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Our Reference: 202300387209  
Your Reference: statutory framework

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Dear Nick,

Thank you once again for your correspondence regarding a statutory framework for restraint and seclusion and I sincerely apologise for the delay in responding. As previously advised, whilst this correspondence was sent for the attention of a range of Scottish Government Cabinet Secretaries and Ministers, I have been asked to reply to this correspondence on their behalf.

The wellbeing and safety of children and young people is always paramount. It is the Scottish Government's view that the use of restraint and seclusion should always be a last resort, used only in exceptional circumstances when it is the only practicable means of securing the welfare or safety of the child or another person.

Whilst we understand the important points that you have raised throughout your correspondence, we consider that an overarching piece of legislation across all settings is not necessarily the most effective means to achieving the reduction, or eradication, of restraint and/or seclusion, that we would all like to achieve. It is the Scottish Government's view that it would be more appropriate for the outcomes that you have identified, in terms of scaffolding and support for all children and young people who experience restraint and seclusion, to be considered and addressed by each area independently to ensure that any support, training, guidance and reporting meets their needs in those particular settings. We are of the view that an approach developed and underpinned by support for the workforce and championed through leadership, placing culture change and children's rights and protecting their safety at heart, is likely to best serve Scotland's children and young people at this time.

Whilst I appreciate that this may not be the response that you had hoped for, I have provided information outlining ongoing work across the Scottish Government in relation to reducing the need to practice restraint and seclusion in some of the key areas relevant to children and young people which I



hope is helpful.

## **Education**

We have concluded a consultation on draft physical intervention in schools guidance which focusses on the rights of the child. In response to the Children and Young People Commissioner's (CYPCS) December 2018 report, in December 2019 the Scottish Government agreed with the Children and Young People's Commissioner and the Equality and Human Rights Commission to develop new non-statutory guidance as a first step to improve practice in this area. Our draft guidance has been developed carefully, over time, with extensive input from over 30 working group members and partners including the CYPCS, education staff, young people, parents, local government and trade unions.

Our draft guidance makes clear that restraint and seclusion must only ever be used as a last resort to avert an immediate risk of harm. We are carefully considering all feedback received on this sensitive topic and a consultation analysis report is being prepared by education officials for the Cabinet Secretary for Education and Skills' consideration and will be published shortly. Whilst we recognise that there has been a delay to this work, we are working at pace to publish the final guidance as soon as possible following the completion of the consultation analysis.

We recognise there have been calls for further legislation. Alongside the publication of the new guidance, we are exploring options to strengthen the legal framework in this area, including placing the guidance on a statutory basis. The Cabinet Secretary for Education and Skills is engaging with Daniel Johnson MSP regarding his proposals for a member's bill on this important issue and we look forward to considering the feedback from his recent consultation when it is available.

## **Mental Health**

The final report of the Scottish Mental Health Law Review set out significant recommendations for change to the scope and purpose of the law. The report also made recommendations for how rights can be better protected in practice and how we can strengthen scrutiny and regulation of mental health services to ensure compliance with human rights standards.

It recommended changes in the short, medium and long term. Some of these need to happen quickly but, others will take longer due to the level of complexity involved and how long it takes for legislation to be developed or amended.

In our initial response in June 2023, we announced the Mental Health and Capacity Reform Programme. This will look at how we can update and modernise our mental health and capacity legislation to better reflect international human rights standards. Alongside efforts to strengthen the law, the Programme will drive actions to improve the way that human rights are put into practice across mental health services. Since our first response, we have been working to design the Programme. Part of this work will consider specific recommendations to reduce the use of coercive practices, including restraint and seclusion over time within mental health settings. The programme aligns with many existing Scottish Government commitments and cross-cutting policy developments. These will help us to achieve the aims of the review and we will work to ensure a co-ordinated approach to implementation.

The Scottish Government is currently designing and establishing a new programme for reform. We intend to publish an initial delivery plan in early 2024. This will include information about the activities that will be taken forward during the first 18 months (from October 2023 – April 2025) to help to achieve the

programme aims.

