

# Proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill – Daniel Johnson MSP

## Summary of Consultation Responses

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Daniel Johnson MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as “not for publication”, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses, which are referenced throughout this summary, are available on the following website: [Safe and Included in School - Daniel Johnson MSP](#).

# Section 1: Introduction and Background

Daniel Johnson's draft proposal, lodged on 19 June 2023, is for a Bill to:

ensure restraint and seclusion of children and young people in schools is only used as a last resort where there is an immediate risk of harm and using appropriate methods.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

[Proposed Restraint and Seclusion Prevention in Schools Scotland Bill | Scottish Parliament Website](#)

The consultation period ran from 20 June 2023 to 29 September 2023 (extended from the original closing date of 12 September 2023).

The following organisations and individuals were engaged with in the development of the proposal and were sent copies of the consultation document or links to it:

- Beth Morrison, campaigner for 'Calum's Law', and Founder and Chief Executive Officer of Positive & Active Behaviour Support Scotland
- Enable Scotland
- National Autistic Society

The consultation was also sent to the office of the Children and Young People's Commissioner Scotland, a selection of children's rights charities, charities supporting people with learning disabilities, a training organisation specialising in non-restraint and low arousal methods, and academics with experience relevant to the proposal.

The consultation was promoted by press release and at a launch event in June 2023, which included videos and interviews for TV and radio.

The consultation exercise was run by Daniel Johnson's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9): [Standing Orders | Scottish Parliament Website](#)
- Guidance (Part 3): [Guidance on Public Bills | Scottish Parliament Website](#)

## Section 2: Overview of Responses

In total, 148 responses were received.

The responses can be categorised as follows:

- 7 (4.73%) from representative organisations (e.g. business association, trade union, political party or other body with a role representing its members or supporters' views collectively)
- 7 (4.73%) from public sector organisations (e.g. Scottish/UK Government, Govt agency, local authority, NDPB)
- 14 (9.46%) from a third sector organisation (registered charities)
- 1 (0.68%) from private sector organisations (e.g. individual company or business)
- 4 (2.70%) from 'other' organisations (e.g. clubs, local groups, groups of individuals, etc.)
- 1 (0.68%) from an individual politician
- 31 (21.95%) from professionals with experience relevant to the topic
- 2 (1.35%) from academics
- 81 (54.73%) from private individuals (members of the public)

The responses included:

- 53 (%) submissions that were made anonymously. In addition, 10 submissions were made anonymous prior to their publication given the sensitive nature of their content.
- 12 (%) submissions that are "not for publication"
- 134 responses were submitted via Smart Survey, while 14 were submitted via email. Of those submitted via email, a selection of responses provided comment on the proposed bill in general but did not answer specific questions. These responses have been included in the total number of responses received, but not in the statistics for each individual question.

### Key themes

Key themes raised by those in support of the proposed bill included:

- That this is a human rights issue, and the passage of the proposed bill would provide important protections for children and young people, particularly those with additional support needs.
- That restraint and seclusion are dangerous and/or traumatising practices, which can affect children for life and lead to mental health issues.
- That all behaviour should be perceived as communication, and that the use of restraint and seclusion stems from failure to recognise an unmet need.
- That children should be protected from restraint and seclusion as its use is inappropriate and, for some respondents, never acceptable. Some considered that its use was acceptable in limited circumstances and that

the proposed bill would help to ensure it was only used to prevent serious harm.

- That making guidance on the use of restraint and seclusion statutory would reduce its use, as the provisions underpinning the proposed legislation would lead to greater enforcement, accountability, and clarity.
- That strong guidance is needed to both protect children and young people from the inappropriate use of restraint and seclusion, and to protect school staff who may be required to use it.
- That there is a need for effective monitoring of the use of restraint and seclusion through data collection, and that this data should be reported.
- That parents, guardians and carers should always be informed of the use of restraint and seclusion, and that they have the right to know when these practices are used on children in their care.
- The importance of de-escalation and other preventative measures as tools to avoid the use of restraint and seclusion in the first place.

Key themes raised by those opposed to the proposed bill included:

- That the aims of the proposed bill could be achieved through other means including the publication and enactment of Scottish Government draft guidance or other forthcoming legislation.
- That time should be taken for Scottish Government guidance to be published, introduced, and reviewed, as opposed to proceeding with the proposed bill.
- That there is an urgent need for additional resources for education and to support children with additional support needs, without which the aims of the proposed bill cannot be achieved.
- That physical intervention practices are necessary to protect children and young people from self-harming behaviours in certain circumstances.
- That the consultation frames restraint as punitive and not a valid response to violence or aggressive behaviour.
- That there are potential unintended consequences arising, including the increased use of restraint or seclusion due to increased training.
- That teachers and school staff are already under pressure and that the negative impact on the health and wellbeing of school staff following the use of restraint and seclusion is underappreciated.
- The need to ensure exclusion isn't over-used to compensate for unwillingness to use restraint/seclusion.
- That the needs of the children "assaulted" in schools by other children should be put first.

## **Scottish Government draft guidance on the use of restraint and seclusion and other legislation**

The Scottish Government launched a consultation on its draft non-statutory guidance on physical intervention in schools, *Included, engaged and involved part 3: A relationship and rights based approach to physical intervention*, in June 2022. It is this guidance that the Member's proposed Bill seeks to place on a statutory footing. The guidance and further information on the Scottish

Government's consultation exercise is available at: [Physical intervention in schools: draft guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/physical-intervention-in-schools-draft-guidance/pages/introduction.aspx).

While Daniel Johnson MSP's consultation exercise was in progress, the Scottish Government was yet to publish the outcome of its consultation into its draft guidance, which sought views including on its clarity of the guidance, its content, and any suggested changes.

The Scottish Government has since published its analysis of the responses to its consultation, available at: [Physical intervention in schools guidance: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/physical-intervention-in-schools-guidance-consultation-analysis/pages/introduction.aspx).

## **Legal frameworks underpinning the use of restraint and seclusion**

While the terms restraint and seclusion are used together throughout this summary of consultation responses, the Non-Government Bills Unit recognises the distinct legal frameworks underpinning these separate practices. As set out in the draft Scottish Government Guidance *Physical intervention in schools: Included, engaged and involved part 3*:

“It is important to note that there are absolute legal prohibitions that apply to the use of restraint. These are summarised in the Equality and Human Rights Commission's Framework for Restraint, which notes that it is never lawful to use:

- restraint 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 that humiliates or otherwise subjects a person to serious ill-treatment or conditions that are inhuman or degrading

“Education authorities, the managers of grant-aided schools and the proprietors of independent schools should ensure that restraint is only used as a last resort, to prevent harm, 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.”

Separately, in relation to the use of seclusion, the guidance states:

“Under Article 5 of the ECHR (incorporated by way of 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.

“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.

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

“There is no legal process for authorising a deprivation of liberty in the school context. As such, the use of any act which amounts to a deprivation of liberty would not be in accordance with the law, and may be legally challenged.”<sup>1</sup>

## **Disclaimer**

Note that the inclusion of a claim or argument made by a respondent in this summary should not be interpreted as verification of the claim or as endorsement of the argument by the Non-Government Bills Unit.

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<sup>1</sup> The Scottish Government, *Physical intervention in schools: Included, engaged and involved part 3* (2022), pp. 40-42, available at: <https://www.gov.scot/publications/included-engaged-involved-part-3-relationship-rights-based-approach-physical-intervention-scottish-schools/>

## Section 3: Responses to Consultation Questions

This section sets out an overview of responses to each question in the consultation document.

### General aim of proposed bill

The consultation document outlined the aim of the proposed Bill and what it would involve. Respondents were asked:

**Question 1: Which of the following best expresses your view of the proposed Bill (Fully supportive / Partially supportive / Neutral (neither support nor oppose) / Partially opposed / Fully opposed / Do not wish to express a view)? Please explain the reasons for your response.**

139 respondents (93.91% of the total) answered this question directly.

A significant majority of respondents (128, or 92.09% of those that responded to the question) supported the proposed Bill, with 112 (87.77%) fully supportive, and 16 (11.51%) partially supportive. Only a small proportion (9, or 6.47%) were opposed in principle, with 3 (2.16%) partially opposed and 6 (4.32%) fully opposed. A 'neutral' response was recorded by one respondent (0.72%), while a further one responded that they 'did not wish to express a view' (0.72%).

Of the 25 organisations that provided a clear response to Q1, 20 (80%) responded in favour of the proposed bill overall, while 4 (16%) opposed it, and 1 (54%) was undecided or expressed no clear view.

Respondents were invited to explain their experience relevant to the subject matter of the consultation. Of the 40 respondents who volunteered that they were parents, guardians or carers, 39 were supportive of the proposed bill, while only 1 was opposed.

### Reasons for supporting the proposed bill

#### Experience of restraint and/or seclusion within the family

A significant proportion of parents that responded to the consultation offered personal accounts of their families' experiences of the use of restraint and/or seclusion in Scottish schools. These experiences formed the basis of their support for the proposed bill and its aims.

To illustrate the scale of the use of restraint and seclusion, Enable Scotland – an equalities charity – set out the findings of research conducted by Positive & Active Behaviour Support Scotland (PABSS), a charity founded by "Calum's

Law” campaigner Beth Morrison which provides support to families who care for children with disabilities:

“PABSS spoke to the families of 613 children affected by seclusion restraint between 2019 and 2021. Issues relating to 331 children were recorded in 2019-2020, and 282 in 2020-2021. The children came from 28 different local authorities in Scotland and 472 children had been secluded.

“Often the children were “removed” from class and there was no way of finding out “how” they were taken to the seclusion room. Many of those 472 children were also restrained. Of the 472 children who had been secluded: 56% were secluded more than 3 times a week, 24% were secluded “daily”, 15% were secluded for several periods in a day, often daily. A worrying, 5% were secluded “too many times to count” and 93% of the children had sustained injuries.” (Enable, Non-Smart Survey response)

To illustrate the nature of some the experiences submitted to the consultation by those supportive of the proposed bill, a selection of responses from families affected by restraint and seclusion are set out below:

“My now 10 year old disabled child is still suffering the effects of the trauma he experienced from unnecessary seclusion when he was six years old. He would be locked in a room on his own at the first signs of ‘heightened behaviour’ to calm down. There was no attempt to use other strategies which had been proven to work first. He would be in such distress he would gnaw at the door to try to get out.” (Anonymous, ID: 227187364)

“My daughter was restrained and degraded many times. My son has had many exclusions and detentions, made to face a wall which was in front of another class to punish him for behaviours related to his autism and ADHD.” (Anonymous, ID: 227216706)

“Personal experience has left my child traumatised and now out of education for 4 years, due to unnecessary and over used restraint in school.” (Anonymous, ID: 227162060)

The use of restraint and seclusion in any circumstance was characterised by some respondents as “violence” (a parent, ID: 222746475), “abuse” (Anonymous, ID: 227814548) and “abhorrent” (Anonymous, ID: 226859445). Some individuals who provided further detail suggested the use of these practices was never acceptable due to the pain or trauma it could cause the children and young people subjected to it, with this given as a reason for supporting the proposed bill:

“Vulnerable children should not be restrained and secluded or injured by professional adults in a school where they are supposed to be safe and happy.” (Anonymous, ID: 222702297)



“We must protect the most vulnerable from restrictive practices and restraint. We have a duty to enshrine this in law to prevent the long terms effects of trauma on individuals and their families. We must do better- we must get this right.” (Mandy Mitchelmore, parent and educator, ID: 226884496)

“Unless lives are at risk, we should not be restraining children.” (Jill Rattray, ID: 223377793)

The detrimental impact on the mental health of children and young people subject to restraint and seclusion was highlighted, with some respondents suggesting its use could cause life-long damage and mental ill health (Gillian Veronica Mead, parent, ID: 226863393; Anonymous parent, ID: 222741208). This included Nicola McIntosh, responding in an individual capacity, who referred to the impact of the use of restraint and seclusion on a family member and said it “ultimately had a hugely negative effect” on their mental health and education (ID: 222708460).

### **Restraint and seclusion used inappropriately**

A selection of respondents put forward the view that restraint or seclusion should only be used in instances where someone was at immediate risk of harm (Fiona McLean, ID: 225789537), with the perceived inappropriate use of these practices given as a reason for supporting the proposed bill. This perspective is typified in the following response from an anonymous academic:

“While I know that difficult situations often arise in the classroom, I think the issues are so complex that clear statutory guidance is requires both to protect the teacher and a child... I am firmly of the view that some interventions are inappropriate and come close to child abuse. I feel particularly that isolation and seclusion – characterised in the document by placing a child in a ‘cupboard’ – is misused and may well amount to ‘a cruel and unusual’ punishment.” (Anonymous, ID: 226993662)

Together (the Scottish Alliance for Children’s Rights) highlighted incidents where restraint and seclusion were used inappropriately despite existing guidance:

“We know that restraint and seclusion are traumatic for children and young people. We also know that, despite current guidance that restraint should only be used as a last resort to protect the safety of the child or others, it continues to be used in response to low level incidents and to protect property. The 2018 investigation by the Children and Young People’s Commissioner Scotland (CYPCS) highlighted that restraint and seclusion are disproportionately used against disabled children, including those with learning disabilities and autism. This contravenes guidance from the UN Committee on the

Rights of the Child that the education of disabled children must make sure that they feel ‘respected by others as a human being without any limitation of dignity.’” (Non-Smart Survey response)

The Challenging Behaviour Foundation was among the organisations to set out the view that restraint and seclusion could have a detrimental impact. Pointing to its work to address the “overuse” and “unacceptable misuse of restraint and seclusion in schools against pupils with SEND, and the lasting, traumatic impact that these interventions have”, its response continued:

“Due to the evidence of significant harm and trauma to children and young people with SEND it is incredibly welcome to see a proposed bill which aims to protect the safety and human rights of children with SEND in schools and ensure that restrictive interventions are never used unless under exceptional circumstances.” (ID: 226191801)

In a joint response to the consultation, Children in Scotland (a charitable network supporting children and families) and Enquire (a Scottish advice service for additional support for learning) called for a “culture change” around the use of restraint and seclusion in Scottish schools to ensure that children’s rights are upheld (Non-Smart Survey response). This view was shared by the academic Dr Brodie Paterson:

“I have argued for more than two decades that the repeated failure of local authorities to discharge their responsibilities to vulnerable children indicated by the continuing evidence of the misuse of restraint and seclusions means that statutory regulation of the practices is needed. Repeated policy initiatives have failed to ensure that the misuse of such interventions which we know may severely traumatise what are often already vulnerable children and whose use is associated with the potential for significant injury or even fatality. Only by ensuring mandatory training, mandatory reflective practice supervision and mandatory governance arrangements are we going to bring about the profound culture change we need in schools. There is already good practice in many schools. There is exemplary practice in many schools. There remain however far too many where the existing frameworks have failed to safeguard children. We cannot in all good conscience leave another generation of children exposed to the risks involved in the misuse of restraint and seclusion.” (ID: 226858200)

## **Protecting human rights**

A key theme among those supportive of the proposed bill was that its aims aligned with human rights commitments, and that the use of restraint and seclusion, particularly on children and young people with additional support needs, was a breach of human rights. The United Nations Convention on the Rights of the Child (UNCRC), and its incorporation into Scots Law, were referred to (Amy Hanna, ID: 221870595), as were the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the European Convention on Human Rights (ECHR) and the Equality Act 2010 (Officers of Autistic

Disabled People's Organisations, ID: 227780887). The use of restraint and seclusion were characterised as both potential and clear breaches of these enshrined rights.

In its response, the Equality and Human Rights Commission (EHRC) drew upon the findings of its recent inquiry into the use of restraint in schools in England and Wales.<sup>2</sup> Its inquiry was informed by the EHRC's human rights framework for restraint, published in 2019, which sets out:

"...principles for the lawful use of physical, chemical, mechanical and coercive restrictive interventions, informed by discussions with governments, regulators, inspectorates and ombudspersons, and with civil society and third sector organisations..."

"We launched our inquiry because of our concerns that children's human rights were at risk in schools: particularly Article 3 (right to freedom from inhuman and degrading treatment) and Article 8 (right to physical and mental integrity) under the Human Rights Act 1998... Our inquiry found that, although they were typically attempting to use a data informed approach, schools across England and Wales were unsure about when and how to record their use of restraint, with inconsistent policies and practices. In particular, we found that there was a need for national guidance, mandatory recording and reporting, and national training standards." (EHRC, ID: 226143288)

The independent officeholder Children and Young People's Commissioner Scotland (CYPCS) – a post currently held by Nicola Killean – was among the organisations to reference existing human rights policy and legislation, highlighting its investigation report into the use of restraint, seclusion and restrictive practices and drawing upon this research in its response to the consultation.<sup>3</sup> Expressing full support for the proposed bill, it pointed to cases in the UK in which the "inappropriate use of restraint has resulted in the death of a child" in addition to cases of severe injury. Calling for the proposed bill to be considered within a "human rights framework", CYPCS continued:

"Restraint, seclusion and restrictive practices engage a number of children's human rights under both the UNCRC and the European Convention on Human Rights (ECHR). Inappropriate use of restraint can amount to "inhuman or degrading treatment or punishment" which is prohibited by Article 3 of the ECHR (the prohibition of torture). Article 3 is an absolute right, interference with which cannot be justified on any grounds. Both the UNCRC (Article 37) and UN Convention on the Rights of People with Disabilities (UNCPRD – Article 15) contain equivalent prohibitions on cruel, inhuman or degrading treatment or punishment. Article 8 ECHR, which includes the right to bodily

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<sup>2</sup> Equality and Human Rights Commission, *Restraint in schools inquiry: using meaningful data to protect children's rights*, 2021:

<https://www.equalityhumanrights.com/sites/default/files/inquiry-restraint-in-schools-report.pdf>

<sup>3</sup> Children and Young People's Commissioner Scotland, *No Safe Place: Restraint and Seclusion in Scotland's Schools*, 2018: <https://www.cypcs.org.uk/resources/no-safe-place/>

integrity, and UNCRC Article 18, which outlines the right to protection from violence and injury are also engaged...

“The test, derived from human rights standards, is that restraint should only ever be used as a last resort, to prevent an immediate risk of harm to the child or another person, using the minimum necessary force and for the shortest time possible.

“Seclusion or isolation may not only amount to cruel or inhuman treatment but may also constitute an unlawful deprivation of liberty in terms of Article 5 ECHR, Article 37 UNCRC and Article 14 UNCRPD. Any statutory guidance must, therefore, include seclusion, including the use of “quiet rooms”, “sensory rooms”, “cool down spaces” etc. Although these spaces can be a valuable support for children who find school overwhelming, inappropriate or excessive use can be harmful and could breach children’s human rights. They should only be used as part of a support plan and any use should be recorded to ensure it can be monitored and reviewed.” (CYPCS, Non-Smart Survey response)

A joint response submitted by a group of Officers of Autistic Disabled People’s Organisations set out the view that it was “imperative that a fully human rights based approach is taken” to the proposed bill and called for the involvement of human rights experts and those “most likely to have [their rights] breached through restraint and seclusion” in its development. The response continued:

“We welcome any increased protection for children to further their human rights.... Increased protection is clearly required as restraint and seclusion is a scandalous issue that has been allowed to continue for too long... Not only are use of these methods typically used in ways that breach human rights, but are typically used as a way to deal with situations where rights have not been met in the first place, such as inadequate provision of reasonable adjustments or discriminatory practices, including ableism and racism.

