needs may require a range of support to enable them to be actively involved in decision making. This may involve the use of visual supports, the benefits of which are discussed in the 'Can Scotland be Brave? Incorporating UNCRC Article 12 in Practice' report. Further advice on supporting children and young people's participation is available on the Scottish Government's website.

32. Schools can also draw upon specialist support through the input of educational psychologists and allied health partners such as counsellors, clinical psychologists, speech and language therapists, occupational therapists and the child or young person's social worker, where appropriate. Education authority schools can make formal requests for input and support to other agencies under the 2004 Act.

33. Planning is required to proactively meet children and young people's physical, neurodevelopmental, sensory, emotional and communication needs. This is particularly important where additional support is required with speech and language communication or where a child or young person cannot communicate verbally. In such circumstances, planning is required to develop an effective non-verbal method of communication with the child or young person to allow learning, and the learning environment, to be tailored to meet their individual needs.

34. If a child or young person can communicate (verbally or non-verbally) and their physical, neurodevelopmental, sensory and emotional needs can be met, distressed behaviour is less likely to occur. In addition, when children and young people are extremely stressed, their ability to express themselves appropriately diminishes, and those supporting them need to be mindful of trying to understand what their behaviour is communicating in that moment. For example, defiance and refusal may be related to anxiety due to an over-stimulating learning environment or a fear of a change.

35. In order to understand whether a child or young person may be experiencing sensory integration difficulties, a trauma trigger or, for example, stress due to the cognitive load of the task being too high, a functional behaviour assessment of the distressed behaviour(s), which can be undertaken by Education Psychologists, should form a part of the assessment of the child or young person's additional support needs.

36. Parents and carers who have years of experience of effective communication with their child are a valuable source of advice. The communication passport is an example of a tool to record and share parental views and experience in communicating with their child.

Promoting positive relationships, behaviour and wellbeing

37. 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. Learning about positive relationships supports the development of children and young people's social and emotional competences and is an important preventative approach to distressed behaviour. Resources to help build positive relationships and support children and young people's mental wellbeing are available on Education Scotland's website.

38. It is recognised that children and young people can build strong and trusting relationships with individual members of staff, who can help them during times of distress. The names of any preferred contacts (and where possible, substitute support) should be included in any support plan. Leadership teams should continue to be alert to the potential for distress caused by the absence of any staff member who normally supports a child or young person. For children and young people at risk of significant distress, schools should work towards having a small number of adults that the child or young person feels safe with. This will reduce dependency on one member staff and help with the continuity of support.

39. Where distress has led to a relationship breaking down, or following the use of restraint or seclusion, restorative approaches can be used to help repair a rupture. It is important that restorative approaches only take place at a time when the child or young person and any others affected feel able to engage in them (see Post-incident support and learning review)

Positive learning environments

40. When considering preventative approaches, thought should be given to the potential impact of the physical learning environment. As part of a nurturing approach, the learning environment should offer a safe base. Careful consideration should be given to ways in which the school estate contributes to a positive learning environment. Education Scotland's CIRCLE resources can be used to help schools and settings evaluate the learning environment. Consideration should be given to:

    - classrooms and common areas that are not over-stimulating;
    - spaces that children and young people can choose to access themselves if they find this helpful (including an individualised safe space), which may also include safe opportunities to move freely around, should this be supportive to the child or young person. This should not include lockable spaces such as toilets;

- quieter, calmer spaces that can be used to facilitate positive participation and decision making or where additional communication support may be provided; and
- spaces that can facilitate both low and high-stimulus activity to support any specific sensory needs.

Leadership and culture of a school

41. A school's culture, ethos and values are critical to promoting positive relationships, behaviour and wellbeing. Angela Morgan's review of additional support for learning implementation in 2020 found that positive school cultures develop where the key conditions for implementation are in place. These are:

    - values-driven leadership;
    - an open and robust culture of communication, support and challenge - underpinned by trust, respect and positive relationships;
    - resource alignment, including time for communication and planning processes; and
    - methodology for delivery of knowledge learning and practice development, which incorporates time for coaching, mentoring, reflection and embedding into practice.

42. Leadership at all levels is key to promoting the highest possible standards and expectations around the use of preventative approaches and minimising the use of restraint and seclusion across a school. Leadership teams also have an important role in risk assessing the learning environment and implementing the required measures to mitigate as far as possible the risk of injury arising from distressed behaviour. Risk assessment is therefore an important part of preventative approaches.

Co-regulation and de-escalation: Alternatives to restraint and seclusion

43. Despite preventative approaches being in place, there will still be situations where a child or young person requires support from adults to regulate their emotions, behaviours and stresses in a school environment. These situations may occur unexpectedly. Some children and young people who are neurodiverse may mask increasing stress levels. Most children, over time and with support, will learn how to self-regulate when they are distressed. However, some children and young people, such as those with complex additional support needs or those who have experienced trauma, may require ongoing or periodic support from adults to regulate their emotions or behaviour. This is known as co-regulation. At times, and as a natural outcome of human interaction, individuals can misunderstand each other or disagree, causing disputes. In these situations, anger and stress can escalate quickly. De-escalation strategies can be used to reduce the intensity of a dispute. Resources on co-regulation and de-escalation can be found on Education Scotland's website. This section includes advice on using these strategies and the specific practice of withdrawal (both pupil and staff led). All these strategies can be used as alternatives to restraint and seclusion.

44. Children and young people, their parents or carers and all staff involved in supporting them should be actively involved in agreeing effective co-regulation approaches and de-escalation strategies, which should be subject to regular review. All staff working with the child or young person, including pupil support assistants and supply teachers, should be informed of any agreed approaches to enable them to respond appropriately.

45. The same process of individualised needs-based assessment, planning, implementation and review should be followed when agreeing co-regulation and de-escalation strategies.

46. The least restrictive approach to supporting a child or young person whose stress levels are rising and where they are unable to self-regulate is to use co-regulation strategies. Where dispute arises, when co-regulation is not possible, de-escalation strategies should be used. The use of co-regulation and de-escalation should always be considered in the first instance. Co-regulation and de-escalation are most effective when planned and tailored to the individual needs of children and young people. However, both strategies can be used when unplanned distressed behaviour occurs. Features of co-regulation and de-escalation include:

    - communicating in a calm, non-judgemental and non-threatening manner;
    - maintaining a quiet sensory environment by speaking in a quiet voice, reducing the number of people present, noise and, if possible, reducing lighting;
    - giving the child or young person time to regain their composure;
    - distraction in the moment where this is helpful to the child or young person;
    - an activity or movement break that supports self-regulation;
    - time with a trusted adult or time alone with an adult in close proximity (within sight and hearing) if the child or young person identifies that this would be helpful to them;
    - respecting a child or young person's personal space, by maintaining a suitable distance;
    - being mindful of using open and engaged body language, facial expressions and tone of voice (and only speaking when appropriate);
    - identifying and responding to what would be most helpful to the child or young person in the moment; and
    - accommodating, where possible, any previously agreed strategies or unplanned requests that would help the child or young person to self-regulate, including a pupil-led withdrawal.

Pupil-led withdrawal

47. Definition of pupil-led withdrawal:

    "Where a child or young person temporarily moves away, at their choice, from a situation they are finding challenging to a place where they have a better chance of regulating their emotions and behaviour.

