

PE1548/QQ

Deputy First Minister and Cabinet Secretary for Education and Skills submission of 18 June 2019

Thank you for your e-mail of 20 May, requesting an update in relation to **Petition PE1548: National Guidance on restraint and seclusion in schools** as the Petitions Committee wishes to consider this petition in advance of Parliament's summer recess.

As you are aware this petition was last considered by the Petitions Committee in May 2018. At that meeting I know that the Petitions Committee were keen to understand what measures would be put in place to establish whether the IEI2 guidance is effective.

Engagement with Local Authorities

Following the Petitions Committee meeting in May 2018 the Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS), chaired by myself, met in June 2018, where it was agreed that officials would engage with all local authorities to discuss their current physical intervention and seclusion policy and whether there were any barriers to the implementation of guidance contained within Included Engaged and Involved Part 2 - 2017 (IEI2).

This engagement implemented my commitment given to the Petitions Committee in April 2017 that if implementation of IEI2 was found to be insufficient further action would be taken.

In November 2018 officials wrote to all Heads of Education requesting to engage with them about their current physical intervention policies with a view to considering whether there were any barriers to implementation of IEI2, with a focus on prevention and de-escalation, in order to identify if any support was required.

As you are aware the Children and Young People's Commissioner published his report 'No Safe Place' on 14 December 2018. The report made 22 recommendations, of which 9 were directed to Scottish Government. I wrote to the Commissioner on 1 February providing an initial response to the report (Annex A) and its recommendations with a view to providing a final response following the engagement sessions with all local authorities. I wrote to the Commissioner on 17 June providing my final response (Annex B).

I have also considered the petitioners most recent submission to the Petitions Committee in the context of this response as the petitioner has highlighted the Commissioner's report and aligns her position to that of the Commissioner in requesting a stronger response from Scottish Government. The actions that I will set out in this letter respond and address the issues raised by the petitioner as well as the Commissioner.

During the period January 2019 to May 2019, Education Scotland and Scottish Government officials held engagement sessions with all 32 local authorities. This process was intended to collate information on the policies and practice in place, the training programmes being used, the staff members who have been trained and the systems in place to manage the programmes. The engagement was also used to get a deeper understanding of the factors within each authority which were relevant to their policy's development and establish, where necessary, appropriate next steps that would be required. The engagement sessions with education authorities were framed around specific questions, which were used consistently in each discussion.

Recommended Actions and next steps following Local Authority engagement

Officials analysed the responses from authorities and produced a qualitative report (Annex C) which contains recommended actions and next steps. The recommended actions and next steps have been agreed by COSLA, ADES and SAGRABIS. For ease I have provided a summary of the recommended actions below.

Recommended actions

Policy Guidance - Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2. Scottish Government will provide more clarity on the definition of seclusion and further guidance on its use in practice.

Policy Context - Authorities should continue to review and update their policies based on the advice within IEI2 and 'Developing a positive whole school ethos and culture: relationships, learning and behaviour 2018' which is the policy guidance in response to the Behaviour in Scottish Schools research (BiSSR 2017.)

Policy Context - Authorities should continue to review and update their policies on physical intervention and seclusion and take account of their own individual context. Parents, carers, children and young people should be involved in the development and consultation of the policy. The rights of all individuals involved in the physical intervention and seclusion incident should be taken into account.

Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2.

Physical Intervention and Seclusion Policy - Further consideration should be given to developing a system within authorities that enables a streamlined method of recording violence and aggression incidents and instances where physical intervention and seclusion have taken place.

Physical Intervention and Seclusion Policy - All authorities should consider including a clear timescale within which to inform parents that an incident has taken place

Reporting - Debriefing systems should be clearly outlined within the authority's policy. Records should be maintained that this process has taken place and the views of children, young people and their parents should be recorded.

Monitoring - Authorities should consider developing a clear formal system for monitoring incidents involving physical intervention and seclusion as part of their overall policy.

Training - Consideration should be given to rolling out de-escalation training to all front line staff in schools. Education authorities should develop and maintain robust records of staff trained in physical intervention and seclusion.

Separate National Guidance

It was clear from the engagement sessions with all authorities that there should not be separate national guidance on physical intervention. All authorities reported that national guidance on physical intervention and seclusion should be located within the wider context of promoting positive relationships and behaviour and preventing the escalation of challenging behaviour. Almost all authorities indicated that they would welcome a refresh of the current guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2.

Recording and Monitoring

Almost all authorities indicated that national data collection on the number of incidents of physical intervention and seclusion would bring significant challenges. Authorities were clear that data on physical intervention should not be analysed in isolation at a national level. They were clear it should be considered within the context of approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school.