“All children have the same needs: to have their rights met, including to feel safe and secure through trusted relationships that support emotional wellbeing and to be free to express views as their authentic selves. This is why we believe that any approach that focuses on behaviour, rather than their human rights and needs is flawed and problematic.” (ID: 227780887)

The rights of parents were also raised. Connect (an independent parents organisation) highlighted the importance of ensuring “effective working relationships between parents, carers and schools”, and the parent, carer or guardian’s role in advocating for their children’s rights:

“A rights-based approach should be used both in terms of the rights of parents and the rights of the child... Too many families feel they are not respected and are not viewed as valued partners. Parents are advocates of their children’s rights, and parents and staff can learn

from one another about how best to support children and young people. A two-way sharing of skills, experience and knowledge will help to build open, positive, trust-based relationships in the best interests of children and young people. The use of restraint and seclusion is distressing for all involved. In the interests of positive and respectful relationships and partnerships between children, parents and schools, we support the principle of the proposed Bill.” (Non-Smart Survey response)

Summarising this rights-based approach for consideration of the aims of the proposed bill, the academic Amy Hanna, who was fully supportive, concluded:

“Given Scotland’s commitment to children’s human rights and the pending incorporation of UNCRC, the proposed Bill is in keeping with a rights-based approach. Moreover, children with disabilities, and children who are non-verbal, are particularly vulnerable to rights infringements through the misuse of restraint and seclusion. This Bill... begins to address these rights issues.” (Amy Hanna, ID: 221870595)

### **Impact on children and young people with disabilities**

Further to the above comments drawing parallels between the proposed bill’s aims and existing human rights and equalities commitments, a significant proportion of respondents supportive of the proposed bill highlighted the rights of children and young people with disabilities specifically. It was suggested that children who are neurodivergent or have learning disabilities are more likely than neurotypical children to experience restraint and seclusion. Upholding these children’s rights was given as a key reason for supporting the proposed bill’s aims.

The use of restraint and seclusion predominantly on children with disabilities was characterised by some as demonstrating a lack of understanding of their needs (Peter Morrison, parent, ID: 224203077). The CYPSC was among those to highlight that neurodivergent children and young people were “disproportionately likely” to experience restraint and seclusion practices, criticising the Scottish Government, education authorities and schools for “considering restraint a behaviour management issue, rather than seeing it in the context of the support needs of disabled children.” The response continued:

“Our view is that this approach results in missed opportunities to properly consider the needs underlying distressed and dysregulated behaviour and can... result in discrimination against these children and multiple breaches of their rights.” (Non-Smart Survey response)

Restraint Reduction Scotland (RSS), a network facilitated by The Scottish Commission for People with Learning Disabilities, was among the organisations to put forward the view that “all behaviour is communication”, and that children and young people displaying challenging behaviour that may lead a member of school staff to use restraint or seclusion are communicating

an unmet need. This, RSS suggested, meant the use of restraint or seclusion on these children was inappropriate:

“RRS believes that all behaviour is communication. Restraint is often used inappropriately to try to manage people’s behaviour rather than seeking to understand what someone is trying to communicate. Distressed behaviour is most likely an indication of unmet needs and every effort should be made to understand and address those needs and understand that communication.

“Furthermore, we understand that the use of restraint and restrictive practices is traumatic for the person who experiences it, the member of staff who uses it and the organisation within which it is used. The use of restraint and seclusion are symptoms of a systemic approach to managing behaviour that impacts negatively on the most vulnerable people and can stay with them throughout their lives.” (Non-Smart Survey response)

Positive & Active Behaviour Support Scotland (PABSS) also emphasised its view that behaviour should be considered communication. Expressing full support for the proposed bill, in its broader response PABSS argued that misunderstanding this behaviour can lead to school staff using restraint and seclusion as “physical punishment”. The response continued:

“We must give staff the training, support, and expertise to understand behaviour can be a form of communication. When a child cannot verbally say “I am hungry/thirsty/the lights are too bright/it’s too noisy/I am bored/I am in pain and those needs continue to go unmet, the child becomes highly anxious and frightened. This leads to distressed behaviour and that’s what staff cannot cope with in the classroom environment. They simply don’t understand that if we meet the physical, emotional and sensory needs of the children, the child’s anxiety and fears would not happen, therefore there would be no need for the child to use their behaviour to communicate “I can’t cope”.

“Children with conditions like autism and learning disabilities who have severe communication difficulties use their behaviour to communicate, because often, it’s all they have. If the response by caregivers/staff is to hold them with force as a method of control, we are not meeting the needs of the child and all we do is traumatise them. It is up to the adult to proactively meet needs and reduce and eliminate the need for any restrictive intervention. Reasonable adjustments must be made as required under section 20 of the Equality Act 2010.” (PABSS, Non-Smart Survey response)

The view that using restraint or seclusion to manage the behaviour of children with disabilities was inappropriate was also shared by National Autistic Society Scotland:

“It is clear that autistic children and young people’s experience of education in Scotland is being adversely impacted by an insufficient level of support and a lack of understanding in their schools. In some instances, this can result in teachers feeling a need to use restrictive practice. We know that teachers in Scotland want to be able to better meet the needs of the autistic pupils in their classrooms; however, they need more resources and effective guidance from national government to do this... If delivered, we hope this Bill would engender cultural changes that would result in an eventual elimination of restraint and seclusion.” (National Autistic Society Scotland, ID: 225412120)

Enable Scotland was of the view that only through legislation could it be ensured that the incidence of restraint and seclusion on children and young people with learning and other disabilities could be reduced:

“Enable believes the Bill proposal brings forward proportionate and practical recommendations for reform of the law which have the potential to make a substantive, positive contribution in ensuring restraint and seclusion are only ever measures of last resort and children with learning disabilities are protected from harms they are currently experiencing far too often.” (Enable Scotland, ID: 226142723)

Individual respondent Peter Morrison, a parent, called for examples of best practice in the use of restraint and seclusion to be learned from to lead to a “culture change which could transform education for learning disabled children in Scotland”. He continued:

“Currently, the picture in Scotland is mixed, essentially a postcode lottery. This is because there is a widespread lack of understanding of why learning distressed behaviour occurs in learning disabled children, and the use of inappropriate strategies to deal with such distressed behaviour... There seems no appetite in our current culture to share that best practice or to share the cultures which allow them to flourish. This bill should be part of the solution to that by forcing those bodies and individuals who currently choose to stick their head in the sand to re-evaluate what they THINK they know, to re-educate themselves in what CAN be done, and consequently improve the experience of children and staff in schools.” (Peter Morrison, ID: 224203077)

## **The need for statutory guidance and training**

The [consultation document](#) set out the central aim of the proposed bill – to reduce the incidence of restraint and seclusion in schools and ensure that it only takes place as a last resort using appropriate lawful methods, by placing Scottish Government guidance on a statutory footing.<sup>4</sup> Many respondents specifically mentioned this aim while giving their support to the proposed bill overall:

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<sup>4</sup> <https://www.gov.scot/publications/included-engaged-involved-part-3-relationship-rights-based-approach-physical-intervention-scottish-schools/>

“We fully support bringing the guidance on restraint and seclusion onto a statutory footing, with clear reporting mechanisms for each incident, and appropriate training for educationalists which focuses on alternative models of care and support which seek to de-escalate situations, or prevent escalation in the first instance, without the need to resort to restraint or seclusion.” (Scottish Autism, ID: 225778174)

“Our view on this issue is informed by the expertise we have gained over more than 20 years of supporting children and young people who are neurodivergent, and their families. Guidance on seclusion and restraint is not sufficient to protect children and young people. Statutory guidance or, as proposed here, legislation, gives better legal protection, increases accountability and affords a right of redress.” (Salvesen Mindroom Centre, ID: 227167163)

“We agree that guidance must be statutory. In the 6 years since the non-statutory guidance was produced, it has proven to be totally ineffective in reducing the inappropriate and unlawful use of restraint in Scottish Schools.” (PABSS, Non-Smart Survey response)

In addition to the guidance, there were calls among those supportive of the proposed bill for more training for school staff in how to support children who are subject to restraint and seclusion:

“I am fully supportive of the intent of the bill, but believe that further training should be provided for staff as working with disturbed or difficult children is a problematic emotional experience for the adults involved [eg child psychotherapy consultancy or EAP counselling, other relevant support and CPD training].” (Elsbeth Crawford, ID: 226370956)

“I believe that the bill would go a long way to protecting vulnerable student and young people from unnecessary and harmful restrictive practice and in tandem force organisations to properly invest in staff CPD and professional learning that I know from experience can create a culture that eradicate restrictive practices and restraint” (Trish Carolan, teacher and academic, ID: 222487088)

“I need to know that school is always safe, inclusive and mindful of my kids physical and mental well-being. While I fully support this bill, it does seem to me that what lacking in schools is proper compulsory training for teachers/PSAs on supporting ND kids appropriately so these bills are not necessary in the first place.” (Alice Nelson, parent, ID: 227758284)

The content of the guidance and training for school staff will be more fully explored later in the analysis of the responses to subsequent questions.



## **Support for the intention of the proposed bill**

A proportion of respondents gave support for the intention of the proposed bill – to reduce incidence of restraint and seclusion in Scottish schools – while also providing comments on or querying how the proposed bill would work in practice, or on the proposed bill’s content.

### **Greater support for school staff**

In addition to consideration of the impact on children and young people of the use of restraint and seclusion, the detrimental impact on teachers, pupil support assistants and school staff more generally was also highlighted by respondents as a reason for their supporting the proposed bill, albeit with qualifications.

This included Victoria Primary School Parents Council Edinburgh, which focused its support on the aim to create a statutory basis for standards of training for school staff including teachers and teaching assistants. Highlighting the range of pressures faced by pupil support assistants (PSAs), it called for the proposed bill to go even further in mandating training:

“Getting it right for every child should be more than a policy statement or warm words. This needs to be seen in practice in schools. All too often untrained PSAs are left to manage more challenging pupils in classrooms or the pupils are excluded from their education – or worse for having medical conditions such as ASD, ADHD, or Trauma which they have no control over. Other children come from homes of neglect and abuse and don’t need the situation perpetuated at school. The bill is correct in what it says but doesn’t go far enough. There should be mandatory training for PSAs and teachers, which is reviewed regularly, Fair and reasonable wages for PSAs - who are currently striking over poor pay and conditions and finally investment in social work, educational psychology and CAMHS which wraps around these more vulnerable children.” (Victoria Primary School Parents Council Edinburgh, ID: 226415546)

Partially supportive of the proposed bill, Kirstyn Walker (a lead practitioner for violence reduction in healthcare), also felt the proposals could go further in recognising the impact on staff. She highlighted the proposed bill’s aim to create a requirement to record and report all incidents of the use of restraint and seclusion to an existing Scottish Government body, suggesting this fed-in to a negative culture which impacted school staff:

“The thought behind the Bill is well placed however the content is largely misguided with a strong focus on restraint being punitive and not used in response to an immediate or imminent risk. It lacks support for staff who are faced with violent, aggressive, or distressed behaviours from pupils and instead uses language which contributes to the culture that restraint is wrong – language for example such as ‘potential consequences’, ‘scrutiny’, ‘once the child is under control’.

There is also a focus on the complaints process for parents/guardians which feeds into the negative culture that staff are wrong to use restraint to manage a situation that poses a risk of harm – whilst the complaints process should be available, this should be the case regardless and not specifically for the use of restraint...

“Common Law, unlawful detention, self defence, UN convention on rights of a child etc – staff are already accountable for their actions under these frameworks of legislation. Education should be given around this rather than creating a new Bill for things that already exist.” (Kirstyn Walker, ID: 223175682)

Elsbeth Crawford, a former education worker responding in an individual capacity, expressed partial support for the proposed bill overall, calling for greater training for staff in recognition of the emotional impact on them:

“I am fully supportive of the intent of the bill, but believe that further training should be provided for staff as working with disturbed or difficult children is a problematic emotional experience for the adults involved [eg child psychotherapy consultancy or EAP counselling, other relevant support and CPD training]” (ID: 226370956).

## **Unintended consequences**

Other respondents felt there was a risk that legislating to make the guidance statutory could lead to unintended or inadvertent consequences which, the Officers of Autistic Disabled People’s Organisations suggested, could “worsen things” for impacted children by legitimising the use of restraint and seclusion:

“For example: legislation that somehow “legitimises” inappropriate restraint and seclusion, fuelling mindsets that some children with particular characteristics, such as disability, will at some point require restraining; legislation that endorses approaches that lack evidence, efficacy and substance, for example behaviourist and other approaches that prioritise behaviour over wellbeing... legislation that fails to properly define terms, including, but not limited to, “harm or injury”, “last resort” and “positive approaches”, so leaving the bar low as to how such provisions can be interpreted or demonstrated to be met... legislation that fails to strengthen or promote the rights of disabled children and children with other protected characteristics, to reasonable adjustments, to ensure physical and psychological safety and wellbeing and to avoid unequal or differential treatment outcomes and attitudes that would amount to direct or indirect discrimination. These things must all be carefully considered and addressed in any proposed Bill for “rights to be centred”.” (Officers of Autistic Disabled People’s Organisations, ID: 227780887)

An anonymous response from a self-described intellectual disability psychiatrist, while supportive of the principle to introduce a statutory

framework around the use of restraint and seclusion in schools, expressed concerns about how the debate was being framed, specifically:

“...the potential effect of inhibiting access to school for certain pupils who display behaviours such as repetitive self-injury/head banging. Statutory guidance will need to be extremely carefully drawn in order to avoid unintended consequences that actually impair the human rights of some individuals with intellectual disabilities given that my professional experience is actually that many organisations have an extreme aversion to the proportionate use of restrictive practices in a person’s best interest - this can lead to unnecessary exclusion and institutionalisation.” (ID: 220722277)

### **Comments on the adequacy of the guidance**

Some respondents gave support to the principle underpinning the proposed bill while commenting on the adequacy of the Scottish Government draft guidance that the proposals seek to make statutory.

This included the International Coalition Against Restraint and Seclusion (ICARS), which gave its partial support to the proposed bill. It expressed concern that the guidance as drafted was inadequate to meet the proposed bill’s aim of reducing the incidence of restraint and seclusion in Scottish schools:

“ICARS recognizes the importance of legislation and guidance aimed at eliminating the use of restraint in education. However, we are unable to support this bill due to concerns regarding the current proposal. We believe that the draft Scottish guidance Physical Intervention in Schools, on which the bill relies, is poorly researched and inadequately drafted. It is our belief that creating a bill based on such flawed guidance is a cause for concern. Furthermore, making the Physical Intervention in Schools guidance statutory may potentially exacerbate the issue of restrictive practices in Scottish schools. In fact, based on documented evidence, it is likely that this guidance will lead to an increase in restraint and seclusion rather than achieving the intended reduction.

“Therefore, we have valid concerns that moving forward with the current outline of this bill, as presented in the consultation document, will result in a prolonged delay in effectively eliminating restraint and seclusion from Scottish school environments.” (ICARS, ID: 227761167)

The Officers of Autistic Disabled People’s Organisations also reflected on the content of the guidance and the fact that, as of the time of the consultation and the publication of this summary, the content of the Scottish Government’s draft guidance on Physical Intervention in Schools was yet to be reported on. It continued:

“We are concerned that although this Scot Gov consultation closed October 2022 it has not yet been reported on. We are aware of

significant concerns relating to this guidance that need to be addressed and therefore question how any Bill proposal can be supported which “does not seek to define nor create new standards” and seeks to “codify this guidance in law” (p3-4) [of the member’s consultation document].

“Some of the issues raised with this draft guidance that need to be adequately addressed in the Bill include:

- (a) its lack of clarity, in terms of definitions, with its length and the extent to which it references various other documents and resources, each with their own references and resources;
- (b) not requiring involvement of and consultation with children and families about approaches and consent. According to the UNCRC children have a right to be heard and supported to participate in decision making to inform and consent to individual support plans and input into policies and practice.
- (c) over-focus on behaviours, rather than relationships and wellbeing, with behaviours often viewed through a negative and reductionist lens, rather than seen as being adaptive or self-regulatory and a response to a lack of appropriate supports and understanding: a response to “maladaptive environments”.
- (d) The narrative around getting to know the child and behaviours was pathologising outdated medical model, inadvertently putting the issue as a fault in the child and fuelling problematic mindsets and stereotypes, which is against human rights (eg UNCRC Articles 19 and 37, UNCRPD Article 15). Instead the focus should be on the rights of the child, including rights to reasonable adjustments and supports under the Equality Act and behaviours of those around the child, impact of inadequate staff understanding of a child’s disability, regulation and communication needs and how to support them, and impact of shortages in resources and staffing levels.
- (e) There is a need to also address psychological restraint, often used in behaviour policies, regardless of how a child may feel or what they need for regulation. This would include coercive practices, wider than threats of punishments, exclusions or aversives, such as requirements for compliance for rewards or avoid loss of “privileges”, eg “golden time” or breaks.
- (f) There was a lack of involvement of disabled and neurodivergent people (who were children once) and their representative organisations in any of the underlying working groups, although disabled and neurodivergent children are at much greater risk of restraint and seclusion. All forms of restraint and seclusion should be covered by the Bill: chemical, psychological, physical, technological and mechanical.”

The Officers of Autistic Disabled People’s Organisations also highlighted existing processes for scrutinising breaches of human rights, calling for consideration to be given to strengthening these and to examine “systemic societal” issues contributing to the use of restraint and seclusion:

“It could be worth looking at the roles and effectiveness of existing commissions and human rights organisations to see if there are any examples of good practice for the process of enforcing human rights and law breaches. What is hard to understand is that there have been and continue to be clear instances of illegal child abuse in education through restraint and seclusion, which would not require additional legislation as laws currently exist, but there seems to be a systemic societal issue with inaccessible systems and processes, lack of accountability and transparency, from local authorities up to Ministers and Scottish Government more broadly.

“Perhaps the work being done as part of this consultation should look at how existing processes need to be improved so that human rights breaches in schools that clearly break the law , such as breaches of rights under the Equality Act 2010, are addressed. We know for example that there are laws around Coordinated Support Plans, however even these are not followed in many local authorities. Without this review any Bill risks ending up as another ineffective layer.”  
(Officers of Autistic Disabled People’s Organisations, ID: 227780887)

## **Reasons for opposing the proposed bill**

Nine respondents (6.47%) were opposed to the proposed bill. Key reasons for their opposition are set out below.