    The child or young person is free to leave the space they have moved to."

48. Considerations for using pupil-led withdrawal:

    - A pupil-led withdrawal can be reactive, in response to an unexpected situation, or part of a planned approach.
    - The child or young person's wishes must be taken into account and, where possible, accommodated.
    - The child or young person may have previously agreed safe spaces they can withdraw to in their support plan. This could be any safe and comfortable space (indoors or out) on the school campus.
    - For some children and young people, a physical activity, such as a walk, may be more beneficial than a calm space.
    - Any planned use of pupil-led withdrawal must be fully documented as an integrated part of any support plan, describing the reasons and likely situations arising for its use. All staff working with the child or young person should be made aware of the relevant details.
    - The child or young person and their family should be active participants in planning the use of pupil-led withdrawal.
    - A risk assessment may be required to determine whether pupil-led withdrawal is a safe approach for the individual child or young person, should this become a recognised support. For example, this may not be a suitable option for a child or young person who is prone to running away.

49. Safeguards for using both pupil-led and staff-led withdrawal are included at the end of this section.

Staff-led withdrawal

50. Definition of staff-led withdrawal:

    "Working with a child or young person to move away from a situation they are finding challenging to a place where they have a better chance of regulating their emotions and behaviour.

    The child or young person is free to leave the space they have moved to."

51. Considerations for using staff-led withdrawal:

    - The space a child or young person moves to may allow them to undertake an activity that would help them regulate their emotions and behaviour. Both the space and the activity may form part of an agreed support plan.
    - Although initiated by staff, staff-led withdrawal involves seeking the consent, whether communicated verbally or non-verbally, of the child or young person as part of a co-regulation approach. The child or young person may become responsive when they are engaged and able to participate in the decision to move to another location or space.
    - Staff-led withdrawal can be used in response to an unexpected situation, or as part of an agreed approach in a child or young person's support plan.
    - If a child or young person does not consent to withdraw to another location, or

to remain temporarily separated from their peers, and a high-risk of injury to themselves or others remains, staff will need to re-consider the least restrictive options available. This may include considering whether the use of a restraint is necessary.

- In some circumstances, where there is a risk of injury, it may be more appropriate to ask other children and young people to leave the immediate area or the learning environment so that it is less stressful for the distressed child or young person.

52. Safeguards for using (pupil-led and staff-led) withdrawal:

- To reduce any negative impacts on a child or young person's learning, and the learning of others, withdrawal should only be used for the shortest possible time and end when they have regulated their emotions and behaviour.
- Staff planning and facilitating a withdrawal should be supported to be trauma-informed and trauma-responsive.
- The most effective way to monitor and support a distressed child or young person is often to be in the same room with them. There are however exceptions to this. For example, if a child or young person asks to be left alone or if the proximity of another person is clearly distressing them, it might be more effective to allow them space to themselves.
- If the staff member responsible for the child or young person is not able to physically be in the room with them, they must immediately alert a relevant member of staff to monitor the situation and offer immediate reassurance and support.
- The child or young person must be free to leave the space or room when they wish, otherwise this would be categorised as seclusion.
- Any room or area that might be used should be risk assessed to ensure it is safe, dignified and comfortable and would help co-regulation of the child or young person's emotions and behaviour, and not add to stress levels.
- Any planned use of withdrawal must be fully documented as an integrated part of any support plan, describing the reasons and likely situations arising for use. All staff working with the child or young person should be made aware of the relevant details.
- The unplanned use of withdrawal should trigger a review of the child or young person's support. In particular, whether a support plan needs to be put in place and if any preventative approaches could be effective in avoiding distressed behaviour from occurring.
- The child or young person should be supported to return to their class, once they are feeling composed, safe and ready.
- Where the use of withdrawal is used frequently, it is important to review its effectiveness on a regular basis. Reflective questions may include:
  - Does this approach offer a lower level of intrusion?
  - Does it help the child or young person to calm more effectively than other strategies?
  - Does it offer improved safety for those around?

Physical intervention, restraint and seclusion

53. Definition of physical intervention:

    "Physical contact carried out with the purpose of providing support to or preventing the actions of a child or young person."

The use of physical intervention

54. The term physical intervention includes a wide range of practices (see Annex B): from non-restrictive support to restraint, which has significant human rights and wellbeing implications. Physical intervention can be used in a variety of ways; from being a strategy agreed in a support plan to decisions taken following an immediate risk assessment in an emergency situation. This section outlines the different types of physical intervention that may be encountered in schools and the key considerations and safeguards that should inform decisions about their use.

Non-restrictive physical intervention

55. Physical contact between a member of staff and a child or young person for the purpose of education, communication, providing aid, reassurance or comfort where there is no element of restraint would be considered a non-restrictive physical intervention. An example may include giving a young child a hug if they are upset or a helping hand if they have fallen over or are crossing the road. Physical contact may also be an important part of communicating with children and young people with complex speech and language communication needs. Such contact must always be in line with the principles of safeguarding and child protection. Their use does not need to be recorded.

56. Considerations for using non-restrictive physical intervention are listed below:

    - The level and form of contact may be determined by a risk assessment of the child or young person's education or wellbeing needs.
    - Some children and young people may find physical contact with other people to be an additional and unnecessary cause of stress.
    - Such contact would not require any follow up action or recording, unless any wellbeing concerns are identified, first aid is administered or there are any safeguarding or child protection concerns.

Restraint

57. Definition of restraint:

    "An act carried out with the purpose of restricting a child or young person's movement, liberty and/or freedom to act independently."

Identifying restraint

58. There are many types of restraint, which is sometimes referred to as restrictive practice. Restraint can involve physical contact (e.g. physical and mechanical restraint) and acts such as seclusion. Specific types of restraint are defined in more detail below. This list is not exhaustive. It is intended to cover the types most likely to be encountered by school staff. Should there be any doubt whether an action is restraint, it is important to keep in mind that any act which restricts a child or young person's freedom to move or act could fall within the definition of restraint. Where staff have identified a possible restraint, its use should be reviewed in line with the advice in this guidance.

Legal framework for restraint in schools

59. The legal framework is outlined in Annex C.

General considerations and safeguards for using any form of restraint

60. While this guidance provides advice on the types of restraint most likely to be encountered in an education setting, all the following general considerations must be satisfied in the event of restraint being used.

    - Restraint should only be used to avert immediate risk of physical injury to any person[1] where no less restrictive alternatives are viable. This reflects the principle of last resort.
    - Restraint must never be used as a form of punishment or as a means of securing a child or young person's compliance.
    - Education providers should be actively taking measures to minimise the use of restraint on all children and young people, eliminate its misuse and use for reasons relating to disability.
    - The use of restraint for reasons relating to a child or young person's disability without evidence of reasonable adjustments being made is unlikely to be considered an appropriate response to distressed behaviour.

61. General safeguards for using any form of restraint:

    - Restraint should only be used by staff who have been appropriately trained in its safe use (except in emergency situations where no trained staff are available).
    - A risk assessment should always take place. This should consider:
        - the best interests of the child or young person;
        - the risk of injury posed to the child or young person and to others;
        - the age of the child or young person, physical health, additional support needs, disability and any known experience of trauma;
        - the least restrictive response available and all viable alternatives including co-regulation, de-escalation and the option of not intervening.
        - Restraint should only be used for the shortest time necessary and in the least restrictive manner possible.