Data collection at a local level informs, is part of and promotes, effective planning, organisation, control, monitoring and reviewing of any incidents of physical intervention and seclusion. The local context, professional judgment, and other relevant information should be considered alongside data collected. Authorities acknowledged that there were improvements needed in relation to recording and monitoring incidents but that where they were collated at a local level, local authorities and schools are able to identify trends or themes emerging and address issues and make improvements to support the wellbeing of all children and young people.

There is a risk that any stand-alone guidance would increase the risk of inappropriate or unsafe use of physical intervention and restraint because it is not embedded within overarching policy/practice based on relationships and Nurture - both of which prevent and minimise the use of physical intervention and seclusion. Schools and local authorities should therefore analyse their data to look for improvements in practice which have a direct impact on such a reduction.

It is also acknowledged that any approaches to monitoring and recording should also take into consideration children and young people rights. Children's rights are now embedded in Scottish legislation with the Children and Young People (Scotland) Act 2014 which introduced a duty on Scottish Ministers to 'keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements'. This will be given due consideration when developing this action balancing the rights and needs of other pupils; education authorities' responsibilities to their staff to ensure their safety and welfare; and the rights, roles and responsibilities of parents and carers in relation to their children and young people whilst they are learning in school

Next steps

A short life working group will be set up to take forward the actions identified in the report and shown above. The key focus of the group will be to strengthen the guidance contained within IEI2, consider the need for a minimum dataset which local authorities will collect against when recording incidents of physical intervention and seclusion. In order to identify trends or where improvements could be made at a school / local level a streamlined and uniformed approach to monitoring and recording is required. The group will therefore also explore how local authorities can get a consistent and uniform approach to recording and monitoring incidents of physical intervention and seclusion. The approach should aim to minimise the amount of additional workload for local authority and school staff.

It is clear from the engagement with local authorities that there are very clear examples of good practice being implemented across Scotland. My officials will therefore be holding a sharing good practice event in October 2019 to showcase these examples.

We anticipate that the strengthened guidance within IEI2 will be published by Spring 2020 and to support implementation of the guidance implementation events will take place in February/March 2020.

The short life working group will come together 12 months after the implementation of the strengthened guidance to review the impact that the revised guidance has had on local authority guidance and practice. They will report directly to me.

I trust that this reassures the Committee of my commitment to this issue and I remain very happy to engage with the Committee on this issue in future.

Deputy First Minister and Cabinet Secretary for
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Bruce Adamson
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01 February 2019

Dear Mr Adamson

Thank you for your email of 14 December, informing the Scottish Government of the publication of the report *'No Safe Place: Restraint and Seclusion in Scotland's Schools'*.

The use of physical intervention and seclusion of children and young people within schools is a matter which is of significant interest to the Scottish Government and of great concern to me.

I would like to assure you that the Scottish Government is committed to ensuring the safety and wellbeing of Scotland's children and young people. Each local authority is responsible for the care, safety and welfare of pupils in school. I am absolutely clear that the use of physical intervention and seclusion should only ever be used as a last resort. It should only be considered in the best interests of ensuring the safety of the child, as part of a de-escalation approach and never for disciplinary purposes.

The national guidance, *'Included Engaged and Involved Part 2: a positive approach to preventing and managing school exclusions'* reflects this position clearly. The guidance sets the use of exclusion from school within the context of approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school. The aim of this guidance is to prevent the need for exclusion, ensuring all children and young people are able to benefit from education to reach their full potential. This national preventative approach and the associated national guidance has been developed in partnership with the Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS). SAGRABIS includes representation from all of the main teachers unions, local authorities

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and other key stakeholders and the group is jointly chaired by COSLA and myself. My response to the report's recommendations is provided within this context.

I have also asked my officials to undertake a range of engagement with education authorities to explore further the approach to physical intervention and seclusion in light of the *'Included, Engaged and Involved Part 2'* guidance. I intend to make use of the information gathered from this process in ensuring the Scottish Government's response to the Commissioner's report is as robust as possible. This is reflected in my response to the specific recommendations below.

I welcome the opportunity to consider the recommendations of your report and to provide a response from the Scottish Government. Whilst I do not believe this response should be viewed under the requirements set out in section 11(2)(A) and 11(2)(B), since the Scottish Government would not be considered a service provider, I have responded as requested given the significance of the issue. I note that the report makes 22 recommendations. My response will focus on the 9 recommendations which are aimed at the Scottish Government. I understand that Education Scotland is also providing a response to one further recommendation.