### **Concerns of unions representing the teaching profession**

Of the teaching unions that responded to the consultation exercise, the Educational Institute for Scotland (EIS) expressed its full opposition to the proposed bill, advising against the introduction of statutory guidance on the use of restraint and seclusion in Scottish schools. It highlighted the existing legislative and policy framework in Scotland in relation to children’s rights which schools and local authorities must adhere to, including the Children and Young People (Scotland) Act 2014 and ‘Getting It Right For Every Child’ (GIRFEC), and noted that the range of national guidance including relating to restraint and seclusion, were already “underpinned by statutory provisions”. In a detailed response, it highlighted the importance of relationship-building between school staff and parents:

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

families... When distressed behaviour requires intervention, staff should be able to discuss this openly with pupils, parents and partner organisations to review the support provided and plan accordingly. We are concerned that adoption of statutory provisions which will be legalistic in nature could militate against a culture of openness and collegiality, rather engendering a culture of fear and leading to increased anxiety and feelings of isolation in teachers and school staff.” (EIS, Non-Smart Survey response)

The EIS also highlighted the perceived risk that making the guidance statutory could lead to a “culture of fear and anxiety” for teachers and school staff, and further damage morale within the teaching profession:

“Reports from our members suggest that teachers and school staff are already afraid or reluctant to intervene in a situation, for fear of potential legal or disciplinary consequences.... However, failure to act could also leave the teacher or member of staff in a precarious position. Such a culture of fear and anxiety will inevitably lead to defensive practice which will do nothing to deliver meaningful outcomes for children and young people or to foster the positive relationships between teachers, school staff, pupils and their families, central to GIRFEC policy and an Empowered School system...

“Teachers are already reporting reduced morale and increased anxiety, as a result of a feeling that they are failing children and young people and their families; a feeling of their efforts being futile; feeling blamed for repetitive unacceptable behaviour; feeling unsupported; and having ongoing concern for vulnerable children... We cannot, therefore, ignore the potential impact of such negative practice on teachers, school staff and ultimately, the children and young people in our schools.” (EIS, Non-Smart Survey response)

Further, the EIS called into question the introduction of the proposed bill in advance of the publication of the Scottish Government’s “refreshed” non-statutory guidance. Noting that the guidance was developed as a means to promote a “relationship and rights-based approach to physical intervention”, it queried the progression of the proposed bill ahead of the adoption and evaluation of the non-statutory guidance and suggested the focus on legislation distracted from the key issue of resourcing. It continued:

“We understand that the Scottish Government is currently considering the responses to that consultation and has committed through the remit of the Working Group to reviewing the effectiveness of implementation of any new guidance one year from the date of publication as part of the process... We believe the introduction of clear and unambiguous non-statutory guidance will provide the reassurance and certainty which all stakeholders need. We would, therefore, recommend that non-statutory guidance is adopted in the first instance, to allow the relational approach which it proposes and which underpins GIRFEC policy, to be embedded.

“However, it is worth noting that the debate around whether guidance should be statutory or non-statutory in some way removes the focus from the major barrier to implementation of effective practice in this area – that of resourcing. Guidance alone will not deliver the changes needed to realise the policy ambition. The Scottish Government must commit to the allocation of sufficient staffing, time and resources to support the implementation of early intervention measures, to allow for effective multi-agency and parental cooperation, to facilitate professional learning and collaboration and to ensure sufficient time is available for teachers, families and other professionals to build the meaningful relationships, which will be key to successful implementation of this approach.” (EIS, Non-Smart Survey response)

Further to the response of the EIS, the teaching union NASUWT raised concerns that the proposed bill did not “take sufficient cognisance of the nuances in this policy area” or address some of the challenges in this area raised by the Physical Intervention Working Group and in response to the Scottish Government’s physical intervention in schools guidance consultation. It suggested that there had been a “complete abdication of responsibility on the part of the Scottish Government” in relation to the provision of guidance and agreed that clear guidance was urgently required. However, it suggested implementing a statutory duty:

“...would be placing undue pressure on schools, local authorities and teachers. Where there is a lack of clear information, different employers will also interpret the legislation differently. There are clear implications in terms of additional workload and distraction for teachers from their core role of teaching and learning.” (NASUWT, ID: 227689982)

## **Guidance**

Further to the previous concerns expressed about the Scottish Government guidance not yet being published and the proposed bill being progressed in advance of this, several organisations expressed full opposition to the proposed bill on this basis. This included Aberdeen City Council:

“We are committed to supporting learners and getting it right for every child. We await the final publication of Included, Engaged and Involved part 3, guidance on use of restraint and seclusion. This guidance has been developed in partnership and consultation with stakeholders including children, young people, parents, professionals, as well as representatives from groups including Education Scotland, ADES and the Additional Support for Learning Project Board. The guidance has been in development for a number of years and we remain concerned that the proposed Bill may impact on the publication.” (Aberdeen City Council, ID: 225623340)

The Convention of Scottish Local Authorities (COSLA) suggested progressing the proposed bill could “further delay” the publication of the Scottish Government’s guidance and affect its implementation:

“Local Government is committed to supporting every young person to get the best possible outcomes from their education and for staff in schools to have the resources, skills and knowledge to support them. COSLA believes that new draft guidance, which was consulted upon in 2022, should be published so that it can be used in schools. We do not support the call for a Bill, and we have some concerns that the proposed Bill is being promoted as an alternative to the new guidance and will further delay its publication.

“Local Government take the issues of restraint and seclusion very seriously. The COSLA Children and Young People Spokesperson Co-Chairs with the Cabinet Secretary for Education and Skills the Scottish Advisory Group on Relationship and Behaviour in Schools (SAGRABIS) and COSLA and Scottish Government Officers Co-Chair the ASL Project Board, both of these groups include parental representatives, unions, Education Scotland, academics and ADES. A subgroup of SAGRABIS, with a wide group of stakeholders was established to develop new guidance to support improved practice related to restraint and seclusion.

“In places this consultation document appears to suggest that this new guidance is currently in use, this is not so, it is yet to be published.”  
(COSLA, ID: 226092428)

The Scottish Physical Restraint Action Group (SPRAG) also focused on the proposal to make the existing guidance statutory, stating that its members were “not convinced there would be positive gains from amendments to the law in relation to restraint at this time” and warning of the “real risk of unintended negative consequences to legislation banning the use of restraint”. It said that its members advocated for a formal review and update of available guidance and that children’s behaviour which might otherwise be subject to restraint or seclusion should be understood through “a trauma-informed lens”:

“SPRAG recommends that a formal review and update of available guidance in relation to restraint and restrictive practice is undertaken; that any updated guidance is comprised of a suite of resources developed in collaboration with the sector, with children and young people, and with care-experienced adults. The group suggest that the locus should be to support staff to understand children’s behaviour and their related needs through a trauma-informed lens, as opposed to behaviour management approaches, and that a clear statement be made establishing the deliberate use of pain as unacceptable. Residential childcare and the secure care sector have a significant contribution to make to discussions in relation to restraint and restrictive practice, and this should be built upon and used to influence



practice and experiences of all those connected with restraint.”  
(SPRAG, Non-Smart Survey response)

## **Protection of children and staff**

Several respondents highlighted that restraint and seclusion could be used to ensure others in classroom settings are kept safe from harm. This included parent Claire Ward, who was fully opposed to the proposed bill and said in response question 1 of the consultation:

“This bill does not address the concerns of the victims of the violent and out of control kids. Their protection NEEDS to be put above all other views.” (ID: 220726343)

Elkie Kammer, a support for learning teacher with experience working in a primary school autism base, provided a detailed response in setting out full opposition to the proposed bill:

“In the past, before 60% of ASN staff was cut in our area, I was teaching children in the Autism Base, who couldn’t cope with the busy/crowded classroom. My duty of care to all children necessitated regular restraint of pupils who lost control and became a danger to themselves or others. In agreement with their parents, I was holding them safely, quietly repeating “I am in control” until they had calmed down. Over the years each one of these pupils internalized these words and learned self-control, thus becoming much happier in themselves and around others. As an autistic person I know from my own past experience how important it is not to be left hijacked by my strong emotions, but to receive outside help, often in the form of initial restraint. Therefore I believe that denying parents, carers, school staff etc. the right to restrain children means denying the children the help they need.” (ID: 220908337)

An anonymous professional with experience relevant to the topic of the consultation expressed partial opposition to the proposed bill based on personal experience of what they considered to be appropriate use of restraint:

“Sometimes children are a threat to themselves and others. Any restraint I have witnessed has been for the good of the child or other children.” (ID: 227804142)

## **Other points made**

The General Teaching Council for Scotland (the independent regulator of the teaching profession) provided general comments on some aspects of the proposed bill without expressing an overall view. The response highlighted the importance of teachers having access to high quality education and learning in relation to supporting children with additional support needs, suggesting

there was an opportunity to “address systemic issues that exist within the wider child protection context”. Its response continued:

“While this consultation suggests that a national inspectorate would play a necessary role in identifying and recording instances of physical restraint and/or seclusion, it is only one part of a wider system that needs to work cohesively to address this and other child protection and safeguarding issues.

“Related to this, we agree... that the system for reporting issues relating to seclusion and restraint is complex and that parents, carers or guardians require support to navigate it. This applies to other child protection issues as well. We are of the view that by looking at this issue in isolation and creating a specific route for addressing it risks complicating the landscape further.

“While placing guidance on seclusion and restraint on a statutory footing would no doubt give it further weight, in our opinion, using legislation to address single issues also risks complicating the landscape. We would be in favour of introducing overarching and comprehensive statutory guidance, similar to the guidance that is in place in England, that is aimed at keeping children safe in schools and colleges.” (Non-Smart Survey response)

Giving its partial support to the proposed bill, the response from the Care Inspectorate to question 1 did not provide comment on the aims of the bill specifically, instead providing clarification in relation to the content of the consultation document:

“We note that the Care Inspectorate is referred to on p.27 of the consultation in relation to routes for raising an issue relating to seclusion and restraint such as making a complaint to the Care Inspectorate if the incident takes place in a residential school. It would be important to amend this to say ‘in the care/residential element of a residential school...’ as we have no remit under the current legislative framework to investigate incidents that have occurred in the education facility of a school.” (ID: 222000921)

One anonymous individual respondent, a professional with relevant experience, recorded a ‘neutral’ response to question 1. They described the proposed bill as “well-meaning but inadequate.” (ID: 220842705)

One respondent answered that they ‘Did not wish to express a view’ and did not provide a substantive response to this question.

**Question 2: Do you think legislation is required, or are there are other ways in which the proposed Bill’s aims could be**

## **achieved more effectively? Please explain the reasons for your response.**

139 respondents (93.92% of the total) answered this open-ended question.

## **Reasons given in support of the introduction of new legislation**

### **Giving effect to the aims of the proposed bill**

Those in favour of introducing legislation tended to support the aims of the proposed bill overall. A pervading view among those supportive of introducing legislation was that making guidance on the use of restraint and seclusion statutory would be the only way to give effect to the proposed bill's key aim – to reduce the incidence of restraint and seclusion in Scottish schools:

“Enable believes it is clear that legislation is required. In the absence of legislation, non-statutory has proved inadequate in reducing use of restraint and seclusion and injuries to young people with learning disabilities. While the draft new guidance recently consulted on by the Scottish Government is an improvement on existing guidance, Enable does not believe it goes far enough and that previous experience indicates its proposed status as non-statutory guidance will mean it will not be effective.” (Enable, ID: 226142723)

“In order to improve the situation regarding unlawful restraint and seclusion the only way forward is to bring into force statutory guidance and the proposed bill.” (Govan Law Centre, ID: 227765586)

“Legislators MUST commit to reducing and eliminating restraint and seclusion immediately. Not enough is being done to do that. No one is held accountable when things go wrong. We're talking about humans here, and in some cases, these children can not speak, or communicate what's happened to them.” (Anonymous, ID: 227777554)

A selection of respondents were of the view that without making it statutory, guidance could be ignored (Anonymous, ID: 222702297), and that legislation would ensure “compliance” with the guidance (Anonymous, ID: 227186780). This included the following response from an anonymous individual:

“I think legislation is required to protect the child and to make sure that what is now labelled ‘guidance’ and so can be ignored by a school is now mandatory. It would also ensure consistency across all Scottish schools.” (Anonymous, ID: 226993662)

CALM Training – a training and consultancy organisation operating in the school sector in Scotland – spoke to the effectiveness of previous guidance relating to restraint, suggesting that its non-statutory basis had affected its application:

“Mandatory legislation is required. We have a history of producing non-statutory guidance that has not changed practice. ‘Holding Safely’ was published as non statutory guidance in 2005. It was an excellent document but failed to become embedded and to change practice substantially. Producing mandatory practice standards for schools would feed into a more robust inspection regime and drive up standards. Where these standards are not met, support, help and guidance could be offered - again supporting practice development and improving situations for children, young people and staff.” (CALM Training, ID: 225640544)

The Scottish Government’s commitment to introducing updated guidance on the use of restraint and seclusion was also referred to, with the Equality and Human Rights Commission (EHRC) suggesting the proposed bill could aid progress:

“[The] Scottish Government agreed in 2019 to act to address restraint and seclusion in schools but has made limited progress. This Bill could be a way of addressing these issues.” (EHRC, ID: 226143288)

Whether respondents were supportive or opposed to the creation of statutory guidance will be explored more fully in the analysis of question 3 of the consultation exercise.

## **To protect children and uphold their rights**

The potential for statutory guidance to protect children from the perceived harm of the use of restraint and seclusion was given as a reason for supporting the proposed bill (PABSS, Non-Smart Survey Response; Restraint Reduction Network, ID: 227802391; Challenging Behaviour Foundation, ID: 226191801; Kathleen Anne Sanger, ID: 227322638; Viv Williams, ID: 222484991). The use of restraint and seclusion was portrayed by some as a “go to” practice and not as a “last resort”, with the proposed bill framed as a solution to protect from this approach (Anonymous, ID: 227160885).

Among the respondents supportive of introducing legislation, the National Autistic Society Scotland characterised the proposed bill as providing “a legal protection from physical harm as a result of unnecessary restrictive practice in schools.” Its response called for the framing of debate around the use of restraint and seclusion as moving towards avoiding its use rather than encouraging “safe use”:

“Yes, we believe legislation is required to prevent unnecessary use of restrictive practice in schools. There is work underway already in other parts of the UK to explore a legal framework and we urge the Scottish Government to follow... Scottish Government guidance on the use of restraint and seclusion in schools is still not being put into practice; moreover, we are concerned that the guidance is framed to promote the safe use of restrictive practice, as opposed to avoiding restrictive

practice. There is still no requirement for training, or the reporting and recording of instances of restrictive practice.

“It is vitally important that a legal framework exists which places future guidance in-law and establishes lines of responsibility, training standards, and a reporting requirement. It is unacceptable that there is not a legal protection from physical harm as a result of unnecessary restrictive practice in schools.

“As Daniel Johnson MSP has recognised, Scottish Government legislation could be taken forward to realise all of the aims of the Member’s Bill. While we support the Member’s Bill, we could support Scottish Government legislation (or other proposed legislative changes) to address these issues, provided that the Scottish Government looks to engage constructively with the Member, the third-sector, and affected families.” (National Autistic Society Scotland, ID: 225412120)

The alignment of the proposed bill with upholding children and young people’s rights was highlighted, with Enable pointing to current Scottish Government policy and legislation in this area and suggesting the proposed bill fit with this existing landscape:

“Enable welcomes the Scottish Government’s proposal to incorporate the UN Convention on the Rights of Disabled Persons in Scots Law through a Scottish Human Rights Bill, along with incorporation of the UN Convention of the Rights of the Child into Scots Law. Ensuring that seclusion and restraint rules are placed on a statutory footing would be entirely in keeping with the approach of the Scottish Government to Human Rights issues. Enable also believes that there are important human rights issues for young people with learning disabilities in relation to current practice and lack of legal safeguards around restraint and seclusion... Enable believes that legislative reform is required in relation to restraint and seclusion for Scotland to be compliant with important international conventions, and to be consistent with the Scottish Government’s welcome commitment to incorporate these into Scots Law.” (Enable, ID: 226142723)

This view was echoed by the Challenging Behaviour Foundation:

“We believe that unless legislation is introduced, there will continue to be children who have their human rights violated and are injured at school during restraint and/or experience trauma and psychological harm. Legislation which outlines the legal requirements that schools have regarding appropriate use, recording and reporting of restrictive interventions it can make it easier for people to identify where restraint is being used inappropriately, and will support effective safeguarding responses. It is vital that a change in statutory legislation is made as the current use of reasonable force guidance in the UK is currently

non-statutory and although it outlines that schools cannot use force as a punishment.” (Challenging Behaviour Foundation, ID: 226191801)

The broader response submitted by the CYPSCS pointed to the obligation on states conferred by the European Convention on Human Rights to ensure that there is “an appropriate legislative and administrative framework to protect human rights and to ensure that any interference meets the test of being lawful, necessary and proportionate”. It continued:

“Given the seriousness of the potential interference in children’s human rights involved in restraint, seclusion and other restrictive practices, our view is that this obligation can only be fulfilled by a legal framework including statutory guidance.” (Non-Smart Survey response)

Positive & Active Behaviour Support Scotland (PABSS), in strong support of introducing legislation, highlighted the Children (Equal Protection from Assault) (Scotland) Act 2019 which prohibited parents from smacking children, and suggested the proposed bill could provide similar “robust statutory/legislative guidance” in relation to restraint and seclusion (Non-Smart Survey response).

### **Legislating for a culture change**

The potential for legislation to change the culture around the use of restraint and seclusion in Scotland was mentioned (Liz White, parent, ID: 222761689). Restraint Reduction Scotland was among those to suggest this could be a key benefit of progressing the proposed bill:

“The use of restraint and seclusion happens throughout Scottish society as a method of trying to manage the behaviour of some of the most vulnerable children, young people and adults. It is embedded in our culture and in our national psyche. If we are to address this issue as a priority, the work to counter restraint and seclusion must be formalised through legislation and resourced to ensure that it is effective.” (Restraint Reduction Scotland, Non-Smart Survey Response)

A parent responding in an individual capacity called for legislation coupled with enforcement to ensure this perceived change in culture could be achieved:

“Legislation is required but also proper enforcement of that legislation and measures to ensure the huge culture change that is needed. There are already schools proactively moving towards no restraint which are seeing hugely positive changes in behaviour.” (Anonymous parent, ID: 222746475)

Parent Peter Morrison also highlighted the potential for “blame culture” in relation to the use of restraint and seclusion, contending that the proposed bill should not be viewed as punitive. He continued:

“...fears about such consequences are part of the reason some in Education are against [the proposed bill’s] aims and objectives. Sadly, their unfounded fears mean that legislation is the only way to have ANY chance of making the cultural and practical changes that lead to best practice being adopted across Scotland, and lead to the goal of both pupils and staff having better days in School. The status quo is not an option, or the problem this bill seeks to deal with will continue unabated leaving the current AND future generations of Scottish children and school staff to suffer mentally and physically.” (ID: 224203077)

## **Alternatives to legislation**

Various alternatives to legislation were suggested by respondents to the consultation.

This included the joint response from Children in Scotland and Enquire, which concurred that elements of the proposed bill could “improve the experiences and protect the rights of children, families and professionals”. It concluded however that aspects of the proposals could be “effectively dealt with in, or as additions to, other legislation”, specifically mentioning legislation to incorporate the United Nations Convention on the Rights of the Child into Scots Law as a means by which to achieve new redress routes, and the Education (Additional Support for Learning) (Scotland) Act 2004 as a route “for resolving disagreements and raising concerns”. The response continued:

“It may not be necessary, if there was robust guidance, to have an additional/different pathway to pursue complaints when there are existing routes in place. For example, there are already routes available to raise issues around implementation of policy (local authority complaint then The Scottish Public Services Ombudsman), disability discrimination claims (Additional Support Needs Tribunal), level of support (Independent Adjudication/Section 70 complaint) or communication/relationship breakdown (independent mediation).