[1] Advice on managing incidents involving weapons is provided in Included, engaged and involved part 2: preventing and managing school

- The method, severity and duration of restraint must be proportionate to the risk of injury posed.
- Every effort should be taken to protect the dignity of the child or young person being restrained, including taking account of their wishes and preferences.
- Where possible, an adult witness (someone not involved in applying the restraint) should be present to monitor the wellbeing and risk of injury to the child or young person during the use of restraint, while ensuring the minimum number of staff attend that can safely support the child or young person.
- During the restraint, every effort should be taken to convey a strong sense of care and concern. Verbal and visual stimuli should be minimised. Increased verbal communication should only be initiated when the child or young person is once again emotionally able to engage. Following the use of restraint, the steps in the post-incident support and review section should be followed.

Physical Restraint

62. Definition of physical restraint:

    "The use of direct physical force to restrict freedom of movement."

63. In addition to the general considerations for using any restraint, the following specific considerations apply to the use of physical restraint:

    - Physical restraints vary in severity, use of force and level of restrictiveness.
    - Children are developing physically and psychologically, making them particularly vulnerable to harm from physical restraint.

Safeguards for using physical restraint

64. In addition to the general safeguards for using any restraint, the following specific safeguards apply to the use of physical restraint.

    - All physical restraint techniques must be risk assessed before use in school and again on their appropriateness for use on individual children and young people. Assessments should describe the specific risks associated with physical restraint techniques and how these can be minimised. These assessments and any agreed approaches must be shared with all staff who may be required to use them.
    - Certain types of physical restraint must never be used as they carry higher risks:
        - Holding a child down on the floor, either in a face down (prone) or a face up (supine) position;
        - Wrapping their arms across the front of their body (basket holds)
        - Holds around the neck;
        - Holds that involve the use of pain;
        - Hyper extending (i.e, locking out) and/or putting pressure on joints;
        - Applying pressure to the torso, chest, neck, abdomen or groin areas; and
        - Hyper flexing the person (bending them forward at the torso).

- All steps should be taken by those applying the physical restraint, and any witness monitoring, to minimise the risk of injury during the physical restraint. This includes only using the minimum number of people for the type of restraint, the minimum necessary force and ending the restraint at the earliest opportunity possible.
- Where it is possible and is safe to do so, no other children and young people should be present when the physical restraint is occurring. For example, where the situation allows, other children and young people may require to be moved to another area where they will be supervised.

Mechanical restraint

65. Definition of mechanical restraint:

    "The use of equipment to restrict freedom of movement."

Recognising mechanical restraint

66. Many children and young people use equipment provided by health and social care services to support their daily healthcare needs. Examples of such equipment include postural supports, headrests, wheelchairs to assist independent mobility and hoists to assist with moving and handling. Where the use of such equipment in schools involves an element of restriction of movement, for example a wheelchair strap, its use could be considered a mechanical restraint. All efforts must be taken to avoid the misuse of any equipment that could restrict movement. It is therefore important that the safeguards highlighted below are in place to ensure the safety and wellbeing of children and young people at all times.

67. The use of seatbelts during motorised transport is a precondition of safe travel. Used appropriately for their intended purpose during transport, they would not be considered a mechanical restraint within the terms of this guidance.

Safeguards for using mechanical restraints

68. In addition to the general safeguards for using any restraint, the use of any equipment with a restrictive element should:

    - form part of an agreed needs-based assessment, planning and implementation process and be regularly reviewed. This would usually be in collaboration with allied health professionals or other specialists;
    - only be used in accordance with its agreed use in a child or young person's support plan, in the safest least restrictive manner and for the shortest time necessary;
    - only be used by staff who have been appropriately trained in its safe use;
    - be used with the consent of the child or young person, wherever possible;
    - always be supervised.
    - never be used as a form of punishment, securing compliance or as a response to distressed behaviour;
    - be reported, recorded and monitored if its use was unplanned or if it was used for a longer period of time or more frequently than anticipated.

Seclusion

69. Definition of 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."

Recognising seclusion

70. The following are key features of any seclusion.

- Where a child or young person has been moved to a space or room against their will (possibly involving a physical restraint).
- The child or young person cannot leave the space in which they have been secluded. This may be because staff are blocking an open door, or are in any other way preventing the child or young person from leaving a room or space in which they have been moved to.

Everyday restrictions of movement within a school

71. When considering practice, it should be acknowledged that in a school context, as in other areas of children's lives, some restrictions of movement are normal and desirable. For example, in the interests of children's safety. Within a school context, these may include restrictions around leaving the school campus, break times and agreed parameters around the unsupervised activity of children. Other restrictions include the use of high handles on doors or fobs that only staff can open. These types of restrictions are sometimes known as blanket restrictions. They apply equally to all children and young people and should be reviewed and risk assessed on a regular basis to ensure they are only used when necessary. Such restrictions of movement do not amount to seclusion.

Implications of using seclusion

72. 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. The safeguards listed in this section will help support children and young people and reduce the risk of a deprivation of liberty occurring. However, this risk cannot be mitigated entirely if seclusion is used, and education providers' policies and practices should be informed by appropriate legal advice. In addition to human rights implications (outlined in Annex C), the use of seclusion can also cause harm to children and young people's health, wellbeing and dignity, particularly when prolonged and, or, used frequently.

The use of seclusion in schools

73. Seclusion is not recommended for general use in schools, either as part of routine practice or as a "default" response to distressed behaviour.

74. 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. Where seclusion is used in an emergency, the safeguards outlined below must be in place.

Safeguards for using seclusion

75. In addition to the general safeguards for using any restraint, the following specific safeguards apply to the use of seclusion.

    - Seclusion must only ever be used for the shortest possible time and in the least restrictive manner possible.
    - Seclusion should not form part of any child or young person's support plan. Education providers should review current plans and update where necessary to reflect this position.
    - Any room or area that might be used should be subject to an immediate risk assessment to ensure it is safe, dignified, comfortable and would minimise the distress that a short period of seclusion would bring.
    - All staff should be made aware of the alternative, less restrictive approaches that should be considered ahead of seclusion.
    - Every effort should be taken to protect the dignity of the child or young person being secluded.
    - As soon as possible, a senior member of staff should also attend to undertake an additional risk assessment of the incident and the appropriateness of the response.
    - If seclusion involves a physical restraint, the safeguards outlined for physical restraint should also be followed.
    - The child or young person must never be left unsupervised. Wherever possible, staff should remain in the same space as the child or young person to help them regulate their emotions and behaviour to bring the period of seclusion to an end.
    - As soon as the immediate risk of injury has passed, the child or young person should be free to leave the space they were secluded in and offered support to return to an appropriate space.

Post-incident support and learning review

76. 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. This process, which can also be followed after any instance of distressed behaviour, is outlined below.

Post-incident support

77. This is support that is immediately offered to the child or young person, staff members and any others involved, and forms the beginning of a restorative approach. Its purpose is to provide emotional and physical wellbeing support and to assess and respond appropriately to any injury caused. The immediate reporting steps outlined in the reporting, recording and monitoring section, including reporting to parents and carers, should also be followed.