## **Residential and Secure Care**

The Scottish Government is committed to Keeping The Promise and to working with key partners in the children's residential childcare sector to ensure that, together, we implement its aspirations. That includes working with partners to further reduce and, where possible, eliminate the use of restraint on children and young people in care.

You identify in your correspondence that incidents of restraint and seclusion in care settings must be recorded and monitored consistently, and the learning from pilot projects given the support of law where necessary to ensure they are embedded in practice.

As you may be aware, there are existing statutory reporting mechanisms in place for reporting incidents of restraint and seclusion in residential and secure care. This involves reporting incidences of restraint or restrictive practice to the regulatory body, the Care Inspectorate, within 48 hours. The Scottish Physical Restraint Action Group (SPRAG) have worked with the Care Inspectorate on improved consistency of reporting of restraint and restrictive practices and this has led to improved national data collection by the Care Inspectorate. The Care Inspectorate have also published a [restrictive practices self-evaluation tool](#) to support practitioners and services to evaluate how well they are doing in reducing restrictive practices and identifying further areas of improvement.

The Scottish Social Services Council (SSSC) also hold the role of the workforce regulator for residential staff and all staff registered are bound by the SSSC codes of practice which set out the standards of practice and behaviour expected of everyone who works in social services in Scotland and the standards expected of employers of social service workers in Scotland.

With regards to the learning that can be taken from pilot projects, we are aware of a range of work already underway within the residential and secure care sector which aims to reduce the need for restraint. In order for us to understand whether existing supports and tools for the residential care workforce remain fit for purpose, we are seeking to work with partners, such as CELCIS and SPRAG, to build-up a national picture of learning from the work that is currently underway. This will help us to better understand developing and innovative local approaches taking place in the sector and identify the key values, principles and enabling environments that have been required to successfully embed trauma-informed care approaches which have reduced, and in some instances eliminated, the need for the use of restraint as the child's needs are identified and supported appropriately from the earliest possible opportunity.

## **Scottish Prison Service**

The Scottish Prison Service (SPS) is committed to the principle of restraint and seclusion being a last resort, utilised when there is a significant risk to the person or others and all alternative strategies have been unsuccessful. For the SPS, the primary legislative framework is the [Prisons and Young Offenders Institutions \(Scotland\) Rules 2011](#), particularly Rule 91, which describes when force can be used against a person in our care. Priority is given towards proactive approaches in which the needs of distressed individuals are identified and met as far as practical, with a view to reducing the need for restraint to take place.

The SPS is currently implementing a new restraint framework, based around embedding a human

rights-based approach into practice, addressing the rights of all involved within an incident. A primary part of this is the pilot study of a new physical intervention curriculum, alongside dedicated Violence and Restraint Reduction Managers and data driven strategies to proactively manage distressed individuals in custody. A pilot was initiated in April 2023, with a decision to widen the scope of the pilot in early 2024. Development of the curriculum has taken account of the views of both operational staff and people in our care.

### **UNCRC Concluding Observations**

The Scottish Government is being pressed to strengthen its approach to children's rights across a wide range of areas, in particular through the Concluding Observations issued by the UN Committee on the Rights of the Child in June 2023. As your letter points out, the Concluding Observations include a range of recommendations about monitoring and restricting the use of restraint and seclusion. These form part of over 190 recommendations that are relevant to Scotland on a wide range of issues ([Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#)).

The Scottish Government is carefully considering which Concluding Observations to prioritise. Resourcing constraints within the public sector mean that it will not be possible to progress all of these simultaneously. We aim to publish our initial response to the UN Committee recommendations within the coming months and are developing our approach to advancing these over the next reporting cycle. In developing our approach, we will engage with children and young people to plan and progress a broader programme of awareness raising. We will ensure that the signatories to your letter are given the opportunity to engage in this work to help us shape advice to Ministers about the relative priority to attach to the various Concluding Observations, including the development of a cross-cutting statutory framework on restraint and seclusion.

I hope this information is helpful.

Yours sincerely

**Stacey-Ann Lindsay**  
**Children's Residential Care Unit**