“Although we understand from our helpline the frustrations of families who feel they would like one clear route of redress, particularly when it concerns such a tricky and emotive issue like restraint and seclusion, we also have concerns that these disputes may not all be suited to one route of redress... If an additional body was tasked with the role, it would need to be clearly connected to other incident and reporting mechanisms and routes to redress that already exist within education and equality legislation so as not to overcomplicate the system for children, families and professionals or require them to raise the same or interconnected issues with multiple bodies at the same time.”  
(Children in Scotland/Enquire, Non-Smart Survey response)

Existing legislation was also highlighted by the Officers of Autistic Disabled People’s Organisations, which called for “legislation that is effective” and greater understanding of why incidences of restraint and seclusion persist:

“What has been done to investigate why the existing Equality Act is failing to properly protect children with protected characteristics? Steps to address restraint and seclusion will continue to fail if we don’t understand why restraint occurs in the first place, including discrimination through cultural and societal factors.” (Officers of Autistic Disabled People’s Organisations, ID: 227780887)

The International Coalition Against Restraint and Seclusion (ICARS) acknowledged that legislative routes were important but raised concerns about the proposed bill’s suggested approach and whether it could effectively achieve its aims. It continued:

“At ICARS, we strongly support the enactment of legislation and the provision of guidance to address the issue of restraint in educational settings.

“Engaging in discussions with international experts is necessary to exchange best practices and address potential challenges in Scotland, where no previous legislative experience in this area exists. Even in countries where legislation addressing this issue already exists, improper restraint and seclusion of children remain ongoing concerns that require vigilant oversight. Effective oversight outlined in legislation can enable positive change. However, it is important for Scotland to avoid enacting laws that may cause confusion, such as placing the sole responsibility of determining restraint use on teaching staff based on their own judgment. This flawed approach has had negative effects on learners, families, and educational professionals in other international jurisdictions, and would ultimately fail educators and worsen outcomes for children and families.” (ICARS, ID: 227761167)

## Opposition to progressing new legislation

### Pre-emption of the publication of Scottish Government guidance

An argument made against the progression of the proposed bill was that it would pre-empt the publication and introduction of the Scottish Government’s guidance on the use of restraint and seclusion, following its consultation on the draft guidance (*Included, Engaged and Involved Part 3*).<sup>5</sup>

This included Aberdeen City Council, which put forward this perspective as to why it did not consider legislation to be required:

“We await the publication of the guidance which we understand is due to be published by the end of 2023, almost three years since the process was initiated. We welcome the publication of the non-statutory guidance and review of impact... only once the effectiveness of the guidance is assessed, should any further measures be considered.

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<sup>5</sup> [Physical intervention in schools: draft guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/draft-guidance-physical-intervention-in-schools/pages/3.aspx)



The guidance needs to be implemented in order that its impact may be established.

“The guidance is the appropriate measure required to ensure that we have a skilled, professional workforce, appropriate recording of information and subsequent quality assurance processes to keep our children, young people and staff members safe, whilst ensuring we are reducing the use of restraint and seclusion in schools, as confirmed and supported by the draft guidance.” (Aberdeen City Council, ID: 225623340)

COSLA reiterated this viewpoint in its response to this consultation question. Its response set out a timeline of engagement that had led to the development of the draft guidance and the Scottish Government’s consultation, including the role of the Physical Intervention Working Group. It continued:

“The COSLA Children and Young People Board considered the proposed Bill and this consultation response at their meeting on 18<sup>th</sup> August 2023. The view of the Board is that we would like the working group to meet to agree a finalised version of the guidance, taking account of consultation submissions received and for the guidance to be published. We do not support the call for the guidance to be statutory. However, we previously accepted there will be a review of the guidance’s effectiveness one year after it is in place. With consideration of going down the statutory route after such review.

“We feel that the guidance is the appropriate vehicle for improving teacher skills, consistent recording of incidents and the means to reduce the use of restraint and seclusion in schools, in line with the drafted guidance.” (COSLA, ID: 226092428)

A similar perspective was put forward by teaching unions NASUWT and the EIS:

“While NASUWT is frustrated with the length of time that this national process has undertaken, given the depth of the inquiry and the breadth of the engagement with this national consultation process it seems premature to move to discussions on statutory levers... The consultation analysis requires to be expedited, not least of which because a number of councils have been looking at local policies, procedures and processes and have placed those developments on hold pending the publication of national guidance. However, statute at this stage would be a blunt tool to provide much needed progress.” (NASUWT, ID: 227689982)

“We believe that the Bill’s aims could be achieved more effectively through the implementation of clear and unambiguous non-statutory guidance which promotes relational approaches in a culture of trust and openness; focuses on prevention and early intervention; on minimising the use of restraint and seclusion and in the adoption of a

rights-based approach, acknowledging the rights of all in the school setting.” (EIS, Non-Smart Survey response)

## **Resources**

For others, improved resources and funding for schools, and support for school staff, was highlighted as a measure to aid the reduction of restraint and seclusion, rather than progressing the proposed bill.

This included the EIS, which argued there had been “years of systemic underfunding in education, particularly in relation to Additional Support for Learning” and called for the “allocation of sufficient resources to address” this to ensure that the proposed bill’s aims could be achieved. It continued:

“The EIS has long called for a long-term resourcing strategy – including action to reduce class sizes and significantly enhance the availability of specialist Additional Support Needs support and expertise within schools – to match the scale of the promise to children and families made within the Education (Additional Support for Learning) (Scotland) Act almost two decades ago. And yet despite the visible impact of the pandemic on children and young people and the crippling impact of poverty on families in the midst of a cost of living crisis, we continue to experience further cuts and witness efforts to evade discourse around the issue of resources.

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

Individual responses also called for increased funding:

“The only way to improve (or rescue) education for all children is by investing in educational provision and reversing the year-on staff cuts we have faced.” (Elkie Kammer, ID: 220908337)

“I do not at present believe legislation is the best way forward. I think the Bill’s aims could potentially be more effectively achieved by providing significantly greater resources to schools when it comes to working with children with additional support needs. The elastic nature of the well-intentioned ‘presumption of mainstreaming’ guidelines has seen too many children enter mainstream education for whom it is unfortunately not the correct environment and there are simply not enough staff (let alone appropriately qualified staff) to address the challenges this creates.” (Moray Tait, ID: 221254793)

## Making guidance statutory

**Question 3: What is your view on the proposal that guidance to schools on seclusion and restraint should be statutory? (Fully supportive / Partially supportive / Neutral (neither support nor oppose) / Partially opposed / Fully opposed / Do not wish to express a view)?**

**Please explain the reasons for your response, including setting out what you consider any statutory guidance should cover and how it should be enforced.**

139 respondents (93.92% of the total) answered this question.

122 of those (87.77%) were supportive, with 116 respondents (83.45%) fully supportive and 6 (4.32%) partially supportive. A total of 10 respondents (7.19%) were opposed, with 2 respondents partially opposed (1.44%) and 8 (5.76%) fully opposed. 4 respondents (2.88%) recorded a 'neutral' response, while 3 (2.16%) did not wish to express a view.

### **Enforceability, accountability, compliance and consistency**

A pervading view in response to this question was that, unless made statutory, guidance is seen to be “only guidance” and need not be followed, with legal obligations required to ensure compliance and enforcement (Peter Morrison, parent, ID: 224203077). For example, Kathleen Anne Sanger, a professional who has supported individuals with learning disabilities and was fully supportive of making the guidance statutory, said:

“We know that non statutory does not protect children with learning disabilities or who are autistic and also fails to protect those who are neurodiverse, everyone deserves to have their human rights upheld, if the bill is statutory we have a better chance of achieving this.” (ID: 227322638)

The Equality and Human Rights Commission set out the background to its arrival at the conclusion that statutory guidance would be of benefit, highlighting its inquiry in relation to comparative guidance for schools in England and Wales and referring to its agreement with the Children and Young People’s Commissioner Scotland (CYPCS):

“The Commission expected that guidance would be developed and published by mid-2020, with a review taking place a year after its introduction to test its effectiveness and to consider whether it should be placed on a statutory footing. This was delayed by the pandemic. Our agreement with CYPCS and the Scottish Government anticipated that this guidance would be non-statutory initially, and that its

effectiveness would be reviewed after a year. If necessary, consideration would be given to moving it on to a statutory footing.

“Since then, we have published our Inquiry.... We have recommended to the UK Government Department for Education that they should introduce sector-wide statutory guidance on the use of restraint in schools in England. The UK Government has confirmed that it will introduce guidance, and that it will commence provision in the Apprenticeships, Skills, Children and Learning Act 2009 to make the recording of physical force mandatory in schools and making it a legal duty to inform parents when it has been used. It will also make it compulsory for all schools to have a restraint policy covering recording. Importantly, our Inquiry found that (non-statutory) guidance in Wales did not have a significant impact on rates of recording and monitoring compared with practice in England, where no such guidance was available.

“We are also aware that CYPCS, who were party to the original agreement, now believe that the Scottish guidance should be made statutory immediately, rather than waiting for a one year review... given the developments above, our Inquiry findings, and (in particular) CYPCS’ evolving position, we continue to recommend the Scottish Government should give consideration to placing the guidance on a statutory footing from the outset.” (EHRC, ID: 226143288)

Together (the Scottish Alliance for Children’s Rights) contended that the continued use of non-statutory guidance had failed to reduce incidence of restraint and seclusion. It highlighted the work of the UN Committee on the Rights of the Child and called for children and young people to be engaged in the shaping scrutiny processes:

“The UN Committee appears to have recognised this reality by specifying that Scotland should develop *statutory* guidance. We believe that placing the guidance on a statutory footing will help to ensure it is adhered to and that children’s rights are accordingly upheld.... As recommended by the 2018 CYPCS investigation, the use of restraint and seclusion should be scrutinised through existing inspection regimes (such as by Education Scotland and the Care Inspectorate). Children and young people should be supported to shape these processes.” (Together, Non-Smart Survey response)

Of those supportive of legislating to make guidance on the use of restraint and seclusion statutory, a key reason given was that this would aid its enforceability, improve compliance, and provide greater accountability. For example, this view was expressed in the comments submitted by the following respondents:

“We are unanimous in our belief that statutory guidance should have proper footing accountable beyond the child and young person to the parents/carers or legal guardians including looked after children and

young people... Transparent accountability matters. Recording of incidents should be incorporated into an effective child or young persons plan, as this will evidence nature and cause and actions and reflective learning to avoid reduce eliminate the practice of restraint and seclusion. It will also provide the opportunity to share knowledge and solutions of what works and doesn't work, as well inform parents, carers, legal guardians. Equally this can bring about an action and process of review and measure what works what improves and evidence progress." (AISee Collaborative, Non-Smart Survey response)

"We believe that placing guidance on a statutory footing must be part of the legal framework. Guidance on a statutory footing would ensure that it is implemented and that clear lines of responsibility are established. It would necessitate robust scrutiny of schools' use of restrictive practice, with appropriate redress available when guidance is not adhered to." (National Autistic Society Scotland, ID: 225412120)

"Restrictive practices are traumatising, used punitively in education to exert control in the classroom leaving children traumatised. Guidance does not have to be upheld... Statutory guidance should provide accountability when restrictive practices have been used in a punitive manner. Statutory guidance should cover the use of restrictive practices." (Anonymous, ID: 226658276)

In its broader response to the consultation, the Children and Young People's Commissioner Scotland suggested statutory guidance would be beneficial to school staff by outlining clear consistent practice:

"The ECHR places a positive obligation on states to ensure that there is an appropriate legislative and administrative framework to protect human rights and to ensure that any interference meets the test of being lawful, necessary and proportionate. Given the seriousness of the potential interference in children's human rights involved in restraint, seclusion and other restrictive practices, our view is that this obligation can only be fulfilled by a legal framework including statutory guidance... Teachers and school staff have no express power in law to restrain a child and can only do so lawfully in discharge of their duty of care (which must itself be exercised consistently with the requirements of the ECHR and UNCRC). The absence of consistent national or local guidance therefore loads all the responsibility for navigating these complex decisions on the shoulders of staff, and places them and children at significant risk." (CYPSC, Non-Smart Survey response)

Characterising the current system as "clearly not fit for purpose" due to variations in practice and reporting, Scottish Autism surmised that:

"Statutory guidance to schools would ensure a robust, consistent message, and create accountability mechanisms where the present

system often leaves both education providers and parents unclear on the lines of accountability, or how to report concerns.” (ID: 225778174)

The need for clarity was also echoed by the following fully supportive individual respondents:

“Schools need the clarity that legislation will give. Legislation will ensure consistency across Scotland. Above all, it will protect the rights of the child and the parent, among other things by ensuring mandatory reporting and will stop restraining measures becoming abusive.” (Anonymous, ID: 226993662)

“This will mean that all schools use the same definitions and that there are fewer grey areas. The issue of what is meant by seclusion is important.” (Alex Murray-Brown, parent, ID: 222466970)

### **Comments on the content of the guidance**

The consultation invited comments on the content of the guidance to be placed on a statutory footing, as detailed in the consultation document.<sup>6</sup> Respondents to the consultation tended to suggest their own recommendations for points for inclusion in the guidance as opposed to commenting directly on the recommendations included in the document.

These recommendations have been set out in broad terms in the following list, in no particular order, with reference to a selection of the respondents which mentioned each recommendation (however these references and the list should not be considered exhaustive):

- A **focus on avoidance of the use of restraint and seclusion**, as opposed to minimising its use or ‘safe’ use (National Autistic Society Scotland, ID: 225412120)
- A requirement to **monitor and scrutinise** the use of restraint and seclusion (Enable, ID: 226142723; Challenging Behaviour Foundation, ID: 226191801; Officers of Autistic Disabled People’s Organisations, ID: 227780887; Salvesen Mindroom Centre, ID: 227167163)
- For **data on the use of restraint and seclusion to be published** (Enable, ID: 226142723; Challenging Behaviour Foundation, ID: 226191801 Officers of Autistic Disabled People’s Organisations, ID: 227780887; Salvesen Mindroom Centre, ID: 227167163)
- For **mandatory training for education staff** supporting children with additional support needs in **alternatives to restrictive practice** (Enable, ID: 226142723)
- Training in **distress presenting as challenging behaviour** (Dr Brodie Paterson, ID: 226858200)
- The requirement to **report all incidents to parents, guardians and carers**, including the timeframe for doing so (Salvesen Mindroom Centre, ID: 227167163)

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<sup>6</sup> <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/daniel-johnson-final-cd.pdf>

- **Training analysis**, identifying who needs trained and in what, and defining “good training” (CALM Training, ID: 225640544)
- Publication of a **national strategy** which includes a **clear deadline for the elimination of the use of restraint and seclusion in education**, with some exceptions (Enable, ID: 226142723)
- That **guidance should be developed in consultation with children and families** (Officers of Autistic Disabled People’s Organisations, ID: 227780887)
- Details of the **assessment process** for any child for whom restraint or seclusion is being considered (Dr Brodie Paterson, ID: 226858200)
- To ensure the “**voice**” of **children and young people with additional support needs** comes through in the guidance (Challenging Behaviour Foundation, ID: 226191801)
- **Positive Behaviour Support**, including skill building and de-escalation techniques (Challenging Behaviour Foundation, ID: 226191801; Salvesen Mindroom Centre, ID: 227167163; parent and educator Mandy Mitchelmore, ID: 226884496)
- **Clear definitions** of all relevant terms used in the guidance (National Autistic Society Scotland, ID: 225412120; Challenging Behaviour Foundation, ID: 226191801; Officers of Autistic Disabled People’s Organisations, ID: 227780887)
- **Safeguarding** including closed cultures and whistleblowing (Challenging Behaviour Foundation, ID: 226191801)
- **Reviewing and learning** from incidents of restraint which include the pupil and their parents, carer or guardian (Challenging Behaviour Foundation, ID: 226191801)
- **Support for staff**, which is reflective and includes supervision (CALM Training, ID: 225640544), and **support plans for children** (Dr Brodie Paterson, ID: 226858200)
- **Rights of redress and a transparent complaints process** (Officers of Autistic Disabled People’s Organisations, ID: 227780887)
- **Individual plans for children** (CALM Training, ID: 225640544)
- For the guidance to be provided in **accessible formats** (National Autistic Society Scotland, ID: 225412120)
- For schools to be required to develop **post-incident reviews** and analyse incidents of restraint (Officers of Autistic Disabled People’s Organisations, ID: 227780887)
- A complete **ban on dangerous restraint methods** such as prone restraint (Officers of Autistic Disabled People’s Organisations, ID: 227780887)

## Issues/opposition

As has been summarised previously in this document, concerns were raised that legislating to make guidance on the use of restraint and seclusion statutory prior to the introduction of the Scottish Government’s draft guidance was premature.

The joint response from Enquire and Children in Scotland made this point while giving its partial support in response to this question, calling for the publication in the interim of the non-statutory guidance. It also queried where the guidance “sits” within the current legislative landscape:

“Our concern with deciding on a statutory route is the potential delay to guidance that was already due to be published. However, we acknowledge this concern could be alleviated if there was some assurance that a non-statutory version of the guidance would be published in the interim... There is also significant legislation that covers this area from different angles (Education (Additional Support for Learning) (Scotland) Act 2004, child protection laws, The Equality Act), so the time this will take needs to be weighed against the benefit it would bring in practice. If the guidance is statutory, there needs to be a decision about where it sits with the (Education (Additional Support for Learning) (Scotland) Act 2004 and associated statutory guidance already in place. If separate, it will have to be clear how the legislation links and speaks to these.” (Enquire/Children in Scotland, Non-Smart Survey response)

In its detailed response, the EIS teaching union suggested statutory guidance was unnecessary as various measures are “already available either under statute or common law” which enable enforcement in relation to the unlawful use of restraint and seclusion:

“Where child protection concerns are raised about an individual in the course of their employment, a range of procedures may apply:

- Child Protection Investigation – a child protection referral can be made to the core agencies. This can result in criminal proceedings being instigated.
- Disciplinary Procedures – in employment, an investigation may be instigated to determine whether alleged conduct falls within the ambit of the disciplinary policy and requires action.
- Referral to a Regulator – once child protection and disciplinary processes have been exhausted, the employer or an interested party can refer the matter to a professional regulator. For teachers, this would be the General Teaching Council for Scotland (‘GTCS’)... Anyone can raise concerns about a teacher’s conduct through the Fitness to Teach process... We believe that the approach adopted by GTCS through the application of this policy ensures balance and proportionality. GTCS is held in high regard, and its work endorsed internationally. The Institute believes that its independence as a professional regulator is key to enhancing teacher professionalism, quality teaching and learning, and public confidence and trust in the profession.
- Disclosure Scotland – Disclosure Scotland holds lists of people who are barred from undertaking regulated work with children and vulnerable adults...”

The EIS also set out the existing mechanisms for review of practice:



“There are various mechanisms which currently provide scope for review:

- Complaints Procedures of relevant agencies
- The Scottish Public Services Ombudsman (‘SPSO’) - If the complaint procedure has been exhausted, a referral can be made to the SPSO. It can consider complaints against Education and Social Work Departments within a local authority.
- Whistleblowing Policies – the law protects workers in public bodies when they make a disclosure in the public interest...