78. Steps that should be followed after any use of restraint and seclusion are outlined below.

- An immediate health, safety and wellbeing assessment of the child or young person who was restrained or secluded, staff members involved and anyone else who may have been injured should take place. This may be led by any witness monitoring the incident or a member of the school leadership team.
- Where a child or young person, a member of staff or anyone else involved has been physically injured or needs medical assistance, this should be sought immediately from a first-aider or, if appropriate, the NHS.
- Any specific post-restraint support identified in the child or young person's support plan should be followed as soon as possible after the restraint ends.
- If a child or young person has been physically injured or is considered to have suffered significant harm as a result of any form of restraint or seclusion, child protection procedures should be followed. Employers may put in place measures under local disciplinary procedures while a child protection investigation is ongoing.
- If restraint or seclusion is being used frequently, an urgent assessment of the child or young person's additional support needs, a review of their support plan and, where appropriate, their placement, should be undertaken. Consultation with Educational Psychology teams and, where appropriate, Health and Social Work teams should be considered. A review of the policies and practices of the education provider and its staff should also take place.

Post-incident learning review

79. This is a factual review, which takes place at a later date (sometimes referred to as a debrief). It is recommended that this takes place as close to the time of the incident as possible, taking full cognisance of the emotional wellbeing of the child or young person and all those involved in the incident. Its purpose is to examine the factors that led to the restraint being used, the decisions taken, establish a timeline and agree actions to support a preventative approach to avoid future incidents of distressed behaviour. It will also examine ways to minimise the impact of the type of restraint used and facilitate less restrictive interventions in future (see Annex E for information that should be captured in the post-incident learning review). The views of the children and young people and staff members involved should be sought, with appropriate participatory support provided. It should be noted, however that this may not be possible or desirable in every instance, for example, where a child or young person's stage of cognitive development would prevent them participating in a reflective exercise. Any agreed actions from the review or changes in approach should be recorded in the appropriate support plan for the child or young person.

If no support plan is in place, consideration should be given to developing one. It is important that children, young people and staff have the time and opportunity to engage in this type of reflective practice.

80. Where distressed behaviour is occurring frequently, staff leading the post-incident learning review may benefit from the input of Educational Psychology teams or other agencies to support a functional behaviour assessment as part of this process. The purpose of a functional behaviour assessment is to gain a broader understanding of why the distressed behaviour is presenting itself. This process is not about apportioning blame or finding fault with practice, but can help identify adaptations to reduce the likelihood of the distressed behaviour recurring. Any functional behaviour assessment by Education Psychologists should take place as part of a broader assessment of wellbeing.

81. Due to the sensitivities involved in conducting post-incident learning reviews with a child or young person following a restraint, it is recommended that they are undertaken by a member of staff trained in this area. Education providers should provide guidance and support in this area, ideally with involvement from Educational Psychology. However, lack of trained staff or available support from specialist staff should not prevent the post-incident learning review from taking place. At all times, consideration should be given to which member of staff is best able to support the child or young person during this review.

82. Parents or carers should be given the opportunity to discuss the incident, the response and future preventative actions and support before the post-incident learning review process is completed. Agreed outcomes from the post-incident learning review should be shared with the child or young person involved, school staff and parents or carers. However, it should be noted that it can be difficult to ascertain the reasons why distressed behaviour is occurring from one review and that recognising patterns over time is more likely to lead to a better understanding and the identification of more effective, less restrictive interventions in future.

83. Every effort should be made to resolve, at as local a level as possible, any disagreements that may arise between children and young people, their parents or carers and the school on the agreed outcomes and support identified in the post-incident learning review. The Enquire service has published advice for parents on working with schools and solving problems. Where concerns around support remain, children (over the age of 12), young people, parents or carers may, where relevant, have access to the dispute resolution mechanisms under the 2004 Act. The My Rights, My Say Service supports children and young people aged 12-15 to access their rights under the 2004 Act. Let's Talk ASN provides advocacy and legal representation to parents, carers and young people (16+) with a right of reference to the Additional Support Needs Tribunal.

84. Where a parent or carer believes that their child has been mistreated, regardless of whether there has been a post-incident learning review, this should be referred to child protection processes. Concerns regarding the use of restraint and seclusion and the handling of a child protection referral can be raised with the school in the first instance. If parents, carers or children and young people are not satisfied that their concerns have been adequately addressed, they can make a complaint through the education providers' complaints handling procedure. Education providers should consider whether their complaints handling procedure is child friendly and can

consult the Scottish Public Services Ombudsman's guidance, where applicable. In the case of a complaint against an education authority, parents, carers or children and young people who have gone through the local complaints route and are not satisfied with a response can contact the Scottish Public Services Ombudsman who may be able to look at the matter and investigate further.

Reporting, recording and monitoring

Reporting

85. 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.

Recording

86. The use of restraint and seclusion must be recorded in line with the recording expectations listed in Annex B.

87. Recording should be completed within five working days of restraint or seclusion being used and shared with the child or young person's education provider for monitoring purposes. Where a child or young person attends an independent or grant-aided special school via an education authority placement, the placing education authority should also receive a copy of the record within the same timescale. The record should also be shared with the child or young person's social worker, where appropriate, within five working days. Parent, carers and the child or young person subject to the restraint or seclusion should be proactively provided with a copy of the incident record. Information should be provided in accordance with data protection law.

88. Annex E lists the information that schools should record following the use of restraint and seclusion. While it is recognised that education providers will use a variety of different systems for recording the use of restraint and seclusion, it is important that the information listed in Annex E is included in all recording systems currently in use to ensure a consistency of approach.

89. The following advice is relevant for residential schools. The Care Inspectorate requires to be notified of the use of restraint and seclusion (see definitions in Records that all registered children and young people's care services must keep and guidance on notification reporting) that occur within the care service, or where care service staff are responsible for the child or young person involved. This does not include the reporting of restraint or seclusion which occur within the education setting or where education staff are responsible for the child or young person involved. The expectations for reporting outlined in Annex B apply to the use of restraint and seclusion in the provision of school education services. Where there is any ambiguity about who the responsible member of staff was at the time of the incident, and which

reporting procedure to follow, the school leadership team should confirm this for reporting purposes.

90. To further support the use of preventative approaches, education providers should have appropriate recording and monitoring processes in place to aid the analysis of distressed behaviour. As part of this, schools should also document within the establishment the successful use of co-regulation, de-escalation and pupil and staff-led withdrawal.

91. Staff should update the child or young person's support plan with the agreed preventative approaches and co-regulation and de-escalation strategies to reduce the likelihood of restraint and seclusion being used again. Where no support plan is in place consideration should be given to developing one. Pastoral notes should also be updated on the school information management system (SEEMiS) or the equivalent school system, where appropriate.

92. In line with a rights-based approach, care should be taken to use impartial, non-stigmatising language in all records of restraint and seclusion.

Child protection referrals

93. Staff should inform police and social work without delay in the following circumstances:

    - if a child or young person has been physically injured or is considered to have suffered significant harm as a result of restraint or seclusion;
    - if there is a concern that an offence may have been committed by a member of staff towards a child or young person arising from the use of restraint or seclusion;
    - when a child or young person, their parents or carers raise safety and wellbeing concerns following the use, or repeated use, of restraint or seclusion.