I recognise that recommendation 2 seeks to establish national guidance on restraint and seclusion and to place this within a rights-based national policy. I believe that the current guidance provided by *'Included, Engaged and Involved Part 2'* absolutely seeks to protect children and young people's rights, including their right to education, by placing the use of physical intervention, seclusion and exclusion as measures of last resort, viewed in the wider context of early intervention, de-escalation approaches and developing positive relationships and behaviour within our schools. The aim is to reduce the need to use any form of physical intervention or seclusion. Our extensive engagement with stakeholders supported this approach. However, we will consider this question further in the light of officials' engagement with education authorities to ensure that the guidance is embedded in local authority policy and practice.

I note that whilst recommendation 3 is directed towards local authorities, it is suggested that anonymised statistical data should be forwarded by them to the Scottish Government's Children and Families Directorate. I would suggest that, should this recommendation be accepted by local authorities, any such information would be provided to the Education Analytical Services Directorate, in line with our arrangements for the collection of national statistical data.

I understand the reasoning behind recommendation 4. Scottish Government officials will work closely with analytical services colleagues and key stakeholders to carefully consider recommendation 4 further. It is important that we ensure that information of this type is used to inform and continually improve policy and practice.

Recommendation 7 seeks to set national policy and guidance within the human rights framework with specific reference to relevant articles of European, Children's, Disabled Person's Rights conventions, and other international human rights instruments. *'Included, Engaged and Involved Part 2'* currently recognises the rights of all children and young people and specifically references the UNCRC in relation to the use of physical intervention. However, I recognise that there may be opportunity to strengthen further this part of the

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guidance and will pursue this with the Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS) and wider stakeholders.

Recommendation 8 seeks to build upon recommendation 7 using case studies and examples of practice in national policy and guidance. As I indicated above, I accept there may well be opportunity to strengthen further this element of the guidance and this specific point will form part of my discussions with the Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS) and wider stakeholders on strengthening the current guidance.

Recommendation 9 seeks that the definition of physical intervention and seclusion are clarified further within national guidance. As with recommendations 7 and 8, I will consider this recommendation with the Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS) and wider stakeholders to ensure that the guidance contained within *'Included, Engaged and Involved Part 2'* is sufficiently clear. In light of those discussions, we will amend and strengthen the definitions within the guidance as necessary.

Recommendation 10 seeks to draw upon recommendations 7, 8 and 9 and suggests that national policy guidance should draw upon those proposed approaches to further guide staff in the appropriate and lawful use of physical intervention and seclusion, using examples to clarify the position further. This recommendation will be progressed in light of the further considerations outlined above, to ensure that the guidance contained within *'Included, Engaged and Involved Part 2'* is as robust as possible. We will update the guidance as necessary.

Recommendation 11 seeks to ensure that the use of seclusion is appropriate. *'Included Engaged and Involved Part 2'* currently sets out the circumstances where physical intervention and seclusion may be used, and specifies that: the separation of a pupil must be in a safe place that does not cause any additional stress to the pupil; and that seclusion must be part of an agreed plan. Where seclusion is used, the guidance indicates that it: must be in a place that is safe; is managed under supervision; takes into account any additional support needs of the pupil; and is time-limited. The guidance also sets out that appropriate support and training should be provided by education authorities, including follow-up action. I will also consider this recommendation with the Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS) and wider stakeholders to ensure that the guidance contained within *'Included, Engaged and Involved Part 2'* provides sufficient clarity on this issue. In light of those discussions, and where necessary, we will amend the guidance.

Recommendation 13 indicates that the Scottish Government and local authorities should ensure that policies make clear that physical intervention and seclusion are measures of last resort. As indicated above, this position is explicit within *'Included, Engaged and Involved Part 2'*, alongside the expectation that seclusion is used to ensure the safety of a child or young person, or others. The national policy also focusses towards approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school.

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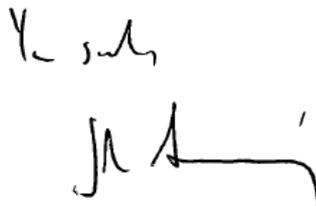
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However, the key issue is ensuring that the position set out in national policy and guidance is reflected consistently and accurately in local practice. To that end, and as described earlier, the Scottish Government and Education Scotland officials, in collaboration with COSLA and ADES, are currently engaging with all 32 local authorities on this issue. These engagement sessions are focused on prevention and de-escalation and aim to establish if there are any barriers to implementing the guidance published in *'Included, Engaged and Involved Part 2'*, in order to identify if any further support is required to assist implementation. These engagement sessions will allow thorough consideration of the role of guidance within the context of a number of the report's recommendations, but recommendation 13 in particular. This work is already underway and a qualitative report will be produced in spring 2019. I would be happy to share those findings with you in due course.