“Given the range of investigation and review procedures highlighted, we would question what additional enforceability measures the proposed new legislation would deliver in practice... Rather than devoting resources to the creation of a new Bill, funding could be allocated to support greater multi-agency co-operation, ensure sufficient time is available to develop relational approaches, and support the implementation of early intervention measures to address needs before they reach the acute stage which would require physical intervention.” (EIS, Non-Smart Survey response)

The NASUWT contended that “statutory interventions are not always a quick fix”, highlighting that existing Co-ordinated Support Plans (CSPs) are statutory documents where, in their view, consistency is lacking. It suggested that the proposed bill should be considered in the context of improving existing measures and the wider education landscape. It continued:

“The Union has previously explained to the Scottish Parliament that it should not be blind to the considerable variation in planning documents used on the ground, and stressed that greater time and effort is needed to build for this consistency with the use of better communication and training before adding further tiers of planning documentation.

“While there has been some acknowledgement that very few CSPs are actually put in place, the Union remains concerned that the drivers for this variability have not been adequately acknowledged or addressed and, therefore, should the proposed Bill be enacted, a similar local variability might be anticipated.

“This proposal for a Restraint and Seclusion (Prevention in Schools) (Scotland) Bill forms one part of a wider body of work which is necessary. In relation to evaluation, NASUWT remains concerned with the continued use of How Good is Our School? (HGIOS 4) as a self-evaluation tool, given that the terms of HGIOS 4 were never discussed and agreed with the profession. Feedback from members is clear that HGIOS 4 creates bureaucracy and excessive and unnecessary workload burdens for staff and schools; it is overdue for review. Equally updated guidance for schools on behaviour is also urgently required...

“Policy is not created in a vacuum and it would be unwise to ignore the shifting sands in the wider landscape of Scottish Education, not least of

which those resulting from the Muir recommendations, the Hayward Review and the National Discussion. We must avoid rushing to implement a statutory process which does not clearly align with the numerous moving parts in the system.” (NASUWT, ID: 227689982)

Both COSLA and Aberdeen City Council reiterated their shared view that the anticipated guidance due to be published by the Scottish Government should be both published and introduced before any steps were taken to make guidance statutory:

“As noted previously we do not support the guidance being statutory. A great deal of time and effort has gone into producing the as yet unpublished guidance, we wish to see it in place and anticipate it will be effective. However, our Members agreed with the former DFM that the impact of the guidance will be tested and if it is not found to be effective the introduction of statutory guidance will be considered.” (COSLA, ID: 226092428)

“We confirm that the guidance that has been developed is sufficient and a statutory measure is not required. The guidance has to be implemented before its effectiveness can be fully assessed. The guidance has been developed in accordance with due process and full consultation. This then gives the opportunity and mechanism to review the effectiveness of the guidance and consider a statutory measure if appropriate.” (Aberdeen City Council, ID: 225623340)

Also setting out their opposition to the proposal to make the guidance statutory, Moray Tait, a former pupil support assistant, pointed to the “often exceptional demands” on staff supporting children with additional support needs and concluded:

“I worry that such guidance may result in staff being deemed to have acted illegally when in fact they have been acting to protect themselves from harm.” (ID: 221254793)

## Recording and reporting of incidents

**Question 4: What is your view on the proposal that incidents should be recorded by schools and reported as standard to a body responsible for monitoring incidents? (Fully supportive / Partially supportive / Neutral (neither support nor oppose) / Partially opposed / Fully opposed / Do not wish to express a view)?**

**Please explain the reasons for your response, including which existing body you consider would be best placed to**

## **perform the monitoring role and how the monitoring role would work in practice.**

139 respondents (93.91% of the total) answered this question. Of those, 127 (91.37%) were fully supportive of the premise of the question, while 7 (5.04%) were partially supportive. No respondents stated that they were partially opposed, while 3 (2.16%) were fully opposed. A single respondent (0.72%) gave a neutral response, while 1 (0.72%) said that they did not wish to express a view.

Key themes emerging in response to this question are detailed below.

### **Monitoring of outcomes and implementation**

It was suggested that recording and monitoring of incidents would aid the effective “monitoring of outcomes”, including the implementation of training and whether the measures set out in the proposed bill had been effective (Anonymous, ID: 223071223). Broad variation in the extent to which schools were reporting and monitoring the use of these practices was highlighted, with the Children and Young People’s Commissioner Scotland suggesting reporting ensured an important “procedural safeguard” (CYPCS, Non-Smart Survey response).

Positive & Active Behaviour Support Scotland, giving its full support to mandatory reporting and informing parents of when restraint or seclusion is used on their children, suggested this was particularly important for children with communication difficulties who are unable to “tell” a parent, guardian or carer what has happened at school. It suggested trust between parents, guardians or carers and schools was vital and that:

“Understanding the ‘why’ behind a child’s behaviour without knowing the full circumstances of their day in school will not do anything to prevent further incidents and parents will not be able to assist school staff going forward.” (PABSS, Non-Smart Survey response)

The Equality and Human Rights Commission summarised in its response the context behind its support for this element of the proposed bill:

“We support the proposal. The reason for recording, analysing and monitoring data is to better understand what is happening at school, education authority and national level, in order to identify opportunities to improve practice and support for children and young people and for staff. A large part of our October 2022 consultation response deals with recording, monitoring and reporting. We said: ‘The first step to providing human rights safeguards, as set out in our human rights framework, is to have transparent recording and monitoring... Recording and monitoring the use of restraint is ... one of the ‘measures to reduce the use of restraint on all children and young people’... The agreement between the Scottish Government, CYPCS

and the Commission placed an obligation on the Scottish Government to ‘develop and introduce a standard dataset to be implemented across Scotland to ensure consistent recording and monitoring of incidents’.

“The Scottish Government should take on the role of collating, analysing and publishing disaggregated data on the use of restraint at the national level, in line with the recommendation of the UN Committee on the Rights of the Child.’

“Monitoring and recording of data on the use of restraint will require careful scrutiny to ensure that information collected locally is consistent and comprehensive.” (EHRC, ID: 226143288)

The Challenging Behaviour Foundation, which was fully supportive in response to this question, set out the position that reporting incidents of the use of restraint and seclusion was important as it:

“Protects children; provides understanding of the prevalence of these practices; reinforces to staff that these practices should not be commonplace, and that there will be scrutiny of them; facilitates reflective practice and learning; identifies training needs; provides transparency; should lead to a reduction in the use of restrictive practices which can be measured... if schools are not recording incidents of restrictive interventions psychological harm that children experience as a result of restrictive interventions, such as school anxiety, and post-traumatic stress, is not identified or support for it provided...

“We recommend that, in addition to recording the incidents of restrictive interventions, circumstances leading up to and following the use of restrictive interventions are also recorded and reported as standard. This information provides valuable context to what potentially triggered an incident, what follow up action needs to be taken, and what could be done differently to avoid such a situation occurring again. At all times, the aim should be to be to provide capable environments that all children and young people thrive in- and where restrictive interventions are not required.” (ID: 226191801)

Although responding that it did not wish to express a view in response to this question, the International Coalition Against Restraint and Seclusion provided detail of areas for consideration in deciding what information should be reported and recorded, including:

“Which incidents need to be recorded; Who will decide and how this decision will be made; The frequency of data compilation and the responsible party; The qualifications of the individuals monitoring the data and making recommendations for improvement; Whether the data will be presented to parliamentary committees and, if so, how often, to influence ongoing improvements to systems, practices, and outcomes; The process for publishing the data... These aspects need to be

clarified to ensure effective implementation and improvement.” (ID: 227761167)

An anonymous psychiatrist suggested improved reporting standards were essential to ensuring that affected young people were properly supported into adulthood:

“We cannot know the extent of a problem without adequate reporting, and knowing about this issues in school and finding ways of managing them safely may reduce the number of people with intellectual disabilities presenting with similar challenging behaviour issues into adulthood.” (An anonymous psychiatrist, ID: 220722277)

### **Data to inform understanding and accountability**

Among those supportive of introducing mandatory recording and reporting of incidents, a common view was that this would aid full understanding of the extent of the use of restraint and seclusion in schools. It was suggested that, without reporting and monitoring, parents were relying on subject access requests to access information in relation to the use of restraint or seclusion on their children (Anonymous, ID: 222705290), and that mandatory reporting would aid in the identification of “patterns” of restrictive practice (Anonymous, ID: 222741208).

Gaps in data collection were identified by Restraint Reduction Scotland as:

“...part of the systemic and cultural challenges faced in Scotland and must be addressed if we are to eliminate the misuse of restraint and seclusion.” (RRS, Non-Smart Survey response).

Scottish Autism and Enable were among the organisations to highlight the impact that standardising recording and reporting of incidents could have in improving accountability:

“Creating a standard approach to recording and reporting incidents will ensure that robust, reliable data can be captured, and will enable decision-makers to understand what needs to be done to address and improve practice in those areas where incidents of restraint and seclusion are seen to occur more frequently. We would suggest that the data should be collected on the basis of individual schools, rather than by local authority areas, as this will ensure individual establishments can receive appropriate attention and support where necessary.” (Scottish Autism, ID: 225778174)

“Without the requirement for adequate data recording and monitoring, any legislation would be deficient. Currently there is no standardised recording of any data in relation to the use and misuse of restraint and seclusion. By placing standards on recording and publication on the face of any Bill would ensure proper transparency and accountability on schools and other public bodies.” (Enable, ID: 226142723)

## **Parity with care settings**

The Care Inspectorate provided a limited response to the consultation, commenting in relation to the care settings of residential schools specifically. Expressing its full support to the premise of the question, it highlighted the “gap” in reporting between non-residential and residential school settings:

“We are aware that the current gap around the reporting of incidents which occur in schools has been a source of concern to the residential schools community. Currently, the care setting of residential schools (and other care settings) are required to report incidents of physical restraint, seclusion, and other restrictive practices to the Care Inspectorate, using our eforms system. The residential school community have been eager to implement a similar process for the education settings of their provision, and requests have been made for us to fulfil that role, however under the current legislative framework we have no remit to monitor incidents that have occurred in the education facility of a school. Once the appropriate monitoring body has been identified, we would be happy to engage with them to share the procedures care settings follow around the reporting of incidents.” (ID: 222000921)

## **Reporting to an existing body: suggestions**

Respondents were asked to suggest which body should receive reports of the use of restraint and seclusion and be tasked with monitoring its use. Most gave support to the premise behind the question rather than suggesting specific bodies. Among the responses which were more specific, local authorities and Education Scotland were the most popular suggestions:

### **Local authorities**

“National Autistic Society Scotland wants every school in Scotland to be legally obliged to report incidents of restrictive practice to parents or guardians and the relevant local authorities. We want local authorities to record reported incidents and the education regulator to carry out a monitoring role. In practice, the monitoring role would necessitate the collation of local authority records relating to reported incidents, with a view to identifying all incidents that are not in line with statutory guidance. Where statutory guidance has not been followed, a regulator and local authority must be obliged to work with the school to implement guidance going forward and provide redress for a family.” (National Autistic Society, ID: 225412120)

“I think councils should perform the monitoring role but would have to significantly increase the number of staff that would be qualified to do this.” (Fiona McLean, a professional with relevant experience to the consultation topic, ID: 225789537)

“The monitoring body can be the local authority who then reports to a central, government authority... The data from the incidents should also be open access, so Parent Council and Parents can see the data... The incidents could then be passed to OFSTED or an other central government entity and could be considered as part of school inspections.” (Victoria Primary School Parents Council Edinburgh, ID: 226415546)

## Education Scotland

“I think the best existing body to monitor these incidents would be Education Scotland as they have some excellent senior education officers who are extremely experienced and knowledgeable about rights in education. In practice, this monitoring role would work by gathering data - both quantitative to monitor the proportionality (i.e. race/disability/gender) and discriminatory practice, and qualitative to monitor reasonableness (elicit accounts from stakeholders including children, parents and practitioners).” (Academic Amy Hanna, ID: 221870595)

“Together recognises Education Scotland’s existing role in inspecting Scotland’s schools but recognises that additional skills and expertise might be needed to properly fulfill this role.” (Together, Non-Smart Survey response)

“Currently Education Scotland appears to have a ‘hands-off’ approach to the everyday goings-on in schools other when they undertake inspections. If they are to undertake the role of a monitoring body they would require to increase resources and have a dedicated team to undertake this work.” (Govan Law Centre Education Unit, ID: 227765586)

“We believe that the monitoring of seclusion and restraint should be a statutory responsibility, and we agree Education Scotland has the potential to have a national role for this in education, although it may also be appropriate for the Mental Welfare Commission to have a monitoring role as it takes on a greater community focus on its remit to protect rights. We further suggest that anonymised data is published to ensure accountability and to monitor progress.” (Enable, ID: 226142723)

## Other suggestions included:

- **The Mental Welfare Commission for Scotland:** “I do not consider any existing body suitable. I would suggest either a new body or an amendment to the role of an existing body such as the Mental Welfare Commission for Scotland.” (Dr Brodie Paterson, ID: 226858200)
- **Any independent body:** “We are concerned if reporting is just to a government body as this is not independent. There is likely to be a

range of organisations who should receive this information in order to carry out their duties, eg Education Scotland, Care Inspectorate, Child and Young Persons Commissioner and Scottish Human Rights Commission.” (The Officers of Autistics People’s Organisations, ID: 227780887)

“There should be an independent monitoring body set up with representation from parent representatives, teachers with experience of ASN and COSLA. The body should be able to demand that more resources and training are put into schools where this is an issue and to see existing risk assessments. The same body should look at assaults upon staff.” (Alex Murray-Brown, ID: 222466970)

- **Children and Young People’s Commissioner for Scotland** (Restraint Reduction Scotland, Non-Smart Survey response; Anonymous, ID: 227632224)
- **NSPCC** (Anonymous, ID: 226993662)

### **View of teaching unions**

The NASUWT, expressing its partial support, acknowledged there were “considerable variations in local practice on recording, monitoring and reporting” but suggested that any statutory requirement to monitor and report should be bolstered by training, communications, support programmes and suitable IT systems. Also raising concerns about workload burdens on teaching staff, it continued:

“The Union would not be in support of creating a further independent body outwith any recommendations made by Professor Muir in the *Putting Learners at the Centre: Towards a Future Vision for Scottish Education* Report, which was provided to Scottish Ministers on the replacement of The Union would not be in support of creating a further independent body outwith any recommendations made by Professor Muir in the *Putting Learners at the Centre: Towards a Future Vision for Scottish Education* Report, which was provided to Scottish Ministers on the replacement of the Scottish Qualifications Authority, or reform of Education Scotland and removal of its inspection function. Any national monitoring on restraint and seclusion should be undertaken by the new body undertaking an inspection function. Local authorities will have their own review mechanisms, in line with their existing statutory duties, and teachers would wish to see the interaction between existing statutory duties and any new duty exemplified through guidance.

“NASUWT does agree, however, that the Scottish Government needs to clearly set out the procedure through which it will maintain an overview of ongoing practice in local authorities and schools. Teachers will need detailed training and exemplification in relation to any national processes. Furthermore, a review period should be built in so that all parties have an opportunity to reflect on the successes or otherwise of implementation,



and amendments can be made accordingly. There must also be an agreed timeframe for any national review.” (ID: 227689982)

The EIS teaching union set out its view that “it is important that incidents should be recorded by schools and that clear non-statutory guidance should inform this process”. Highlighting the Scottish Government’s National Guidance for Child Protection in Scotland 2021 as the existing basis for national guidance for reporting, reflecting and monitoring the use of restraint and seclusion, it raised concerns about resourcing, class sizes and teacher workload:

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

“We are therefore concerned that, in the absence of any detailed information about recording and reporting processes, these may be onerous and only add to existing pressures... The Institute does not support the proposal that anonymised statistical data should be reported to an existing body, such as Education Scotland. Education Scotland, as part of their current scrutiny and inspection roles in schools already consider the impact of restraint and seclusion practice.” (EIS, Non-Smart Survey response)

**Question 5: What is your view of the proposal for parents, carers and guardians to be provided with details of every incident to allow concerns to be escalated wherever necessary? (Fully supportive / Partially supportive / Neutral (neither support nor oppose) / Partially opposed / Fully opposed / Do not wish to express a view)?**

**Please explain the reasons for your response including what information parents, carers and guardians should be entitled to.**

135 (91.22%) of the total number of respondents answered this question.

Of those, 121 (89.63%) were fully supportive, while 7 (5.19%) were partially supportive. A total of 3 respondents (2.22%) were partially opposed, while 1 (0.74%) was fully opposed. A response of ‘neutral’ was given by 2 respondents (1.48%), while 1 did not wish to express a view (0.74%).

## Parents have the right to know

A key reason mentioned by respondents in support of this proposed measure was that parents, guardians and carers have the right to know when restraint or seclusion practices are used on their children (Anonymous, ID: 221767719; Anonymous, ID: 220769406). This view was typified by individual respondent Viv Williams, who said:

“Parents need to be told everything that happens to their child. Keeping parents ignorant to the facts, affects the rights and obligations of parents to exercise their parental responsibility. It takes away that right to make decisions, to keep their child safe. Failing to tell parents what has happened to their child means parents are oblivious to their child’s pain and why they are reluctant to go to school. It means parents can’t challenge why the school is using restraint. In short, it prevents a parent advocating for their child.” (ID: 222484991)

Restraint Reduction Scotland stated that providing parents, guardians and carers with all information relating to the use of restrictive practices was “accepted good practice and a legal requirement”, calling the withholding of such information “unacceptable”. It continued:

“The purpose of information sharing is not to feed a blame culture but rather to ensure that parents and carers are able to make informed decisions about the education and care their child or young person is receiving, and appropriately challenge practices used which they believe are harmful. RRS believes requirement to share information is in line with the UNCRC, good practice, and mirrors the current experience for adults in services registered by the Care Inspectorate.” (Non-Smart Survey response)

The AISEE Collaborative highlighted that “parents and carers play a significant role in disseminating knowledge and understanding of their child or young person and in advocating for them.” It continued:

“This happens best when there is appositive collaborative inclusive partnership between child, young person, parent carers and the professionals working them. However good advocacy can only happen with knowledge education and training. If that knowledge is not there then how would a parent carer know if a child or young person’s rights have been breached.” (AISEE Collaborative, Non-Smart Survey response)

Together (the Scottish Alliance for Children’s Rights) also spoke to the role that parents, guardians and carers play in supporting children access their rights, adding that they could not “access justice” if they are not informed of breaches of their children’s rights. It called for the proposed bill and statutory guidance to:

“...support the provision of child-friendly information in a range of formats to help children understand what they can expect from the adults around them, where they can get help and what they can do if they feel their rights have not been upheld.” (Non-Smart Survey response)

## **Transparency**

The need to ensure transparency to enable partnership working between families and schools, and “collaborative care”, was raised in support of the premise behind this question (Anonymous, ID: 222761689). This included the Challenging Behaviour Foundation, which called for “openness and transparency to pool knowledge and expertise to achieve the best possible outcomes for the child”. Highlighting the UK Government’s commitment to inform parents, carers and guardians when restraint has been used on their children, it continued:

“Being unaware of the use of restraint leads parents to feel powerless when it comes to the safety and autonomy of their child. These risks damaging the relationship between a school and a family, leading to distrust between networks who need to be as communicative and honest as possible for the child to flourish at school, and at home.” (ID: 226191801)

Anne Hair, a health visitor, suggested that honesty and transparency not only promoted trust but ensured support for the “child at [the] centre” of any issue (ID: 226851140). An anonymous respondent echoed this viewpoint, recommending that this process should include a “follow up” with affected children once calm to ensure that their view was valued (ID: 227816166).