94. Children and young people and their parents or carers can also initiate a child protection referral by the following routes:

    - Informing school staff or the education provider that they believe they/their child has been mistreated. This can be done at any point following the use of restraint or seclusion. Staff must then make a child protection referral.
    - Exercising their right to make a complaint to the police about the use of restraint or seclusion.

95. Employers may put in place measures under local disciplinary procedures while a child protection investigation is ongoing. Education providers and headteachers should be mindful of the need to provide appropriate support to any staff who are undergoing investigation.

96. The National Guidance for Child Protection in Scotland details the process that should be followed along with the information that should be recorded and provided to Social Work or Police Scotland. Information on initiating child protection procedures can be found in Part 3 of the Child Protection Guidance. The guidance also discusses child protection issues arising from the use of restraint.

97. Child protection procedures will be initiated when police, social work or health determine that a child may have been significantly harmed or may be at risk of significant harm. The child protection investigation will include any suspected offences by a member of staff towards a child or young person arising from the use of restraint or seclusion.

98. Any injuries to a child or young person following the use of restraint or seclusion should also be investigated under agreed local disciplinary procedures.

Health and Safety reporting and recording

99. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 require employers and those in control of work premises to report certain serious workplace accidents and specified dangerous occurrences. RIDDOR requires accidents to be reported if they happen 'out of or in connection with work'. Injuries arising from restraint or seclusion could therefore be reportable under RIDDOR.

100. In addition to those specified, injuries to employees must be reported where they result in an employee being away from work, or unable to perform their normal work duties, for more than seven consecutive days as the result of their injury. This seven-day period does not include the day of the incident but does include weekends and rest days. The report must be made within 15 days of the incident happening.

101. Injuries to children and young people (and other non-workers) are reportable if the injured person is taken from the scene of the accident to hospital and receives treatment for the injury. 'Treatment' does not include examination or diagnostic tests or being taken to hospital as a precaution. For further guidance see 'Incident reporting in schools (accidents, diseases and dangerous occurrences): Guidance for employers'.

102. Injuries must also be recorded, but not reported, where they result in a worker being incapacitated for more than three consecutive days. For education providers, who must keep an accident book under the Social Security (Claims and Payments) Regulations 1979, that record will be enough. However, it is recognised that education authorities may require reporting to occur to ensure risk assessments can be conducted and appropriate risk mitigations adopted.

Monitoring

103. Regular monitoring and analysis of the use of restraint and seclusion is essential to minimising their use. Education authorities, the proprietors (such as the Board of Governors) of independent schools and the managers of grant-aided schools should regularly review restraint and seclusion data to identify and act upon any emerging trends. This will help refocus efforts on preventative approaches to distressed behaviour and less restrictive alternatives to restraint and seclusion. It will also support local accountability and challenge, a focus on meeting children and young people's needs, respecting their rights and the appropriate application of the duty of care towards children and young people and the adults who support them.

104. Regular monitoring of restraint and seclusion data by the school leadership team and the education provider will also enable any concerns about the misuse of restraint and seclusion to be to be investigated and addressed through appropriate action.

Communication within the school community

105. All members of the school community (parents, carers, children and young people and school staff) should be aware of the local physical intervention policy covering the use of restraint and seclusion, reporting expectations following any incident and how to raise any concerns. Local policies should be readily available in a variety of formats that are easily accessible and understood by all children and young people, their parents or carers and staff within the school community. This should involve translation into the languages of the school community, where necessary, and include translation into visual formats.

106. Information on, or links to, the education provider's physical intervention policy covering the use of restraint and seclusion should be included within the school handbook.

Inspections

107. As part of their scrutiny and improvement roles in schools, HM inspectors consider the impact of practice in relation to the use of physical intervention, restraint and seclusion for children and young people.

108. In line with the "How Good Is Our School?" self-evaluation framework, inspectors will request pre-inspection information from the school. For all school inspections, this includes information on the use of physical intervention, restraint and seclusion. Pre-inspection questionnaires are also issued, which include questions about children and young people's wellbeing, safety and the extent to which they feel respected and supported. During the inspection, inspectors gather and triangulate other evidence relevant to the context of the school. For example, looking at records of restraint and seclusion, talking to staff about the impact of professional learning and discussing with children and young people how well they are supported in school. Inspectors may comment on the use of physical intervention, restraint and seclusion under Quality Indicator 2.1 (safeguarding and child protection). They may also report on any outcomes for children and young people including the application of guidance under Quality Indicator 3.1 (ensuring wellbeing, equality and inclusion).

109. In line with child protection guidance, should the use of restraint and seclusion raise concerns about the safety and wellbeing of one or more child or young person, inspectors would follow local child protection procedures and consider onward referrals to social work or the police.

School Care Accommodation Services

110. The Care Inspectorate regulates and inspects school accommodation services and, where appropriate, carries out joint inspections with HM Inspectorate of Education. As part of their work, the Care Inspectorate consider and take action, where necessary, in response to the use of restraint and seclusion in school accommodation services.

Professional learning

111. Many staff are highly experienced in supporting children and young people's mental and physical wellbeing. Many also have a high level of knowledge in areas such as nurture principles, trauma-informed approaches, understanding neurodevelopmental differences and safe handling of children and young people with complex additional support needs. Consistent with the implementation of this guidance, it is recommended that education providers, schools and staff consider any further professional learning opportunities, aligned to the Inclusion, Wellbeing and Equalities Professional Learning Framework, in the following areas:

- promoting positive relationships and behaviour;
- trauma-informed and nurturing approaches;
- preventative approaches to addressing distressed behaviour;
- the use of co-regulation, de-escalation and pupil and staff-led withdrawal;
- restorative approaches to supporting positive relationships and behaviour;
- identifying and providing for the additional support needs of children and young people in their care;
- support for children and young people with neurodivergence, including autism and learning disabilities;
- an understanding of the impact of sensory needs, the sensory environment and how to establish positive non-verbal communication with children and young people;
- use of communication passports;
- The use of local recording systems; and
- Conducting post-incident learning reviews.

112. Links to available resources in these areas are included in Annex D.

Physical intervention, restraint and seclusion

113. Staff should be supported to exercise the education providers' duty of care responsibilities towards children and young people in the school. Where staff are working in environments where there is a significant ongoing risk of distressed behaviour or a risk of physical injury, the following advice may help inform a decision around appropriate professional learning options:

- It is not expected that a large number of staff within an education establishment would require restraint training. However, where a health and safety risk assessment indicates restraint as a foreseeable possibility, consideration should be given to training an appropriate number of staff.
- Where restraint is a foreseeable possibility, schools should use restraint training that is certified as complying with Restraint Reduction Network (RRN) training standards. This will ensure:
  - training is human rights-focused;

- that staff also receive training in preventative approaches;
- that trainers have the appropriate expertise to train in schools;
- that training in techniques is safe and proportional to school requirements and is appropriate for use on children and young people;
- that training includes hearing from people who have been restrained; and
- that training is accredited by the United Kingdom Accreditation Service as meeting the ISO standards for certification.