Once I have had the opportunity to consider these matters alongside key partners, as set out above, I will of course respond to you in more detail on the planned approach.

I trust that this information reassures you of my commitment to addressing concerns about this issue, and to working with partners to ensure that the use of physical intervention and seclusion is only ever used as a last resort.


JOHN SWINNEY

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Deputy First Minister and Cabinet Secretary for
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17 June 2019

Dear Mr Adamson,

Thank you for your letter of 8 March, about your investigation report "No Safe Place: Restraint and Seclusion in Scotland's Schools". I previously wrote to you on 1st February and advised that I would provide more detail on our planned approach and next steps following my officials engagement with all 32 local authorities about their physical intervention and seclusion policies.

To that end, I will now provide you with a summary of the work undertaken, recommended actions, next steps and consequently, a final response to the 9 recommendations made in your report to Scottish Government. The recommended actions and next steps have been agreed by COSLA, ADES and the Scottish Advisory Group on Relationships and Behaviour. I have provided a copy of the full report for your information at Annex A.

Engagement with authorities

During the period January 2019 to May 2019, Education Scotland and Scottish Government officials held engagement sessions with a range of professionals from all 32 local authorities. The discussions with authorities were based on their current physical intervention and seclusion policy and whether there were any barriers to the implementation of guidance contained within '*Included Engaged and Involved Part 2: a positive approach to preventing and managing school exclusions*'. (IEI2)

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The engagement sessions were used to collate information on the policies and practice in place in relation to physical intervention and seclusion, the training programmes being used, the staff members who have been trained and the systems in place to manage the programmes. The engagement was also used to get a deeper understanding of the factors within each authority which were relevant to their policy's development and establish, where necessary, consider and develop appropriate next steps. The engagement with education authorities were framed around specific questions, which were used consistently in each discussion.

I think it is pertinent to highlight here that my officials noted from the discussions with authorities that almost all had considered their own policies and practice following the publication of your report.

Recommended actions

Policy Guidance - Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2. Scottish Government will provide more clarity on the definition of seclusion and further guidance on its use in practice.

Policy Context - Authorities should continue to review and update their policies based on the advice within IEI2 and 'Developing a positive whole school ethos and culture: relationships, learning and behaviour 2018' which is the policy guidance in response to the Behaviour in Scottish Schools research (BiSSR 2017.)

Policy Context - Authorities should continue to review and update their policies on physical intervention and seclusion and take account of their own individual context. Parents, carers, children and young people should be involved in the development and consultation of the policy. The rights of all individuals involved in the physical intervention and seclusion incident should be taken into account.

Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2.

Physical Intervention and Seclusion Policy - Further consideration should be given to developing a system within authorities that enables a streamlined method of recording violence and aggression incidents and instances where physical intervention and seclusion have taken place.

Physical Intervention and Seclusion Policy - All authorities should consider including a clear timescale within which to inform parents that an incident has taken place

Reporting - Debriefing systems should be clearly outlined within the authority's policy. Records should be maintained that this process has taken place and the views of children, young people and their parents should be recorded.

Monitoring - Authorities should consider developing a clear formal system for monitoring incidents involving physical intervention and seclusion as part of their overall policy.

Training - Consideration should be given to rolling out de-escalation training to all front line staff in schools. Education authorities should develop and maintain robust records of staff trained in physical intervention and seclusion.

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Next steps

A short life working group will be set up to take forward the actions identified in our report and shown above. The key focus of the group will be to strengthen the guidance contained within IEI2, consider the need for a minimum dataset which local authorities will collect against when recording incidents of physical intervention and seclusion.

In order to identify trends or where improvements could be made at a school / local level a streamlined and uniformed approach to monitoring and recording is required. The group will therefore also explore how local authorities can get a consistent and uniform approach to recording and monitoring incidents of physical intervention and seclusion. The approach should aim to minimise the amount of additional workload for local authority and school staff.

It is clear from the engagement with local authorities that there are very clear examples of good practice being implemented across Scotland. My officials will therefore be holding a sharing good practice event in October 2019 to showcase these examples. It is essential that the confidence of practitioners in the appropriate use of physical intervention and seclusion, as a considered last resort, is maintained and further enhanced. We must be careful to ensure that our actions to challenge inappropriate use of physical intervention and seclusion should not undermine the confidence of practitioners who are using physical intervention in line with the law, appropriate practice and considered assessment.

We anticipate that the strengthened guidance within IEI2 will be published by Spring 2020 and to support implementation of the guidance implementation events will take place in February/March 2020.

The short life working group will come together 12 months after the implementation of the strengthened guidance to review the impact that the revised guidance has had on local authority guidance and practice. They will report directly to me.