CALM Training called for details of any “near miss... where restraint wasn’t applied” to also be recorded, suggesting a “huge amount of learning” could be gained from this (ID: 225640544).

## **Children with communication difficulties**

The specific challenges presented by using restraint or seclusion on children with communication difficulties was a key theme in response to this question. One parent highlighted that non-verbal children unable to tell their parents “if anything happens at school”, adding “we need a policy to ensure parents know what is going on” (Anonymous, ID: 220914953). This viewpoint was shared by the following respondents:

“Enable believes that parents, carers and guardians should be provided with details of every incident to allow concerns to be escalated. This is particularly important for children and young people with learning disabilities who may also have challenges with communication. Currently parents too often have very limited information about incidents of restraint and seclusion which makes it

more difficult to raise concerns through relevant complaint process.” (Enable, ID: 226142723)

“These incidents can profoundly impact upon their child, and affect their life beyond the school gates. Also, many children who are subject to restraint and seclusion have difficulty communicating their experiences, and cannot inform their parents of what has happened during their day. It is essential that incidents are notified to parents on the day that they occur, and they are advised what occurred, which staff members were involved, how long their child was restrained or secluded for, whether any injuries were observed, and what steps were taken afterwards to prevent future escalations.” (Scottish Autism, ID: 225778174)

“It seems incongruous that in a society that thinks it important that parents are informed of every minor incident relating to a physical injury to a child, that information relating to a restraint or seclusion is not similarly reported. This is especially true because we know that the majority of children who are subject to restraint and seclusion have zero or poor language skills and cannot communicate what happened to them to their parents. This means the parent has no way of understanding and / or dealing with the mental consequences that restraint and seclusion can have on a child, particularly if such incidents are repeated (which evidence shows is often the case).” (Peter Morrison, ID: 224203077)

## **Information to be shared**

Respondents were invited to provide comments on the type of information that should be shared with parents following the use of restraint or seclusion on their child. Among those that responded to this aspect of the question, there were calls to provide parents with a full report that provided context before, during and after the incident (Trish Carolan BCBA, ID: 222487088).

The National Autistic Society said it was “crucial” that parents had access to redress, suggesting that proactively informing parents of the use of restrictive practices was essential to this. It continued:

“We believe that parents and guardians should be entitled to detailed information on restraint and/or seclusion of their children, including though not limited to: Location; Date and Time; Job titles of staff present when restraint and/or seclusion occurred; Number of staff present when restraint and/or seclusion occurred; A written statement detailing measures (if any) undertaken to avoid the use of a restrictive practice; A written statement outlining the justifications for the use of restrictive practice (e.g., to avoid immediate risk of harm).” (National Autistic Society, ID: 225412120)

The Challenging Behaviour Foundation also offered suggestions as to the scope of the information schools should, in their view, be recording:

- “Setting events leading up to the display of challenging behaviour that restrictive interventions were used in response to
- What de-escalation techniques were attempted to avoid the challenging behaviour beginning or escalating
- The location and date/time of the restraint (s)
- Type(s) of restraint used
- The duration of each restraint
- The staff member(s) involved in the incident.
- Whether the pupil has SEND and an EHCP
- The ethnicity of the child
- The age of the child
- Whether or not the method of restraint was pre-agreed in the child’s behaviour support plan (if applicable)
- Whether the pupil was injured as a result of the restrictive intervention, if so, what this includes and what follow up actions were taken
- What techniques were used after the restrictive intervention, and how long it took for the pupil to recover
- The outcome of the post incident meeting- including learning and changes made to prevent recurrence.

“As the proposal suggests, this can aid families to escalate concerns where necessary in serious cases e.g., making a complaint to the school, making a safeguarding referral, or contacting the police if this is deemed necessary. It can also make it easier for parents and school staff to discuss any changes that should be made to a pupil’s behaviour support plan or EHCP if early warning signs, triggers for behaviour or patterns of restraint are identified.” (Challenging Behaviour Foundation, ID: 226191801)

Calls were made for a “full detailed report” which included “reflections by staff on how restraint could be avoided if situation arises again”, and the suggestion that parents should be contacted by telephone within 20mins of an incident occurring (Anonymous parent, ID: 222746475).

### **The role of a 'Child’s Plan’**

Partially supportive of the premise behind this question, Aberdeen City Council highlighted the importance of enabling “effective partnership working”, suggesting this was a key aim of sharing and recording information that should also be “agreed and recorded in the Child’s Plan to ensure a shared understanding of strategies and supports and review of their impact.” (ID: 225623340)

The role of the Child’s Plan was also mentioned by organisations opposed to the premise behind the question. Both the EIS and COSLA suggested that reviewing a Child’s Plan was an appropriate existing route for reviewing incidents of restraint or seclusion.

Specifically, the EIS was critical of the question for linking reporting incidents of restraint and seclusion with a complaints process and escalation, calling for the “building a culture of trust, collaboration and mutual respect”. It was supportive of the inclusion within the Scottish Government’s draft guidance of the commitment that the reporting process was focused on reducing the likelihood of distressed behaviour reoccurring, rather than apportioning blame. It continued:

“With the adoption of appropriate prevention and early intervention strategies and the allocation of sufficient resources, it would be hoped that incidents involving the use of restraint and seclusion would be kept to a minimum. Where they arise, we would fully expect that this would necessitate the review of the current interventions and reflection on whether the support in place is appropriate and sufficient to meet need. In these circumstances, we would envisage parents being involved in a meeting to create or review a Child’s plan. As part of the GIRFEC procedure, parents would be involved in the review procedure and aware of the incident, giving rise to the review.” (EIS, Non-Smart Survey response)

Partially opposed, COSLA also expressed the belief that the question was “too narrow” by linking reporting with the escalation of concerns, noting that the “unpublished” Scottish Government guidance also included provision for parents to be informed of all incidents, adding that this should be considered:

“...the starting point for post incident reviews and updating the Child’s Plan with any changes in approach which all involved may agree.” (ID: 226092428).

### **SPSO comments on potential complaints processes**

The Scottish Public Services Ombudsman (SPSO) did not express a specific position in relation to the aims of the proposed bill, providing a response only in relation to complaints handling processes. Its response is included here given its relevance to the element of the question relating to the “escalation” of concerns about the use of restraint and seclusion.

The SPSO highlighted that schools are obliged to “follow the principles for complaints handling approved by the Scottish Parliament and the procedures the SPSO have developed in line with them” and indicated that its powers at present do enable it to investigate complaints pertaining to the use of restraint and seclusion. It set out details of a child-friendly complaints procedure pilot it is undertaking, which it anticipated would be in use by state-funded schools to manage complaints in 2024. It continued:

“We would strongly suggest that, instead of introducing a further system of complaints which would signpost to a government agency (and then would subsequently be brought to SPSO), that consideration is given to improving and making any necessary changes to the current

system to achieve the outcomes sought. Our reasons for doing so are:

1. The SPSO is a parliamentary-supported organisation which requires independence for the complaints system from the government and government agencies.
2. The current system is backed by parliamentary-approved principles and standards which SPSO can issue nationally and on a cross-sector basis.
3. Complaints focused on individual areas of experience can mean that multiple complaints routes need to be used. For example, a child who has experienced restraint may also have other concerns about their relationship with the school.
4. Local authorities already need to comply with and apply a regulated complaints process and there would be an additional burden from having to comply with a separate system for a specific category of complaint.
5. Adding a new complaints route will increase rather than reduce complexity. Which in turn will increase the resolution time for children.
6. As all government agencies are also under our jurisdiction, the proposed system would mean people have to access an additional process before they could bring a complaint to SPSO. It is our experience that complaints involving restraint and seclusion can be the most intractable and difficult. Adding an extra layer before a final resolution can be made is likely to simply delay this further and make it even harder to repair damaged relationships.

“While we caution against introducing added complexity, we are keen to discuss the need for specific legislative change to the existing systems based on the outcome of the consultation and any future bill. Options that could be considered include:

1. ensuring the restrictions in the SPSO Act about what we cannot investigate do not limit our ability to consider issues relating to restraint and seclusion.
2. improving the ability of SPSO to share information with relevant agencies (Education Scotland for example). This would allow for the resolution of individual concerns to remain independent and separate from regulation while still ensuring they are informed of anything they need to consider during an inspection.
3. ensuring all publicly resourced schools are under our jurisdiction.”  
(SPSO, Non-Smart Survey response)

## Other comments

Other comments made in response to this question included the following:

- The International Coalition Against Restrictive Behaviour said it was “vital” to ensure that **clear definitions** were used in reporting, given the various systems used to document restrictive practice. It queried whether a plan was “in place to develop a standardised template to

ensure consistency and accuracy in the information conveyed to parents, as well as the method of communication, across different educational settings? Furthermore, will the Scottish Government take responsibility for establishing definitive protocols and procedures?" (ICARS, ID: 227761167)

- Partially supportive of the premise behind the question, the academic Amy Hanna suggested there would be **some situations in which advising a parent of the use of restraint or seclusion “may not be appropriate**. For example, children with disabilities are more likely to suffer violence at home, including domestic violence and in some cases, passing information about school to a parent/c/g might be harmful by, for example, indicating where they are living.” (ID: 221870595).
- An anonymous respondent noted that reporting and recording restraint and seclusion could serve to help **“identify triggers** and ultimately prevent crisis situations” (ID: 223071223).
- Kirstyn Walker, a lead practitioner in the field of violence reduction within healthcare, **cautioned against sharing the names of staff involved in restraining or secluding a child with parents, carers and guardians**. Calling for greater focus on support for staff to be included in the proposed bill, she said: “This information should be retained by the school, and should a complaint arise, that information is available... Guidance on complaints should not be provided for each incident as this feeds in to the culture that restraint is wrong. Consider a complaints pack as a standard for all aspects of education that is accessible for parents that contains this information.” (ID: 223175682)
- NASUWT gave a response of ‘neutral’ to this question. It called for the **improvement of existing complaints procedures** rather than creating new ones (ID: 227689982).

**Question 6: What is your view of the proposal to require data on restraint and seclusion to be published? (Fully supportive / Partially supportive / Neutral (neither support nor oppose) / Partially opposed / Fully opposed / Do not wish to express a view)?**

**Please explain the reasons for your response including details of what data should be collated, who should be responsible for publishing it and how regularly.**

138 (93.24%) of the total number of respondents answered this question.

Of those, 113 (81.88%) were fully supportive, while 10 (7.25%) were partially supportive. A total of 4 respondents (2.90%) were partially opposed, while 2



(1.45%) were fully opposed. 5 respondents (3.62%) gave a neutral response, and 4 (2.90%) selected that they did not wish to express a view.

Key themes that emerged in response to this question are set out below.

### **Transparency and accountability**

Among those supportive of the publication of data pertaining to restraint and seclusion, a commonly held view was that doing so would aid transparency (Restraint Reduction Network, ID: 227802391; Anonymous, ID: 227806715). The issue of accountability was raised, with the publication of such data said to help improve accountability while upholding the rights of children (Anonymous, ID: 223645646). In the view of individual respondent Laura Docherty, “the public has a right to this data” (ID: 222439540). Publication as aiding transparency and accountability is a theme common to the following responses:

“We thoroughly support data on the use of restraint and seclusion being published to create a culture of transparency in this area.... Following recent media focus on “violence in schools” we feel there needs to be careful consideration of the language used in gathering and publishing this data.” (Enquire/Children in Scotland, Non-Smart Survey response)

“Restraint Reduction Scotland believes that anonymous, detailed data should be published to ensure public understanding and accountability. This could be undertaken on an annual basis by the national body which collates all available local information. Data published must never reveal people’s identity or individual experiences. Members of RRS were at pains to stress that this information should not be used at any time to feed a ‘league table’ of delivery but rather to feed meaningful development of best practice and the elimination of restraint and seclusion in all educational establishments.” (Restraint Reduction Scotland, Non-Smart Survey response)

“PABSS recommends schools must record and report their data which should be made public with an annual report. This transparency will help families to make an informed choice about their child’s learning and care. It would also be an incentive to schools to make sure that they are doing everything in their power to eliminate the inappropriate use of restraint and seclusion. A national organisations like The Care Inspectorate or Education Scotland could have specially trained staff to oversee and monitor this.” (PABSS, Non-Smart Survey response)

### **Comparative data**

Enable was among the organisations to highlight the current lack of any centrally held or published data relating to the use of restraint and seclusion. It suggested that accessing data would mean that “analysis of prevalence and

trends” would not longer be contingent on surveys of parents or Freedom of Information requests. It continued:

“This data needs to be published regularly and consistently to examine progress and to also potential reveal areas of further concern. The data needs to be anonymised and meaningful and allow for monitoring of progress towards reducing the number of incidents of restraint and seclusion. We agree with the recommendations made by the Children and Young People’s Commissioner in 2018 that the Scottish Government should analyse and publish data on the number of incidents as part of its official statistics. We also agree local authorities should ensure that all recording forms at school level include sections for de-escalation techniques considered and attempted, the child’s and parents and carers views, and we support the proposals in the Bill consultation around data collection and publication.” (Enable, ID: 226142723)

Others also pointed to the need to examine trends in the data and the potential benefits of comparative data aiding understanding of the use of restraint and seclusion:

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

“We believe the data should be centrally published to enable a Scotland wide overview whilst... granulating the data into authority by authority area and published every three months to support scrutiny and transparency. We equally believe such data must not simply be raw data, it should include incident descriptions actions and solutions inclusive of reflective learning to disseminate knowledge and improve practice.” (AISee, Non-Smart Survey response)

“Data can show patterns that indicate where more training is necessary or where good practice has made restraint less necessary. It needs to be public because we’re talking about a practice that can risk a child’s life. Society as a whole has to be able to see where and when this is happening. We all have a duty to protect children.” (Jill Rattray, ID: 223377793)

“Comparison of data from area to area helps us find the right questions to ask when looking for solutions. Why does Area A have 50% more

seclusions than Area B? There MIGHT be a good reason, but the data helps us look at why.” (Peter Morrison, ID: 224203077)

## **Content of the data to be published**

Giving its support to the publication of data, the Equality and Human Rights Commission called for the data to be published in a “disaggregated form” to ensure that the protected characteristics of children involved were included:

“We support the proposal. In our October 2022 consultation response, we said: ‘Restraint data from schools should be collated, published and analysed, including by protected characteristic in line with recommendations from the UNCRC... Additionally, the Scottish Government should take on the role of collating, analysing and publishing disaggregated data on the use of restraint at the national level, in line with the recommendation of the UNCRC... It would... be helpful for [schools and education authorities] to understand how the data they collect will be used at the national level – which should be to identify opportunities to improve practice for children and young people and for staff.’

“In May 2023 we responded to the UK Department for Education call for evidence on Use of reasonable force and restrictive practice in schools. We recommended that ‘mandatory recording of the use of restraint (meaning both force and other restrictive practices) should include: the type of restraint, the reason(s) for the use of restraint, where and when the restraint was used, the length of the restraint, the impact on the child, including any injuries, and any risks to their physical or mental wellbeing, the protected characteristics of the child (including age, sex, disability – broken down by impairment type – and race), the outcome of any incident review, including any measures that will be taken to avoid or minimise restraint and the risk of harm in future, the pupil’s involvement in the review, and when the parents were informed.’” (EHRC, ID: 226143288)

Further to the suggestions already considered above, the quotes below demonstrate the range of data that a selection of respondents believed should be included in any publication, and the frequency of publication:

“Our view is that the Scottish Government should publish data on the use of restrictive practice in schools annually. Publication of data would allow for public scrutiny of the effort to reduce, and ultimately eradicate, the use of restrictive practices in schools. It will also allow local and national government to target support, guidance, and resource where it is needed most. We would suggest that data on the numbers of reported incidents is published. Additionally, data on incidents that were deemed unnecessary (and outside of statutory guidance) would be useful, so there is a clear picture of how guidance is being followed – or not. If possible, disaggregated data could help to establish if specific groups are more at risk of restrictive practice.

The Care Inspectorate already had procedures in place for recording incidents of restrictive practice in Early Learning and Childcare settings.” (National Autistic Society, ID: 225412120)

“The name of the council and total number of incidents of restrictive practices that were carried out. A breakdown of the number of restraints for each school within a council. What type of restrictive practices were carried out. It is important that the seclusion and restraint figures are published separately but alongside each other as otherwise this data could be misleading. For example, a school may have very low number of seclusions because they are using restraint instead. A breakdown by protected characteristics including SEND and ethnicity. The ages of pupils that were subject to restrictive interventions.

“In addition, to reinforce and promote a proactive approach we recommend that schools are required to publish data on proactive PBS training their staff receive. This will also enable analysis of the effectiveness of training delivered. Education Scotland should also oversee the reporting and publishing of this data to ensure it fits in with mandatory training requirements, as external scrutiny strengthens the human rights protection for pupils at school in Scotland. This would also align with recommendations from the Equality and Human Rights Commission which states that ‘OFSTED should monitor national and school level restraint data as part of its inspections and use it to develop any new inspection frameworks, to increase transparency and oversight, and support human rights protections for children’ and ‘ESTYN should consider and use relevant available restraint data to identify trends over time, inform priorities and to support school inspection and evaluation’ for England and Wales respectively.” (Challenging Behaviour Foundation, ID: 226191801)

“If the children’s commissioner is responsible for reporting, it would make sense for them to publish. Otherwise it should be published on local authority websites. I’m not sure it should be published on a school by school basis, especially if every incident is reported, because this may be stigmatising for young people attending these schools. I do think publication at some level is needed to secure the culture change needed here to move the dial on treatment of young people with disabilities and other needs.” (Anonymous, ID: 226008331)

“Full disclosure of the information is required in order allow comparison between regions and sharing of best practice. It should be collected as it happens (i.e.. every time an incident is recorded it is immediately forwarded to the monitoring agency. This would ensure that the agency receives contemporaneous information, which would avoid situations where there are allegations that reports were altered after the event. The data could be published once a month. Advances in electronic processing mean that there should be no need for lengthy processing. The only reason to be monthly rather than fully live would be to ensure

that specific incidents cannot be publicly identified.” (Anonymous, ID: 227632224)

### **Potential risks of publishing data**

There was disagreement among respondents, including those supportive of the publication of data, as to whether individual schools should be identified. While some were of the view that naming schools would allow parents to make informed decisions about where to send their children and viewed this as a positive outcome (Anonymous, ID: 220769406), others were concerned that data could potentially lead to parents choosing to send their children to schools which reported fewer incidents (Anonymous, ID: 220842705).