- Unless in an unforeseen emergency situation, where there is no less restrictive option available to prevent injury, no member of staff should attempt to undertake any type of restraint without having completed RRN certified training in its safe use given the risk of injury to the child or young person and themselves. Staff who have undertaken professional learning in restraint should participate in refresher training to maintain an appropriate level of competence and must do so at least annually[2] to continue practising these techniques. Education providers should maintain an overview of this.
- Refresher professional learning should include refreshing staff knowledge and awareness of preventative approaches, co-regulation, de-escalation and not only restraint.
- Additionally, there may be a requirement for school leadership teams to be supported in how to carry out risk assessments, as advised by the Health and Safety Executive, in relation to children or young people's behaviour which could result in a risk of injury to themselves or others. This should also be supported by Educational Psychology teams where available, with regards to approaches which reduce risk.

[2] As determined by their certified professional learning provider

Annex A: National policy and legislation

The guidance is set within the legislative and policy framework outlined below.

Legislation

- Education (Scotland) Act 1980
- Human Rights Act 1998
- Standards in Scotland's Schools etc Act 2000
- Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002
- Education (Additional Support for Learning) (Scotland) Act 2004
- Scottish Schools (Parental Involvement) Act 2006
- Equality Act 2010
- Children and Young People (Scotland) Act 2014
- UNCRC (Incorporation) (Scotland) Act 2024

Policy

- Curriculum for Excellence
- Getting It Right For Every Child (GIRFEC)
- Additional support for learning: Code of Practice, 3rd Edition (2017)
- Additional support for learning: action plan
- Plan 24-30 - The Promise
- Executive Summary - Keeping the Promise implementation plan
- Presumption to provide education in a mainstream setting: guidance
- The National Improvement Framework
- Developing a positive whole school ethos and culture: relationships, learning and behaviour
- Included, engaged and involved part 1: promoting and managing school attendance
- Included, engaged and involved part 2: preventing and managing school exclusions
- National Guidance for Child Protection in Scotland
- Learning/intellectual disability and autism: transformation plan
- Preventing and responding to gender based violence: a whole school framework

International human rights conventions

Convention against torture and other cruel, Inhuman or Degrading Treatment or Punishment

European Convention on Human Rights (ECHR) and Human Rights Act 1998

Article 3 - prohibits torture, inhuman or degrading treatment or punishment

Article 5 - the right to liberty and security

Article 8 - the right to respect for private life, which includes respect for physical integrity

Article 14 - Protection from discrimination

United Nations Convention of the Rights of Persons with Disabilities (UNCRPD)

Article 5 - Equality and non-discrimination

Article 7 - Children with disabilities

Article 14 - Liberty and security of person

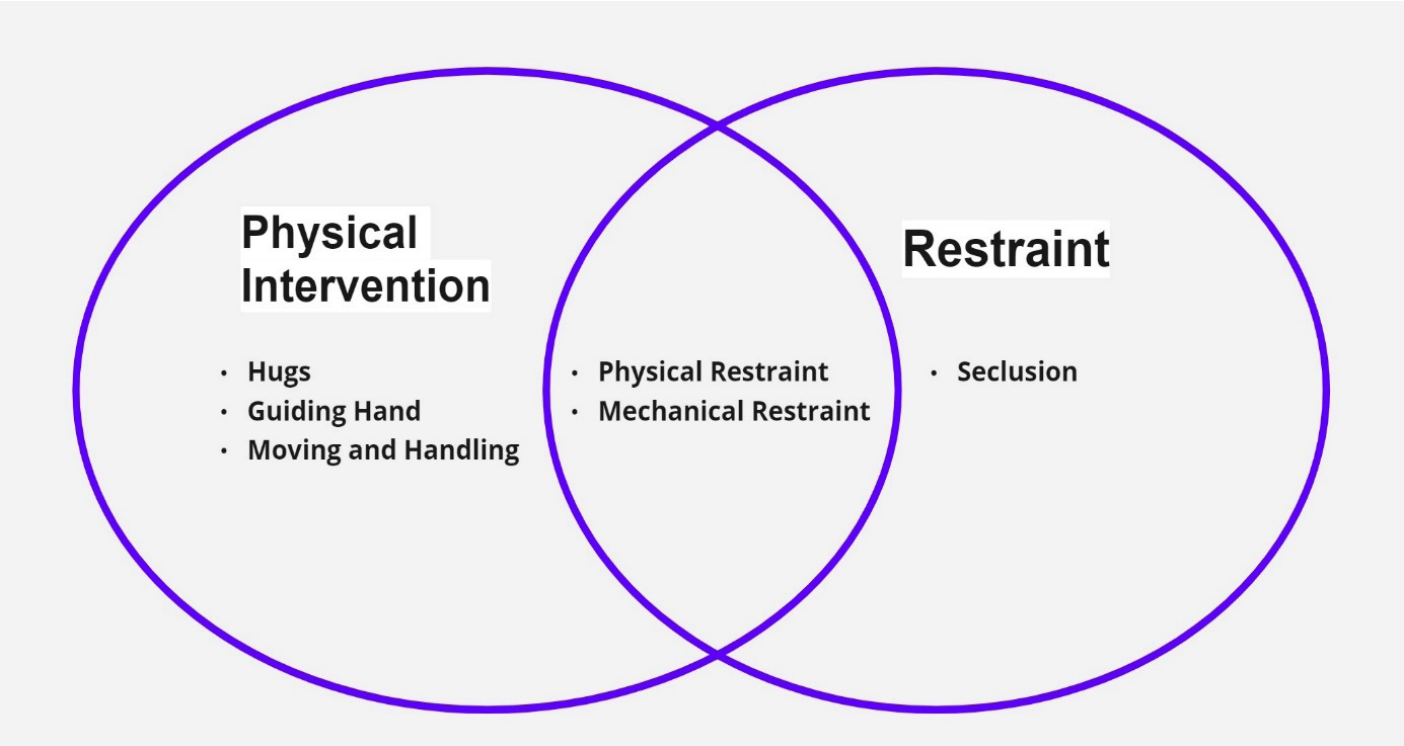
Article 15 - Freedom of torture or cruel, inhuman or degrading treatment or punishment

Article 17 - Protecting the integrity of the person

Article 24 - Education

Annex B: List of definitions and recording expectations

Venn diagram of physical intervention and restraint terminology



Alternatives to restraint and seclusion

Preventing distressed behaviour from occurring:

- Universal and targeted support to meet children and young people's additional support needs
- Preventative approaches to distressed behaviour

Responding to distressed behaviour:

- Co-regulation and de-escalation strategies
- Pupil-led withdrawal
- Staff-led withdrawal

Key definitions and recording expectations

1. Physical intervention

"Physical contact carried out with the purpose of providing support to or preventing the actions of a child or young person."

Recording and Reporting Expectations

Physical intervention that does not involve restraint does not need to be recorded or reported.

Physical intervention that involves restraint must always be recorded and its use reported, as outlined below.

Physical intervention that involves restraint must be followed by post-incident support and a learning review, as outlined below.

2. Restraint

"An act carried out with the purpose of restricting a child or young person's movement, liberty and/or freedom to act independently."

Recording and Reporting Expectations:

Recorded by school within 5 working days.

Reported by school to parents/carers as soon as possible during the school day and exceptionally within 24 hours of restraint being used.

Reported by school to Education Authority, managers of grant-aided school or the proprietor of the independent school within 2 working days with the full record shared within 5 days.

Post-incident support and learning review: yes

3. Physical restraint

"The use of direct physical force to restrict freedom of movement."

Recording and Reporting Expectations

As per restraint recording and reporting.