I will now provide a final response on the 9 recommendations from your report which are aimed at the Scottish Government.

No Safe Place recommendations

I have indicated above my belief that we must continue to support the use of appropriate physical intervention and seclusion by our practitioners in line with law, national and local guidance. The title of your report 'No Safe Place' implies that the use of physical restraint and seclusion renders schools unsafe. I do not accept that implication. Our national policy on the use of physical intervention and seclusion indicates that their use should be a measure of last resort, in the context of approaches which support positive relationships and behaviour, and de-escalation. Further, the guidance sets this within the duty of care owed to all children and young people attending school in respect of the health, safety, wellbeing and welfare of the children and young people in their care.

Turning to the recommendations of your report. Recommendation 2 seeks to establish national guidance on restraint and seclusion and to place this within a rights-based national policy. The current guidance provided by IEI2 absolutely seeks to protect children and young people's rights, including their right to education, by placing the use of physical intervention, seclusion and exclusion as measures of last resort, viewed in the wider context of early intervention, de-escalation approaches and developing positive relationships and behaviour within our schools. The aim is to reduce the need to use any form of physical

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intervention or seclusion, whilst recognising that in some rare instances, these approaches may be needed to secure the safety of other pupils and staff.. Our recent engagement with all 32 local authorities continues to support this approach, however, almost all authorities indicated that they would welcome a refresh of the current guidance on physical intervention and seclusion within the wider context of IEI2. A refresh of the guidance within IEI2 will be undertaken to strengthen the guidance on physical intervention and seclusion within the wider context of IEI2.

Recommendation 4 requests that anonymised statistical data should be reported to the Scottish Government and Scottish Government should analyse and publish this data as part of its official statistics. It is my view, informed by the engagement with education authorities that statistical data should not be analysed in isolation at a national level. It should be considered within the context of approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school. By recording and monitoring incidents at a local level, local authorities and schools will be able to identify trends or themes emerging and where improvement can be made to support the wellbeing of all children and young people. This position is supported by all authorities.

Authorities acknowledged that there were improvements needed in relation to recording and monitoring incidents but that where they were collated at a local level, local authorities and schools are able to identify trends or themes emerging and address issues and make improvements to support the wellbeing of all children and young people. It is important that we ensure that data collection of this type is used to inform and continually improve policy and practice and therefore we will not be collecting or reporting on statistical data at a national level. We will, however, be working with authorities to consider developing a streamlined and formal method of recording violence and aggression incidents and instances where physical intervention and seclusion have taken place.

It is also acknowledged that any approaches to monitoring and recording should also take into consideration children and young people rights. Children's rights are now embedded in Scottish legislation with the Children and Young People (Scotland) Act 2014 which introduced a duty on Scottish Ministers to 'keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements'. This will be given due consideration when developing this action balancing the rights and needs of other pupils; education authorities' responsibilities to their staff to ensure their safety and welfare; and the rights, roles and responsibilities of parents and carers in relation to their children and young people whilst they are learning in school

Recommendation 7 seeks to set national policy and guidance within the human rights framework with specific reference to relevant articles of European, Children's, Disabled Person's Rights conventions, and other international human rights instruments. IEI2 currently recognises the rights of all children and young people and specifically references the UNCRC in relation to the use of physical intervention. However, there is an opportunity to strengthen further this part of the guidance and this is an action that will be taken forward by the short life working group who will be refreshing and strengthening the current guidance in IEI2. It may be helpful for your officials to contribute to this element of the planned approach.

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Recommendation 8 seeks to build upon recommendation 7 using case studies and examples of practice in national policy and guidance. As indicated above, I accept there is an opportunity to strengthen further this element of the guidance and this is an action that the short life working group will take forward.

Recommendation 9 seeks that the definition of physical intervention and seclusion are clarified further within national guidance. It was clear from my officials engagement with authorities that there is a need for more clarity on the definition of physical intervention and seclusion and further guidance on its use in practice within IEI2. This is one of the actions being taken forward work the short life working group will take forward.

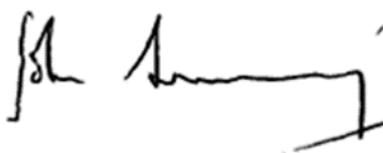
Recommendation 10 seeks to draw upon recommendations 7, 8 and 9 and suggests that national policy guidance should draw upon those proposed approaches to further guide staff in the appropriate and lawful use of physical intervention and seclusion, using examples to clarify the position further. This recommendation will be progressed alongside recommendations 7, 8 and 9 to ensure that the guidance contained within IEI2 is as robust as possible.