Expressing partial support for the premise behind this question, the NASUWT teaching union highlighted the issues that teachers currently experience in trying to access data concerning assaults and violence in education workplaces. It raised concerns regarding the potential for individuals to be identified:

“Any proposal must navigate the complex statutory landscape and address, head on, the potential for individual staff or students to be identified as one example. It must also be landed within existing reporting requirements under health and safety legislation. Indeed, it is worth noting at this point our disappointment that there was no specific reference or acknowledgement of the need to ensure that measures are in place to ensure the health, safety and wellbeing of staff and pupils within the drafted consultation document.” (NASUWT, ID: 227689982)

Scottish Autism suggested naming schools could risk identifying affected children:

“While we previously stated that the data should be collected on a school-by-school basis by the relevant body, we would strongly suggest that the data is published on a local authority basis, as this would ensure that individual pupils do not risk identification. The data which should be collated should be: number of incidents, number of pupils involved, age of pupils involved (presented as a range), number of incidents which resulted in injury, number of incidents which involve children with an identified additional support need. The data should be published on a ‘school year’ basis, and should be published by the body which is identified to collect the data.” (Scottish Autism ID: 225778174)

Conversely, Victoria Primary School Parents Council Edinburgh called for data to be published at the level of individual classes:

“There should be general data for whole schools but also specific data for individual classes. Which will allow either teachers or Pupil support assistants who are poorly performing to be identified quickly and

removed. The Head Teacher should collate the data to report to the LA who then in turn report the data to an overriding government authority. This offers an opportunity, at every level, for issues to be remedied quickly. E.g. if a school has a large number of incidences in half a term from a specific class or year group the head can act to address this and there should be no 'reprisals' for the head... However if there were a large number of incidences over a year at a given school the LA could then investigate. Parents Councils would also want to see this data, we are accountable only to school parents themselves and can raise concerns with both the school senior management and the local authority. We, as Parents councils, and other 3rd sector bodies involved in schools, would also want to see this information." (Victoria Primary School Parents Council Edinburgh, ID: 226415546)

### **Opposition to the publication of data**

The EIS teaching union was among the respondents to express concern behind the "rationale" of publishing data, warning of a:

"...danger that this could lead to the creation of national league tables of local authority's restraint and seclusion figures or local league tables in relation to individual schools. This could then conversely result in practice which would discourage reporting, as a result of concern about how a local authority or school might be perceived." (EIS, Non-Smart Survey response)

While agreeing that incidents should be recorded and monitored, COSLA also raised concerns about the creation of a league table-effect following the publication of data. Partially opposed to the premise of the question, it highlighted the role of Education Scotland in examining restraint and seclusion practices during school inspections and the publication of these reports, continuing:

"We are unsure of the intended purpose or benefit of nationally collating information on restraint and seclusion and publishing it. Were national reporting to be introduced it would need to be anonymised and avoid identifying individual pupils and school staff, this would be particularly difficult in relation to small and rural schools." (COSLA, ID: 226092428)

The International Coalitions Against Restraint and Seclusion (ICARS) responded that it did not wish to express a view, but agreed that it was "crucial to establish clear parameters regarding the extent of this reporting release and the specific objectives it aims to achieve". It asked:

"How do we define "too much restraint"? Who holds the authority to make decisions in this matter, and what measures will be implemented as a result? Have the processes and procedures outlined in the framework for reporting similar data in other international regions been thoroughly examined? Which specific data schema will you adopt for

the collection of this information? It is crucial to consider carefully the expertise of the individuals you intend to develop this schema for implementation across diverse educational settings in Scotland.” (ID: 227761167)

Other concerns raised by those opposed to the publication of the data included that:

- **Publication could lead to “unwanted behaviour”** such as covering up of incidents (a parent, ID: 222746475)
- Data should be made available via **Freedom of Information requests** to avoid the misuse of the data, such as for “politically partisan purposes” (Elspeth Crawford, ID: 226370956).
- Data “does not tell the story behind it and **can cause confusion**” or send the “wrong message” (Anonymous, ID: 227816166)
- Publishing the data could “**sensationalise the debate** in a way which is unhelpful for individuals who may require to experience restraint or seclusion as part of an appropriate care plan that enables them to have the best quality of life and the best possible access to the community” (An anonymous psychiatrist, ID: 220722277)

**Question 7: What is your view of the proposal to require all teachers and teaching assistants to complete mandatory training on restraint and seclusion? (Fully supportive / Partially supportive / Neutral (neither support nor oppose) / Partially opposed / Fully opposed / Do not wish to express a view)?**

**Please explain the reasons for your response including details of what training should involve and how it could be delivered in practice.**

138 (93.24%) of the total number of respondents answered this question.

Of those, 110 (79.71%) were fully supportive and 11 (7.97%) were partially supportive. Of those opposed, 2 were partially opposed (1.45%) and 10 were fully opposed (7.25%). Five (3.62%) respondents recorded a ‘neutral’ response, while none responded that they did not wish to express a view.

**Should training be mandatory?**

Among those expressing support for the premise behind this question, calls were made for the teachers and school staff most likely to use restraint and seclusion to undergo mandatory training in its use (Laura Docherty, ID: 222439540). This included CALM Training, a Scottish training consultancy which works extensively in the education sector:

“Where there is a foreseeable risk that restraint/seclusion may be required then the provision of appropriate training should be a

mandatory requirement. Our understanding is that this is currently the case under Health & Safety at Work Legislation/regulations. The practice of training one or two or a few people within a school in restraint must stop. Where a child may require this level of support, all key staff in the care/education of that child must receive appropriate training. In some schools this may require to be the whole schools team. An approach to tiered training should be explored - staff in different roles may require different levels/types of training.” (CALM Training, ID: 225640544)

PABSS was of the view that all teachers and teaching assistants should complete mandatory training, suggesting a similar approach to that taken by “The Oliver McGowan Mandatory Training in Learning Disability and Autism in healthcare setting in England” and highlighting the merits of the Communication Passport resource:

“Families could also be encouraged to take part in training to ensure consistency and wellbeing across the country. PABSS also believes in the Communication Passport... this resource is completely free for families to create and use. The passport can then be shared with school staff to ensure the child’s care and wellbeing.” (Non-Smart Survey response)

While some agreed that training should be mandatory for all teachers and teaching assistants (Govan Law Centre, Education Law Unit, ID: 227765586), others raised concerns that mandatory training could lead to unintended consequences, such as an increase in the use of restraint and seclusion (Anonymous, ID: 222705290; Andy Finlay, ID: 226449715). Calls were also made for mandatory training in positive behaviour support:

“We fully support the proposal to require all teachers and teaching assistants to complete mandatory training as standard across schools in Scotland – but with the caveat that it must be part of training that focusses on proactive positive behaviour support. Whilst we appreciate that this point focuses on restraint being used by trained members of staff, we recommend that this guidance is framed around proactive positive behaviour support and understanding challenging behaviour as an unmet need.” (Challenging Behaviour Foundation, ID: 226191801)

“All teacher and teaching assistants do not need to be trained in Restraint and Seclusion as this only leads to them using it as a first approach, it sends out the wrong message and creates a mindset that all our children should be restrained and secluded, there will be a small minority of children who may need restrained in a life saving situation or to protect them or others from serious harm, if these children are identified and this may need to happen then the families and the child(if this is possible) should be all part of that plan. However all teachers and support staff should have training in Positive Behaviour Support to understand the rationale behind the behaviour.” (Kathleen Anne Sanger, ID: 227322638)



## Content of the training

Suggestions for what the training should cover included the following:

- The Officers of Autistic Disabled People’s Organisations called for clarity in relation to the proposed learning outcomes, and for training to cover: what constitutes restraint/seclusion; the rights of pupils under UNCRC and UNCRPD provisions; training in reporting and monitoring data on the use of restraint and seclusion; training in what constitutes a “last resort”; preventative/de-escalation procedures; training in neurodiversity; and reflective practice (ID: 227780887).
- In addition to calling for clarity of definitions and de-escalation, Salvesen Mindroom called for training in the safe use of restraint or seclusion where no alternative is available; the support needs of children after restraint or seclusion has been used; and training refresh requirements (ID: 227167163).
- Scottish Autism called for “training to focus on low-arousal approaches, stress reduction, the specific needs of neurodivergent learners (e.g. the effects of sensory stress on autistic children), trauma-informed practice, and other methods and approaches which are designed to reduce and remove the need to rely upon restraint and seclusion.” (ID: 225778174).
- Enquire/Children in Scotland highlighted the importance of the “format and focus” of the training, with the aim “at its heart” to be the avoidance of using restraint or seclusion in the first place; the principle of “behaviour as communication” and the individual distress signals of each child. (Non-Smart Survey response)

An alternative proposal – for all staff to receive training in alternatives to restraint and seclusion, including de-escalation – was suggested (Trish Carolan BCBA, ID: 222487088). It was further proposed that training should focus on restraint as a method of “last resort... to be used in life threatening situations, or to prevent significant harm” (Viv Williams, ID: 222484991).

Enable was among the respondents to express this view:

“We fully agree that there should be mandatory training in alternatives to restrictive practice for all teachers and teaching assistants working with pupils with additional support needs. This training should include approaches to de-escalating stressful situations which currently can result in use of restraint and seclusion, and wider alternatives to their use... It is vital that all appropriate training is mandatory for all teaching staff working with children and young people with additional support needs, and Enable also supports the proposal in the consultation document that there should be robust national standards for training on the use of physical interventions. Enable also support the recommendations of the Children and Young People’s Commissioner in 2018 that local authorities should ensure that restraint and seclusion

is only carried out by staff members who are trained to do so, and that training should be rights-based and in line with the Council of Europe recommendations set out in Recommendation 2004(10) and with the principles in the Common Core.” (Enable, ID: 226142723)

The potential for training to have the causal effect of reducing incidence of restraint and seclusion was questioned by the EHRC, which highlighted the results of its inquiry into its use in England and Wales. It called instead for national training standards and a human rights-focused approach:

“Our Inquiry found some evidence that ‘training may not always have a positive impact on the use of restraint’. This was based on a report by Positive and Active Behaviour Support Scotland and the Challenging Behaviour Foundation which found that ‘the number of restrictive interventions was higher when staff had received training’. It therefore cannot be automatically assumed that training will always lead to a reduction in the use of restraint and improvements in human rights safeguards when it is used. This underlines the need for national training standards based on a human rights approach. That the draft guidance requires training to be certified to Restraint Reduction Network Training Standards is therefore welcome. Nevertheless, the Scottish Government, education authorities and schools should be aware of this concern. They should monitor training and restraint data and, if any link between training and an increased use of restraint is found, take appropriate action. The scrutiny body should also be alert to this possible issue.” (EHRC, ID: 226143288)

## **Opposition to mandatory training**

Others expressed opposition to the proposal that mandatory restraint and seclusion training should be provided for teachers and teaching assistants.

This included Aberdeen City Council, which highlighted the practical challenge of rolling out mandatory training within the teaching profession:

“The developed draft guidance advises that “where a health and safety risk assessment indicates restraint as a foreseeable possibility, consideration should be given to training an appropriate number of staff”. In our view this approach is measured and appropriate. A *Teaching Profession for the 21st Century: Agreement* reached following recommendations made in the McCrone Report (2001), agrees that Continuing Professional Development is agreed with the individual and often in areas that are identified by themselves. Mandatory training for existing teachers may therefore be problematic to enforce.” (Aberdeen City Council, ID: 225623340)

Concerns were also raised that the introduction of mandatory training would have the detrimental impact of leading to the increased use of restraint and seclusion practices:

“I do not believe that restraint and seclusion should be used by providing training you are basically saying its OK to use it. They should be given more training in understanding behaviour.” (Anonymous, ID: 226878148)

Alternatives to mandatory training were suggested, including by the International Coalition Against Restraint and Seclusion. It called for the prioritisation of “training programs that promote disability-affirming practices, which have been endorsed by the disability and neurodivergent communities most impacted by these practices. Mandatory training should aim to enhance the knowledge of teaching staff regarding disabilities, their potential manifestations in educational environments, and the appropriate approaches for providing support.” (ICARS, ID: 227761167)

ICARS also raised concerns about the involvement of training providers in the use of restraint and seclusion in the development of the Scottish Government draft guidance:

“In order to ensure an impartial process, it is recommended to involve additional stakeholders such as neurodivergent experts and representatives from Disability Led Organisations (DLOs) and Autistic Led Organisations (ALOs) in future meetings, discussions, and decision-making processes.” (ICARS, ID: 227761167)

### **Negative impact on school staff**

The potential negative impact on the school staff compelled to undertake mandatory training was also raised by respondents expressing opposition to this question.

The teaching union NASUWT agreed with the necessity of ensuring that “appropriate” training and resources are provided to schools and local authorities to support the implementation of any guidance or statutory guidance arising from the proposed bill. It continued:

“Whether training should be mandatory, however, is complex. NASUWT has always argued that such training should be voluntary, given many teachers are concerned about the risk of legal/personal injury claims and their own liability. The Union believes that all staff should have a right to training, but we would recommend any national guidance stops short of mandating training...NASUWT would, however, support moves to ensure teachers have recourse to professional support.” (NASUWT, ID: 227689982)

Restraint Reduction Scotland expressed the importance of ensuring that individuals “do not feel personally blamed or judged for their practice”, otherwise:

“...the use of restraint and seclusion may be hidden and barriers to change and development could be significant if teachers and other

school staff were to adopt a psychological armour of defensiveness to the supportive, open and transparent approach that will be necessary to address this issue. Therefore, mandatory, high-quality training, which is person-centred, supportive and skills-based will be essential if we are to deliver on the aims of the proposals.” (Non-Smart Survey response)

Expressing full opposition to the introduction of mandatory training for teachers and assistants on the use of restraint and seclusion, the EIS suggested that many would be “appalled” at this prospect, continuing:

“In such cases, mandatory training may be sufficient to make them question their future in the profession, particularly when there is already a culture of fear and anxiety... This directive approach may also act as a disincentive for new teachers to enter the profession, adding to the recruitment and retention issues with which we are grappling on a global basis.”

The EIS also considered the premise of the question from a gendered perspective, highlighting the potential specific impact on a “predominantly female” workforce:

“What consideration has been given, for example, to the impact of requiring female teachers to restrain male pupils, who may be physically taller and stronger, particularly when we are striving to eliminate genderbased violence in our schools?” (EIS, Non-Smart Survey response)

An anonymous respondent also raised concerns about the potential impact on school staff, suggesting teachers were “afraid” of the implications of such interventions and that mandatory training could make them less likely to intervene:

“I worry about this because the current training on physical restraint techniques requires staff to practice the moves regularly on other members of staff, log details of such practice, and then only use such techniques if any situation develops where physical intervention is necessary. Teachers are afraid that if they have to intervene physically to protect another pupil from an assault etc, they will be the ones whose actions are being put in the spotlight and they will be deemed in the wrong if they have not followed requirements to the letter. The danger that forcing staff to undertake such training and then requirements that will follow from this will make teachers less likely to physically intervene when physical intervention is required - this will not be in the interests of other pupils who may be the ones to suffer if they are being assaulted and staff are hesitant about physically intervening to protect them.” (Anonymous, ID: 220842705)

## Financial Implications

**Question 8: Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law? (A significant increase in costs/ some increase in costs/ no overall change in costs/ some reduction in costs/ a significant reduction in costs)?**

**Please explain the reasons for your response, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.**

118 (79.72%) of the total number of respondents answered this question.

20 (16.95%) expressed the view that the proposed bill would lead to a significant increase in costs, while 52 (44.07%) stated there would be some increase in costs. 23 respondents (19.49%) believed there would be no overall change in costs, 14 (11.86%) stated there would be some reduction in costs, and 9 (7.63%) stated there would be a significant reduction in costs.

### **Increase in costs**

Of the 72 respondents that were of the view that the proposal would result in an increase in costs, varying reasons were given for this by respondents both in favour of and against the overall aims of the proposed bill.

The EIS put forward the view that the proposed bill could lead to a significant increase in costs. It said that adopting early intervention and de-escalation strategies, in line with the Getting It Right For Every Child policy, required a move away from “the significant under-provision of resources”. The response continued:

“The section of the consultation document which considers the financial implications focuses on the potential for increased costs associated with complaints processes and legal action ‘on the basis that information provided to parents or carers [may] include grounds for legal challenges, for example on the basis of assault’. It talks of the impact on resources of the Scottish Court Service and the Crown Office and Procurator Fiscal Service. This is extremely concerning as the tone is overwhelmingly negative and one which will not build trust between teachers and school staff and families. It also fails to appreciate that the fundamental issue in terms of managing distressed and violent behaviour lies not with whether guidance on restraint and seclusion is statutory, but on the systemic underfunding of education”. (EIS, Non-Smart Survey response)

NASUWT highlighted the “presumption of mainstreaming” education policy had impacted financing in the sector, and that cuts to specialist services and support for pupils with additional support needs had been “disproportionately affected” by austerity policies. Describing its members’ view of the “failure of inclusion” policy, it continued:

“The real-terms cuts in spending in the children’s services sector experienced over the past decade must be reversed, with additional resources made available to meet recovery-related priorities. Without investing in appropriate provision, it is to be anticipated that ASN children’s education and mental health and wellbeing will continue to be compromised and, corresponding to that, it could be anticipated that those pupils might experience increased distressed behaviour at school – therefore relating to the frequency of seclusion or restraint required.” (NASUWT, ID: 227689982)

Aberdeen City Council provided comments on the cost implications of the proposal relating to mandatory training:

“There would be a cost to recruit and train trainers and subsequent cost to provide this training. To facilitate the training itself, consideration regarding staff cover, travel and accommodation costs would be required. Ensuring information is shared with any monitoring body established by an Act would also incur some cost. Similarly, if there were changes required to current complaint procedures. Additional costs to education authorities and schools as the result of an Act of the Scottish Parliament would need to be fully funded by the Scottish Government. Further work is therefore required to understand the full financial implications of the Bill”. (Aberdeen City Council, ID: 225623340)

Agreeing that the proposed bill would incur increased costs, Scottish Autism characterised this as being of benefit to families likely to experience restraint and seclusion:

“If mandatory training is to be provided, this will incur some costs. The administrative costs for collection, analysis and publication of data would also require to be factored in. We have heard testimony from our own engagement with families that there are a number of parents who have become ‘economically inactive’ due to the trauma of their child’s experience leading them to become unable to attend school, or being placed on a part-time timetable. Better informed practice, which eliminates the instances of children being subject to these harmful approaches will, over time, potentially increase the number of children included within school, and thus reduce the need for parents to give up work.” (Scottish Autism ID: 225778174)

A shared view among a selection of respondents supportive of the proposed bill was that any increase in costs would be worthwhile in achieving its aims:

“RRS believes there will be some financial impacts on local and national government as there is a requirement to invest in the development of systems and processes which will allow for the successful implementation of the proposals. This would include the provision of training throughout Scotland and the development of data collection and analysis systems. RRS appreciates the challenges that are faced by all public and voluntary organisations currently in terms of finance but believes that these proposals are of importance and will make a significant difference to the quality of lives of some of the most vulnerable children and young people in the country. (Restraint Reduction Scotland, Non-Smart Survey response)

“Whilst there may be a financial impact to local authorities/establishments this doesn’t outweigh the fact that the biggest impact will be a change in attitudes, culture and acceptance that current processes can be questioned. Integrity and trust in the care of our children is first and foremost regardless of what financial impact comes with it. Changing attitudes and providing clear and accurate information need not cost excessive amounts if it is embedded in initial teacher training and built into the existing in-service days.”  
(Anonymous, ID: 227182889)