Post-incident support and learning review: yes.

4. Mechanical restraint

"The use of equipment to restrict freedom of movement."

Recording and Reporting Expectations

The use of equipment with a restrictive element does not need to be recorded or reported if its use was in line with an agreed support plan.

Any use out with the agreed support plan should be recorded and reported in line with other restraints.

Post-incident support and learning review: yes, when used out with agreed support plan.

5. Seclusion

"An act carried out with the purpose of isolating a child or young person, away from other children and young people, in an area in which they are prevented from leaving."

Recording and Reporting Expectations

As per restraint recording and reporting.

Post-incident support and learning review: yes.

Urgent review of the child or young person's support plan should also take place.

6. Pupil-led withdrawal

"Where a child or young person temporarily moves away, at their choice, from a situation they are finding challenging to a place where they have a better chance of regulating their emotions and behaviour.

The child or young person is free to leave the space they have moved to."

Recording and Reporting Expectations

Documenting its use within the establishment is advised so that high frequency of use can be reviewed. The child's or young person's support plan should be updated where necessary.

Where no support plan is in place, consideration should be given to developing one.

Onward reporting not a requirement.

Post incident support and learning review: on a needs basis.

7. Staff-led withdrawal

"Working with a child or young person to move away from a situation they are finding challenging to a place where they have a better chance of regulating their emotions and behaviour.

The child or young person is free to leave the space they have moved to."

Recording and Reporting Expectations

Documenting its use within the establishment is advised so that high frequency of use can be reviewed. The child's or young person's support plan should be updated where necessary.

Where no support plan is in place, consideration should be given to developing one.

Onward reporting not a requirement.

Post incident support and learning review: on a needs basis.

Annex C: Legal framework for restraint in schools

1. The key legislation and human rights conventions in relation to restraint and seclusion are listed in Annex A. It is important to note that there are absolute legal prohibitions that apply to the use of restraint and seclusion. These are summarised in the Equality and Human Rights Commission's Framework for Restraint, which points to the clear position in international human rights law in respect of:

   - restraint and seclusion with intent to torture, humiliate, distress or degrade someone;
   - a method of restraining someone that is inherently inhuman or degrading, or which amounts to torture;
   - physical force (such as physical restraint) as a means of punishment; or
   - restraint or seclusion that humiliates or otherwise subjects a person to serious ill-treatment or conditions that are inhuman or degrading.

2. Education authorities, the managers of grant-aided schools and the proprietors of independent schools should ensure that restraint and seclusion is only used as a last resort, to prevent an immediate risk of injury, with the minimum necessary force, and for the minimum necessary time. In practice, the principle of last resort means that restraint should only be considered where no less restrictive options are viable.

UNCRC Act 2024

3. Under the 2024 Act, it is unlawful for public authorities to act incompatibly with the incorporated UNCRC requirements when acting under powers conferred by or under Acts of the Scottish Parliament, certain statutory instruments or under the common law. The 2024 Act gives children, young people and their representatives the power to go to court to enforce their rights. The use of restraint on children and young people has significant implications for their human rights, in particular with respect to the following incorporated articles:

   - Article 2 (non-discrimination)
   - Article 3 (the best interests of a child)
   - Article 12 (respect for the views of the child)
   - Article 19 (protection from violence, abuse and neglect)
   - Article 23 (children with a disability)
   - Article 24 (health and health services)
   - Article 28 (right to education)
   - Article 29 (aims of education)
   - Article 37 (inhumane treatment and detention)
   - Article 39 (recovery from trauma and reintegration)

4. "Public authority" includes the Scottish Ministers, a court or tribunal, and "any person certain of whose functions are functions of a public nature"[3]. This expressly includes functions carried out under an arrangement with a public authority[4], which would include functions carried out under a contract or grant. Education authorities are public authorities for the purposes of the 2024 Act. While this is ultimately for the courts to determine, it is anticipated that publicly-funded provision at grant-aided or independent schools would be a public function.

Equality Act 2010

5. The use of restraint and seclusion, if they are not used for the reasons outlined in this guidance, could amount to discriminatory or prohibited conduct under the 2010 Act.

6. Under the 2010 Act, education providers have a duty to make reasonable adjustments for disabled children and young people and must not discriminate against a child or young person in the provision of education, or by subjecting a child or young person to "any other detriment". Reasonable adjustments for a child or young person's distressed behaviour arising from their disability would include the consideration and use of less restrictive or preventative approaches and de-escalation or co-regulation strategies, before restraint is used. Education providers must therefore ensure that they comply with the provisions of the 2010 Act in relation to any use of restraint in schools.

Duty of care

7. Education providers owe a duty of care to their pupils[5] and staff in relation to their safety. They have a duty to take reasonable care to prevent any harm that can be foreseen. Similar duties are placed on education providers under Health and Safety legislation. This guidance highlights the preventative approaches that can be taken to meet the needs of children and young people and lower the risk of harm to themselves or others arising from distressed behaviour. It also highlights the de-escalation and co-regulation strategies that should be considered ahead of restraint or seclusion if an unexpected risk of injury arises. Nevertheless, it is accepted that there are situations when the use of restraint or seclusion may be the only viable option available to staff to prevent an immediate risk of injury.

Health and Safety at Work etc Act 1974

8. An employer's general duty under Section 2 of the 1974 Act includes ensuring, so far as is reasonably practicable, that their employees are not exposed to risks associated with work-related violence and aggression. The Health and Safety Executive's definition of work-related violence is 'Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work'. This can include verbal abuse or threats as well as physical attacks.

9. An employer's responsibilities under Section 3 of the 1974 Act includes conducting their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in their employment are not exposed to risks associated with work-

[3] Section 6(5).
[4] Section 6(6).
[5] At common law and under statute including The Schools (Safety and Supervision of pupils) (Scotland) Regulations 1990 (legislation.gov.uk)

related violence and aggression. An employer's responsibilities can therefore extend to both employees of other employers (e.g. contract staff), to self-employed persons and also to members of the public, including pupils.

10. Under the Management of Health and Safety at Work Regulations 1999, employers have a legal duty to assess the risks to employees and this includes, where appropriate, the risks from exposure to reasonably foreseeable violence and aggression relating to their work. The aim of the risk assessment is to determine what measures need to be taken to prevent or minimise the potential for work-related violence and aggression.

Protection from assault

11. The criminal law of assault is relevant to the use of physical restraint in schools. The common law crime of assault, in short, is a deliberate attack upon another person, whether or not actual injury is inflicted. No particular degree of force is required. What matters in the context of restraint is the question of intent. Restraint, if used inappropriately, excessively or harmfully, could result in a charge of assault being brought.

Human Rights Act 1998

12. Under the Human Rights Act, public authorities can only interfere with a child or young person's Article 8 rights (the right to respect for private life, which includes respect for physical integrity), where it can demonstrate that its action is lawful, necessary and proportionate in order to:

    - protect national security
    - protect public safety
    - protect the economy
    - protect health or morals
    - prevent disorder or crime, or
    - protect the rights and freedoms of other people.

13. Any physical restraint would have to meet this test.

Standards in Scotland's Schools etc. Act 2000

14. Section 16 of the Standards in Scotland's Schools etc. Act 2000 prohibits corporal punishment in schools and subsection (4) is relevant to the use of a physical restraint:

    16 No justification for corporal punishment

    (...)