Recommendation 11 seeks to ensure that the use of seclusion is appropriate. As I have said above it was clear from my officials engagement with authorities that there is a need for more clarity on the definition and use of seclusion. Again this will come under the work the short life working group will take forward to amend and strengthen IEI2. We will ensure that the guidance contained within IEI2 provides sufficient clarity on this issue.

Recommendation 13 indicates that the Scottish Government and local authorities should ensure that policies make clear that physical intervention and seclusion are measures of last resort. As indicated in my previous response, this position is explicit within IEI2. The national policy also focusses towards approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school.

As advised our next step will be to pull together a short life working group to review, refresh and develop strengthened guidance on physical intervention and seclusion based on the actions as set out above. I would like to invite you or a member of your team to join the short life working group to work in partnership with key stakeholders to deliver against the actions set out. If you are able to take up this invitation please contact melanie.lowe@gov.scot who is leading on this piece of work.

I trust that my response reassures you of my commitment to addressing concerns about this issue, and to working in collaboration with partners to ensure that the use of physical intervention and seclusion is only ever used, appropriately, as a last resort.



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**Report of the engagement with education authorities
on the use of physical intervention and seclusion in schools**

May 2019

Background

A petition for the introduction of separate national policy on physical intervention and seclusion has been considered by the Education and Skills Committee since 2015.

Following discussion at a meeting of SAGRABiS in June 2018, chaired by Deputy First Minister, it was agreed that officials would engage with all local authorities to discuss their current physical intervention and seclusion policy and whether there were any barriers to the implementation of guidance contained within Included Engaged and Involved Part 2 - 2017 (IEI2).

This engagement implemented the Deputy First Minister's commitment given to the Petitions Committee in April 2017 that if implementation of IEI2 was found to be insufficient further action would be taken.

The petition in conjunction with sustained media interest and the Children and Young People's Commissioner Scotland announcing that his first investigation was going to be on 'physical restraint and seclusion' led Scottish Government to take action to ensure the guidance contained within IEI2 was being implemented across local authorities.

This process was intended to collate information on the policies and practice in place, the training programmes being used, the staff members who have been trained and the systems in place to manage the programmes. The engagement was also used to get a deeper understanding of the factors within each authority which were relevant to their policy's development and establish, where necessary, appropriate next steps that would be required.

It was acknowledged throughout this process that this area is very complex and emotive for all individuals involved. Due consideration was given to the fact that there are a number of factors that must be weighed against each other. These include: the rights and needs of other pupils; education authorities' responsibilities to their staff to ensure their safety and welfare (both as a result of experiencing the behaviours which may lead to the use of physical intervention and also as a result of their use of physical intervention); and the rights, roles and responsibilities of parents and carers in relation to their children and young people whilst they are learning in school.

Context

All education authorities have a duty of care to all children and young people attending school in respect of the health, safety, wellbeing and welfare of the children and young people in their care. The use of physical intervention and seclusion should only ever be used as a last resort. It should only be considered in the best interests of ensuring the safety of the child, as part of a de-escalation approach and never for disciplinary purposes. The rights of all children and young people must be a key consideration where physical intervention is being considered.

It is recognised that there are times when children and young people will exhibit challenging and distressed behaviour. Staff's knowledge and detailed assessment of a child or young person should be used to predict and plan for the type of situation

which may cause that child or young person severe stress or frustration that can lead to challenging and distressed behaviour. Staff should recognise that all behaviour is communication and endeavour to identify, where possible, the triggers that may lead to a child or young person acting in a challenging and distressed way.

National guidance IEI2 reflects this position clearly. The guidance sets the use of exclusion from school within the context of approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school.

Risk and health and safety assessment processes should also be applied to situations where unpredictable, challenging and distressed behaviour can arise. There is a framework of rights provided through the articles of the UNCRC and UNCRPD. The legislation and Scottish Government guidance shown below should be given cognisance when managing distressed and challenging behaviour.

- **The Health & Safety at Work Act 1974** requires “every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees” and “the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees”.
- **The Management of Health & Safety at Work Regulations 1999** requires employers to make a suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work.
- **The Education (Scotland) Act 1980** recognises that there may be occasions when staff may have to use “such force as is reasonable” to prevent a pupil causing injury to themselves or others. Despite using preventative strategies, it is recognised that in certain situations pupils may continue to exhibit distressed or challenging behaviour to a degree where restrictive physical intervention becomes necessary as a last resort to prevent a pupil injuring themselves or others. These provisions apply not only to school premises but to any other place where a teacher has responsibility for a pupil concerned e.g. a field trip, or other approved out of school excursion. There is no legal definition of “reasonable force”. It will always depend on the circumstances of the case.
- **The Standards in Scotland’s Schools etc. (Scotland) Act 2000 Act** states that teachers or other people working in a school may not use corporal punishment on pupils. Section 16 states that actions taken to prevent immediate danger of injury to self or others is not corporal punishment.
- **Included, Engaged and Involved, Part 2: A Positive Approach to Preventing and Managing School Exclusions (2017)** states that “it is only acceptable to physically intervene where the member of staff reasonably believes that if they do not physically intervene, the child or young person’s actions are likely to cause physical damage or harm to that pupil or to another person”.