“Cost effective long term as less children will become traumatised from school. Short term increase in cost to cover the adequate training required. The whole sector needs a massive cash injection and new thinking. Things as they are cannot and will not continue.” (Laura Docherty, ID: 222439540)

The Scottish Courts and Tribunal Service provided a limited response to the consultation and commented only on the financial implications of the proposed bill while not expressing a view on the overall aims. It drew attention to the [consultation document’s](#) reference to the potential for the proposed bill to lead to a higher number of cases referred to the Additional Support Needs (ASN) Tribunal and highlighted the expected associated costs of this:

“The Bill proposal indicates there may be financial implications for the ASN Tribunal due to a potential increase in the number of cases raised. We also note there is the potential for increased criminal prosecutions. Both of these matters may also impact on court/tribunal time and associated business programming.” (Scottish Courts and Tribunals Service, Non-Smart Survey response)

### **No overall change in costs**

Of the 23 respondents that answered ‘no overall change in costs’ to this question, it was suggested that the benefit of the measures implemented as a result of the proposed bill would offset any associated costs (Restraint Reduction Scotland, Non-Smart Survey response; Mandy Mitchelmore, ID: 226884496), with parent Peter Morrison contending that the positive impact

on staff absence rates would help save money that could be diverted elsewhere:

“The reduction in staff absences, and consequent additional payments for temporary staff, is important in saving money. Currently, most councils pay exorbitant fees to organisations for restraint training that was designed NOT for dealing with distressed behaviour in learning disabled children, but for handling adults in secure mental settings and/or prisons. Much of this money could be diverted to the new training which would undoubtedly be cheaper, even if bought commercially, but especially so if it was set up in house and government owned.” (Peter Morrison, ID: 224203077)

An anonymous respondent suggested that the proposed bill, if passed, would result in fewer incidents of restraint and seclusion taking place, but added that this would also be aided by increased funding to support children with additional support needs:

“I do think significantly more funding is needed to support children with ASN in mainstream schools through teacher training and more support staff. This would result in less heightened behaviour and less potential incidents where seclusion may be considered.” (Anonymous, ID: 227187364)

## **Reduction in costs**

Of the 23 respondents who responded that there would be either some or a significant reduction in cost as a result of the proposed bill, Positive & Active Behaviour Support Scotland (PABSS) was of the view that parents, guardians and carers would be enabled to be more economically active due to the measures contained within the proposed bill:

“Family carers tell PABSS that their inability to keep working/loss of their jobs as a result of dealing with trauma experienced by their child, themselves, and their family (including their child’s siblings) has a further financial impact on their own income. If children and their families were spared the trauma in the first instance, parents can continue working/paying their taxes.” (PABSS, Non-Smart Survey response)

Others were of the view that early intervention could lead to a reduction in incidents and associated costs, calling for the long-term impact to be considered (Anonymous, ID: 226836660):

“If the proposals are put in a legal framework, then there is likely to be a financial saving: early intervention with the right training, support for staff and the continuity of training across Scotland would cut down on injuries and trauma to both staff and pupils. If children with learning disabilities receive appropriate early intervention in which they learn pivotal communication, language and motor skills, this can then



decrease the risk for later challenging behaviour and mental health difficulties for children with learning disabilities, which can lead to a reduction in the need to use challenging behaviour.” (Challenging Behaviour Foundation, ID: 226191801)

“When children learn to escape from something they find painful or overwhelming, the behaviour becomes entrenched and hard to break, so it carries on to adulthood thus costing huge amount of resources through their childhood, then we carry that cost onto adult services costing yet more. Early intervention with the right approach and training would save vast amount of money.” (Kathleen Anne Sanger, ID: 227322638)

An anonymous respondent suggested that “not causing our young people distress in the first place is an investment worth making”, before adding that this approach would lead to “considerable future resource savings.” (Anonymous, ID: 227632224)

## Equalities

**Question 9: Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?**

82 respondents (55.41%) answered this question.

The majority of respondents that provided clear answers to this question were of the view that, if enacted, the proposed bill would positively impact people with certain protected characteristics.

Comments which drew parallels between the proposed bill’s aims and upholding human rights, which have been explored previously in this document, are not reiterated here.

Age and disability were frequently referred to, as those most likely to experience restraint and seclusion are children and young people with a disability or additional support needs (Sarah Gilburn, ID: 220766402; Anonymous, ID: 221767719). The view that the proposed bill would positively impact equalities in these areas is illustrated in the below comments:

“I think that this law would have a positive impact on children with disabilities. There would be less inappropriate restraint and seclusion which would have a positive impact on their mental health, overall well being and improved relationships with teaching staff.” (Nicola McIntosh, ID: 222708460)

“Part of what this bill seeks to do is to redress the lack of protection for learning disabled children in school settings. Learning disabled people have much greater protection in adult settings, so the bill redresses inequality in age discrimination giving children rights more akin to their adult peers. Restraint and seclusion in schools overwhelmingly affects learning disabled children in comparison to neurotypical children, so it also redresses inequality in disability discrimination. (Peter Morrison, ID: 224203077)

The National Autistic Society expressed the view that the proposed bill would benefit “everyone who engages with school – including learners, staff, and parents”. It continued:

“It will also have a positive impact on all learners, regardless of their being autistic or neurotypical, disabled or non-disabled. A school where restrictive practice is never used, or is used rarely, is a far happier school and one where everyone can learn effectively. We do not believe that this Member’s Bill will have adverse consequences for any group of people; however, it is important to state again that those involved in the education of pupils with Additional Support Needs (ASN) must be given the tools, guidance, and resources to support those pupils.” (National Autistic Society, ID: 225412120)

The EHRC also highlighted the potential for the proposed bill to improve outcomes for children and young people with protected characteristics by protecting them from “unlawful discrimination” due to disproportionate use of restraint and seclusion, adding:

“The Bill seeks to mitigate and eliminate this risk by improving the recording, analysing and monitoring of data to better understand what is happening at school, education authority and national level, in order to identify opportunities to improve practice and support for children and young people and for staff. This Bill therefore has potential to help schools and education authorities to eliminate unlawful discrimination and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.” (Equalities and Human Rights Commission, Non-Smart Survey response)

In addition to neurodivergence and learning or physical disabilities, the potential for the proposed bill to positively impact those suffering from mental ill health was also highlighted (Mandy Edwards, ID: 224185578; Nicola McIntosh, ID: 222708460). For example, an anonymous parent commented:

“No more trauma - less deaths and injuries of children - better safeguarding, less demand on services for trauma later in life - reduction of suicide rates later in life - enable untraumatised children to grow into well adjusted adults who can contribute to society rather than end up more reliant on services and potential admissions to mental health facilities as adults because of trauma from restraint when younger.” (ID: 226865480)

The protected characteristic of race was also raised by several respondents (Amy Hanna, ID: 221870595; Jill Rattray, ID: 223377793). In response to question 1, the Officers of Autistic Disabled People's Organisations provided more detailed comments in relation to the intersection of race with other protected characteristics, highlighting that children with intersectional identities, such as being from an ethnic minority, were the most likely to experience restraint and seclusion:

“Neurodivergent children (with or without a learning disability or other co-occurring disabilities) are one of the most at risk groups from have their rights breached, including being subjected to restraint and seclusion and approaches that inappropriately focus on neuronormative and the dominant culture behavioural goals, rather than wellbeing. This risk increases for neurodivergent people with intersectionalities, in particular for those who are from racialised groups in the presence of inherent covert and overt racialised bias.” (Officers of Autistic Disabled People's Organisations, ID: 227780887)

The Restraint Reduction Network also highlighted intersecting identities:

“There are significant inequalities in restrictive practices. For example you are more likely to be restrained if you have a disability, are female, are a child or are black. This Bill has the potential to help address some these inequalities.” (ID: 227802391)

Similarly, Restraint Reduction Scotland noted:

“We are also aware of the negative impacts of restraint and seclusion for some people who are from black and minority ethnic communities (mainly in relation to misperceptions about risk/harm and other factors related to institutional racism) and in relation to gender. We believe further work is required to fully understand and address these intersectional issues.” (Non-Smart Survey response)

An anonymous professional, self-described as an intellectual disability psychiatrist, suggested that the proposed bill could have both positive and negative impacts in respect of disability. While agreeing that a reduction in the use of restraint and seclusion on learners with disabilities and neurodevelopmental conditions was to be welcomed, the response continued:

“However, there is a risk of the proposal creating inappropriately high levels of aversion in professionals and service providers to restraint and seclusion when these might be the most appropriate, or indeed only, means of adequately managing an identified risk. This aversion may lead to people with disabilities living a more restricted life and having their access to school (in this particular context) limited or even removed completely, any act and statutory guidance must bear this in mind.” (Anonymous, ID: 220722277)

Both teaching unions responding to the consultation – the EIS and the NASUWT – raised the potential gendered impact of the proposed bill (EIS, Non-Smart Survey response). The NASUWT called for a “gendered lens” to be applied to any resulting guidance and called for the “gender-based violence” element of the use of restraint and seclusion to be considered:

“The consultation takes no account of gender-based violence: there are no links to ongoing work within the Scottish policy context, including the work of the Gender Equality Taskforce in Education & Learning or the Gender Based Violence Working Group. The Union has noted that this issue arises frequently through casework, where female staff are targeted. As teaching remains a predominantly female workforce, a gendered lens needs to be applied to any guidance”. (NASUWT, ID: 227689982)

## Sustainability

**Question 10: Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?**

79 respondents (53.38%) answered this question.

Of those, respondents in support of the aims of the proposed bill tended to provide comments in support of the potential for the proposed bill to positively impact on the areas mentioned in the question.

Given the topic of the consultation, comments tended to focus on the impact of the proposed bill on future generations, as illustrated in the following responses:

“By bolstering the rights of young people who have previously been subject to restraint and seclusion we will also deliver a stronger education system. By having statutory guidance, young people and their parents, guardians and carers can have increased confidence in the ability of education environments to protect and support them effectively. The publication of accurate and timeous data will further enhance the reputation of schools and education professionals as having both the right approach and training to deliver a world leading environment to thrive.” (Enable Scotland, ID: 226142723)

“Autistic children become Autistic adults. Having Autistic adults not traumatised by restraints and instead being taught how to self regulate will be an immensely important and valuable contribution to society. Inclusion and understanding is everything.” (Laura Docherty, ID: 222439540)

“How fair, just and equal a society is can be understood by how it treats its children. I think this proposal could have significant impact on

creating a just society not only for future generations, but for children now.” (Amy Hanna, academic, ID: 221870595)

Together (Scottish Alliance for Children’s Rights) considered in broader terms what is meant by a “healthy environment”, linking this to feeling safe:

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

CALM Training spoke to the potential for the proposed bill to improve the quality of life of teachers and school staff:

“We see this legislation as protecting and promoting the rights of children and young people and their families/carers. Developing effective cultures within schools would also improve the lives of people who work there. A focus on relationships, trauma, its impact and recovery from trauma, wellbeing strategies including mindfulness – all improve the quality of life of people, enhance empathy and compassion – developing compassionate cultures.” (CALM Training, ID: 225640544)

An anonymous respondent highlighted the potential positive economic impact of the proposed bill’s outcomes, suggesting children which are “truly nurtured... will grow to reach their full potential”. They continued:

“This will also benefit the economy and reduce the number of services they require later in life. This will also benefit parents of additional support needs children as they will no longer have to compromise careers and jobs as many do due to their children’s needs not being met in education settings. Time off work due to ongoing issues at your child’s school shouldn’t be the normal but sadly it is for many parents and it can go on for years with some ceasing employment as a result. This is preventable and isn’t acknowledged by the current education system at all. No parent in 2023 should be forced to cease employment or work on reduced hours because their child isn’t being treated with dignity and respect in an education setting.” (Anonymous, ID: 227182889)

An anonymous psychiatrist raised concerns about the potential negative impact of the proposed bill should restraint and seclusion practices be completely eradicated, highlighting what they believed to be instances where its use was justifiable:

“I would hope that the proposed bill could create a more just and healthier society for individuals - particularly those with intellectual disabilities – where they are not subjected to inappropriate treatment and are cared for and supported in a way which allows them to have the best possible quality of life. I would have concerns that were there

to be an excessive focus on the total eradication of any restrictive practices such as restraint and seclusion and an aversion to these being included in care plans for anybody, regardless of risk, might set some people (often those with the most complex needs) up to fail and might have a perverse impact of unjustly limiting their opportunities. (Anonymous, ID: 220722277)

Of the respondents generally opposed to the aims of the proposed bill, no substantive comments were made in relation to this question which have not been covered elsewhere in this analysis of responses.

## General

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

85 (57.43%) respondents provided a direct response to this question. Comments which have been made elsewhere in this analysis have not been replicated here.

Final comments made in response to this question, which are listed in no particular order, included the following:

- The NASUWT emphasised its position that the proposed bill and the rights issues considered therein “are addressed almost exclusively in this proposal through the lens of the child who may be the subject of an intervention”, calling for **greater focus on the “legitimate interests of other rights holders** (i.e. other students and staff”. (NASUWT, ID: 227689982)
- Together (Scottish Alliance for Children’s Rights) said it was hopeful that the proposed bill would “act as a catalyst for further discussion and legislation to **end the inappropriate use of restraint in other settings** – such as justice, residential care and health settings.” (Non-Smart Survey response). This echoed calls made by the Children and Young People’s Commissioner Scotland.
- The Officers for Autistic Disabled People’s organisations highlighted the **importance of the language** used in the proposed bill and any resulting Act. It also called for focus on the “societal barriers, including racial and other discrimination”, and suggested that perceived challenges presented by the “presumption of mainstream” risked putting “the **blame on the child’s disability, rather than inflexible or aversive school systems** and discrimination arising from stereotyping... We know for example that a disproportionate of autistic children end up being excluded and can not cope with mainstream, even when they have relatively few and simple support needs and no intellectual disability, due to a lack of understanding about autism, resourcing issues and sensory environments etc.” (ID: 227780887)

- Moray Tait called for the creation of a “**recognised vocational qualification** compulsory for all support staff working in schools”, which should include – but not be limited to – restraint and seclusion practices, noting that this could have a positive impact on salaries (Moray Tait, ID: 221254793)
- The Restraint Reduction Network emphasised the perceived importance of the proposed bill focusing on practices beyond physical restraint and to include “**other types of restrictive practices**”. It suggested the term “solitary confinement” be used instead of “seclusion”, and for a position to be taken in relation to “mechanical restraint” (Restraint Reduction Network, ID: 227802391)
- COSLA disputed the contention made in the consultation document which set out that the proposal sought “not to produce a **blame culture**... However, with the proposed Bill giving new powers to an unspecified existing Scottish Government body to hold teachers to account, create new complaints processes and new national reporting, it can be read as though that is the aim.” (ID: 226092428)
- The EIS said it would welcome further information about how the statutory provision of the proposed bill “would balance competing rights and the interface with **health and safety legislation**” (EIS, Non-Smart Survey response)
- SPRAG set out its view that the “**definitions proposed in the consultation document do not align with those already in operation elsewhere**, such as residential childcare”, suggesting a lack of alignment could limit the reliability of associated data (Non-Smart Survey response).
- An anonymous respondent called for a “**Pupil Behaviour Risk Assessment**” to be carried out following any incident in which a member of staff is required to physically intervene “to protect a pupil, other pupils or staff” (ID: 220842705).

## Section 4: Member's Commentary

*Daniel Johnson MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.*

First, I would like to thank all those who submitted a response to my consultation, as well as all those who supported me through the consultation process. I was particularly pleased to see strong support for the core principles of the proposed bill – placing the guidance on the use of restraint and seclusion on a statutory footing; a requirement to report, record and monitor the use of restraint and seclusion in Scotland's schools; for this data to be published; and the introduction of standardised training.

Since the launch of the consultation period, my concern about the levels of violence in Scotland's classrooms has increased. What has also been clear is that pupils, parents, guardians, and teaching practitioners are deeply frustrated at Scotland's current approach to the use of restraint and seclusion. Not only was this evident from the number of individual respondents who supported the proposed bill, but also from the number of parents and guardians who responded with emotionally personal accounts of their children's experience, which, at times, I found difficult to read. I was also pleased to see so many organisations engage with the consultation, with the majority responding in favour of the proposed bill overall.

Setting existing Scottish Government guidance on physical intervention in schools on a statutory footing was a key principle in the consultation and I believe it is a step that will help to provide clarity, as the guidance would include provision for the bill's broader aims. This principle was supported by many respondents, who shared views such as the importance of the legislation's role in supporting the guidance's enforceability, improving compliance, and providing greater accountability. Responses from organisations such as the Children and Young Person's Commissioner Scotland provided insight on how statutory guidance could ensure a sector-wide consistent approach to restraint and seclusion. Other organisations highlighted that draft guidance without a legal underpinning is not fit for purpose, and setting this guidance on a statutory footing would be a clear path to improving accountability, compliance and enforcement.

Since the beginning of my work on restraint and seclusion, I have always been clear that the role of recording and reporting needed to be improved and is instrumental to successfully reforming Scotland's approach to physical intervention in schools. Respondents raised concerns about the level of bureaucracy they have faced when trying to access information about their children when physical intervention has been used. We already record and report incidents where children fall and hurt themselves in the playground, and there is no reason why this approach should not be replicated when the use of restraint and seclusion occurs. This point also extends to a parent's right to be informed if and when restraint and seclusion is used on their child.



Standardised guidance and training is a key principle which I believe is intrinsic for the success of this bill. This would provide those who work in an educational setting with reassurance, and the information and appropriate skill set to focus primarily on de-escalation when approaching a situation that might require the use of restraint and seclusion.

I would also like to acknowledge those who expressed opposition and provided criticism to elements of this consultation, including the perceived detrimental impact on teachers and education support staff, or potential unintended consequences such as an increase in the use of restraint and seclusion due to increased training in its safe use. I recognise and respect these views and will consider them further as this proposal progresses.

I also acknowledge that there were responses that wanted this proposed bill to go further - some who advocated for an absolute prohibition of the use of physical intervention. I understand the anger and emotion in this space, particularly from those whose children have suffered serious injury as a result of existing restraint practice. The proposed bill does not advocate for a prohibition on the use of restraint, nor does it seek to forbid all forms of physical contact in educational settings. Indeed, hand holding or picking up a child after they fall and hurt themselves are examples where physical contact is important for caregiving and the nurturing of a child. In some incidents, particularly if the child poses a risk to their own safety or the safety of other children, restraint may have to be used, but this must be with a clear focus on de-escalation and prioritising the safety of the child(ren).

The consultation period has affirmed my view that Scotland's approach to restraint and seclusion in school needs to be reset and reformed. I believe that placing the guidance on its safe usage on a statutory footing would go a long way towards protecting the rights of children and providing clarity for teachers and education staff. My proposed bill presents a clear opportunity to restore the trust of parents, guardians and caregivers and ensure the rights of the child are front and centre of our approach to restraint and seclusion.

Under the Member's Bill procedure, I will now seek support from members across the Parliament in order to earn the right to introduce a bill.