    (4) Corporal punishment shall not be taken to be given to a pupil by virtue of anything done for reasons which include averting–

    (a) an immediate danger of personal injury to; or
    (b) an immediate danger to the property of,

    any person (including the pupil concerned).

Legal framework for seclusion in schools

15. In addition to key aspects of the legal framework outlined for restraint, there are a number of human rights protections relevant to the use of seclusion. Of particular relevance is the legal framework surrounding deprivation of liberty[6].

16. Under Article 5 of the ECHR (incorporated by the Human Rights Act 1998), everyone has the right to liberty and security of person. No one shall be deprived of their liberty save in certain circumstances, set out in Article 5, and in accordance with a procedure prescribed by law.

17. In contrast, restrictions of movement may be permissible. It must be acknowledged that in the school context, as in other areas of children's lives, some restrictions of movement are normal and desirable, for example in the interests of children's safety.

18. A deprivation of liberty can occur where a person is confined to a place that they cannot leave.

19. There is no legal process for authorising a deprivation of liberty in the 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.

20. Article 37(b) of the schedule of UNCRC Act 2024 requirements also sets out the principle that no child shall be deprived of their liberty unlawfully or arbitrarily. The detention of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Paragraphs (c) and (d) are also relevant in outlining rights following any deprivation of liberty.

21. UNCRC Article 3(1) is relevant to all decision making in this area in stressing that in all actions concerning children, the best interests of the child shall be a primary consideration.

UNCRPD

22. Similarly to Article 37(b) of the UNCRC, the UNCRPD Article 14(1) (liberty and security of person) sets out that state parties should ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

[6] Deprivation of liberty has been considered by the Supreme Court in the decision of *Cheshire West and Chester Council v P* [2014] UKSC 19: P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents), P and Q (by their litigation friend, the Official Solicitor) (Appellants) v Surrey County Council (Respondent) (supremecourt.uk)

Annex D: Further resources

Positive relationships, behaviour, wellbeing and inclusion

- GIRFEC National Practice Model
- Getting it right for every child (GIRFEC): Wellbeing (SHANARRI)
- Promoting Positive Relationships and Behaviour in Educational Settings | Learning resources | National Improvement Hub
- Restorative approaches to support positive relationships and behaviour | Learning resources | National Improvement Hub
- Nurture and trauma-informed approaches: A summary of supports and resources | Learning resources | National Improvement Hub
- Inclusion, Wellbeing and Equalities Professional Learning Framework | Leading professional learning | Professional Learning | Education Scotland
- Nurture, Adverse Childhood Experiences and Trauma informed practice: Making the links between these approaches | Self-evaluation | National Improvement Hub
- Applying nurture as a whole school approach | Resources | Education Scotland
- OLCreate: Introduction to Inclusive Education
- Psychological Capacity: Kitbag
- NES Trauma Informed - Transforming Psychological Trauma: A Knowledge & Skills Framework (2017)

Additional support for learning

- Milestones to support learners with complex additional support needs | Learning resources | National Improvement Hub
- CIRCLE resource to support Inclusive Learning and Collaborative Working (Primary) | Resources | Education Scotland
- KIDS (Kids Independently Developing Skills) guidance from NHS GGC
- Health workforce: Allied health professionals
- Communication Passports | Practice exemplars | National Improvement Hub
- Having Better Conversations – Using Talking Mats Resources
- Home | Autism Toolbox
- National Autism Implementation Team Scotland: Diagnosis Resources | ThirdSpace
- NAIT-Guidance-An-autism-lens-on-the-Six-Principles-of-Nurture.pdf
- Autism; The SCERTS® Model
- Scottish Council for Learning Disabilities - Resources & Publications
- Principles of Good Transitions 3 – ARC Scotland

Children's human rights

- A Human Rights Based Approach: An Introduction – Scottish Human Rights Commission
- Human Rights Town - the app! - SCLD
- Can Scotland be Brave – Incorporating UNCRC Article 12 in practice

Minimising restraint

- Six core strategies for reducing restrictive practices – infographic
- Post incident learning reviews
- Restraint Reduction Network, Blanket Restrictions Toolkit
- A leadership blueprint to eliminating the use of physical intervention and seclusion from a school setting | Research | National Improvement Hub

Professional networks

- Restraint Reduction Scotland
- Hosted by CELCIS: Scottish Physical Restraint Action Group :: Celcis

Annex E: Dataset for recording restraint and seclusion

The key information that should be recorded following the use of any type of restraint, including seclusion, is outlined below. This is not a recording form. However, this dataset can be used to update existing recording forms and systems to improve local data collection. Education authorities may wish to consider updating their Privacy Notices to ensure they reflect the processing of any additional special category personal data.

Decisions on which member of staff completes the record would be agreed locally with the recognised trade unions.

Information that should be recorded following the use of restraint and seclusion

1. Reporter's name, position, school
2. Date restraint recorded
3. Type of restraint. This includes physical restraint, mechanical restraint and seclusion
4. Date, time and duration (minutes) restraint or seclusion was used
5. Time to report (days) (parents/carer and education authority/school managers/ proprietor)
6. Exact location incident and restraint occurred (if different)
7. Child or young person involved, including: name, age, protected characteristics, additional support needs, health conditions
8. Name and position of staff involved
9. Detailed account of restraint or seclusion, including:
    - events leading up to restraint or seclusion
    - how did staff/child or young person respond?
    - what happened afterwards?
    - Was the distressed behaviour related to an identified additional support need? If so, how?
10. Did anyone else observe the restraint or seclusion? Please provide details.
11. Does the child or young person have a support plan?
12. Was the plan followed?
13. If the plan was not followed, why? If followed, are there any changes required to the plan?
14. Were de-escalation or co-regulation strategies used?
15. Were the members of staff involved trained in the use of restraint?
16. Why was restraint or seclusion used?

17. Was the child or young person physically moved to another place? If so, who took the decision, how were they moved and where to?
18. Was the child or young person prevented from leaving the space they were moved to? If so, how and for what reason?
19. Was the child or young person supervised during the use of seclusion? By whom? Were they in the same room as the child or young person?
20. How long did the child or young person spend in this situation (in minutes)?
21. Comment on how the child or young person responded while in this situation and when they returned to class.
22. Were there any visible or apparent physical injuries to the child or young person and/or others as a result of the restraint or seclusion?
23. If so, how were these attended to? Was this recorded?
24. Were child protection procedures initiated? If so, which agencies were informed?
25. Was post incident support provided to the child or young person and all others involved?
26. Confirm that the record has been authorised by senior manager
27. What monitoring and ongoing assessment is in place?
28. Further action to be taken following analysis by senior manager
29. Date restraint / seclusion record closed

Post incident review

The key information that should be recorded during any post-incident learning review discussion is listed below.

Post incident learning review (restraint and seclusion)

1. Summarise the child or young person and staff learning review discussion, including child's view, where gathered, agreed follow up support and actions
2. When did the discussions take place?
3. Who conducted the discussions?
4. Describe agreed actions?
5. Was the child or young person's support plan updated?
6. Parent/carer comments
7. Has the child or young person's support plan been reviewed to take account of changes required'?
8. If the child or young person had no support plan, has one been opened and agreed now?

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