Taken together the documents above ensure that employers must assess risks to employees and make arrangements for their health and safety by effective planning, organisation, control, monitoring and review.

This includes protecting employees from the risk of violence and ensuring staff understand their responsibilities in terms of planning to meet needs and the use of inclusive practice, de-escalation and physical intervention.

Process

Scottish Government wrote to all local authority Directors on 29 November 2018 and asked them to nominate inclusion officers who would be in a position to discuss physical intervention and seclusion policy and practices within their authority.

During the period January 2019 to May 2019, Education Scotland and Scottish Government officials held engagement sessions with a range of professionals from all 32 local authorities. The discussions were based on the questions outlined below. The following paper provides an analysis of the responses, highlighting particular areas of consistency and strength and areas for further discussion and potential development.

The discussions all took place following the publication of the Children's Commissioner's report 'No Safe Place' 2018. Officials noted from the discussions with authorities that almost all had considered their own policies and practice following the publication of the Commissioners report.

Policy Guidance

Current policy guidance on physical intervention and seclusion is contained within IEI2. The policy provides advice on promoting positive relationships and behaviour in schools and places physical intervention and seclusion within a context of preventing and managing challenging behaviour in order to avoid exclusion from school. IEI2 advises that:

'Education authorities, in consultation with staff and key delivery partners including unions should develop their own policy on de-escalation and physical intervention within the wider context of positive relationship and behaviour approaches based on their own individual needs and context.'

Seclusion

IEI2 advises that:

'seclusion of a child or young person within a separate space is also a form of physical intervention and should also only be used as a last resort to ensure the safety of a child or young person, or others. Any separation of a child or young person must be in a place that is safe and that does not cause any additional distress to the child or young person. The use of this form of physical intervention should be included in an agreed plan for the individual. Where seclusion is used:

- *it must be in a place that is safe;*

- *it should be managed under supervision;*
- *it should take into account the additional support needs of the child or young person;*
- and;*
- *it should be time limited.'*

It was clear from discussions with education authority officers that there is confusion about the definition of seclusion. Most authority policies do not currently specify what seclusion is or provide advice and guidance on its use. Most authorities are now considering reviewing or are in the process of updating their policy to include further detail on seclusion.

Action Point

Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2. Scottish Government will provide more clarity on the definition of seclusion and further guidance on its use in practice.

The responses below are based on information collated about physical intervention as most authorities did not provide advice and guidance on seclusion. Where information on seclusion was available this has been included.

Policy Context

Does the EA have a policy in place to provide advice and guidance on developing positive relationships and behaviour (based on IEI 2 2017)? When was the policy created/updated?

Almost all local authorities have a policy in place as advised within IEI2 (2017). Where the policy was created prior to 2017, authorities are in the process of reviewing and updating their policy in collaboration with key partners.

Action point

Authorities should continue to review and update their policies based on the advice within IEI2 and 'Developing a positive whole school ethos and culture: relationships, learning and behaviour 2018' which is the policy guidance in response to the Behaviour in Scottish Schools research (BiSSR 2017.)

Does the EA have a policy on physical intervention and seclusion as advised in IEI part 2 2017? Date the policy was created/updated? Are there clear links to the relationships and behaviour policy where it outlines importance of a positive ethos and culture and preventative approaches? Does the policy reference duty of care/children's rights?

Almost all authorities have a policy on physical intervention and seclusion. Almost all authorities are reviewing or have reviewed their current policy following the publication of 'No Safe Place'. Of those that have been reviewed, all policies are linked to positive relationships and behaviour and the importance of a positive ethos and culture. They also all reference children's rights and duty of care. A few authorities have confirmed

that their policies are in the process of being updated. Almost all authorities indicated that they would welcome a refresh of the current guidance on physical intervention and seclusion within the wider context of IEI2.

Action points

Authorities should continue to review and update their policies on physical intervention and seclusion and take account of their own individual context. Parents, carers, children and young people should be involved in the development and consultation of the policy. The rights of all individuals involved in the physical intervention and seclusion incident should be taken into account.

Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of IEI2.

Physical Intervention and Seclusion Policy

Is the policy clear about the circumstances in which physical intervention and/or seclusion may be used?

Almost all policies are clear about the circumstances in which physical intervention may be used.

Is the policy clear about the circumstances in which physical intervention and/or seclusion may not be used?

Almost all policies are clear about when physical intervention should not be used and some policies make it clear that it should not be used as a punishment.

Does the policy specify the training requirements which should be met prior to a staff member using physical intervention?

There are a number of different training programmes used across Scotland. Almost all policies outlined the specific training requirements which should be met prior to a staff member using physical intervention.

Does the policy make clear the arrangements for recording and monitoring and review of use of physical intervention and seclusion?

Most authority policies outline clear arrangements for the recording, monitoring and review of incidents involving physical intervention. This is an area that almost all authority officers would welcome further advice and guidance. All authorities have a clear system in place for recording and reporting incidents involving violence and aggression through the Health and Safety executive. In some cases this is the only system used for recording instances of physical intervention.

Some authorities recognise that this is not an accurate system for recording instances of physical intervention as it is up to the individual involved in the incident to assess if they have been involved in a violent and aggressive incident and report it accordingly.

Some authorities have clear recording and monitoring systems in place only in their special schools as they understand that it is most likely to be where instances may take place where they are part of a child or young person's support plan.

A number of the training providers offer a recording and monitoring system as part of their package of support. Where this is the case authorities have clear systems in place.

In some cases there are two recording systems, the Health and Safety process and a separate physical intervention record. A few authorities have developed a new electronic recording system that allows for one report to be made that contains information for the health and safety system and for officers monitoring the use of physical intervention and seclusion. In these areas this should enable more robust monitoring.

Action point

Further consideration should be given to developing a system within authorities that enables a streamlined method of recording violence and aggression incidents and instances where physical intervention and seclusion have taken place.

Does the policy make clear the need to inform parents and carers of the use of physical intervention and seclusion and the circumstances for this?

All current policies in place clearly state the need to inform parents and carers following an incident involving physical intervention. Some have a clear timescale set within their current policies for informing the family which is usually the same day. Where authorities are reviewing their policy they indicated that they will include a clear timescale within which to inform parents that an incident has taken place.

Action point

All authorities should consider including a clear timescale within which to inform parents that an incident has taken place

Recording

How do schools/ELCs record instances of physical intervention/use of seclusion?

Most authorities confirmed that their schools and early learning centres do record instances of physical intervention. A few have a clear recording process for seclusion also.

Does the EA have records of the number of times physical intervention and seclusion has been used since June 2017?

Some authorities have central records of the number of times physical intervention has been used. These records are used to record and monitor incidents of physical intervention. The systems used to record differ from authority to authority. A few have records at school level that can be drawn on if required. These are used at a school level to record and monitor incidents.

Does this indicate a reduction/increase in the number of incidents since the previous year?

Some authorities noted an increase, some noted a decrease (note, two of these authorities only record incidents at special schools). Less than half of the authorities either noted no change in the number of incidents, or noted that they had no data.

Is the EA aware of any instances of physical intervention or seclusion used which were not recorded? What were the reasons for non-recording?

Most authorities are not aware of any incidents which were not recorded. A minority of authorities confirmed that they were aware of previous instances of physical intervention and seclusion had not been recorded, noting workload and different thresholds in special schools as the reasons for non-recording. However, almost all authorities stated that there is a strong message for all incidents to be recorded and staff are encouraged to complete the reports.

Is the education authority aware of any instances of physical intervention or seclusion being used to ensure a child or young person's safety where this was not part of a planned approach? (for example, an unexpected incident or where there has been inappropriate use of physical intervention or seclusion)

Less than half of the authorities noted that instances had happened where it was not as part of a planned approach. Physical intervention was only used when there was a crisis incident where staff had to intervene through their duty of care to the individuals involved. A minority of authorities confirmed that no such instances had happened.

Reporting

Are parents/carers involved in the development of support plans which include the use of physical intervention/seclusion if required to ensure the safety of their child or young person?

All authorities reported that parents and carers were involved in the development of support plans which included the use of physical intervention.

Are parents/carers informed where physical intervention or seclusion has been used to ensure a child or young person's safety outwith an agreed approach/support plan? What is the timescale for informing parents/carers?

All authorities were confident that parents and carers would be informed following a crisis incident where physical intervention had to be used. The timescale was expected to be the same as the advice given for notifying parents where a plan was in place.

Have there been any instances of physical intervention or seclusion being referred to Regulatory Bodies (care inspectorate or education Scotland)?

A minority of authorities confirmed that cases had been referred to regulatory bodies.

Have there been any education authority investigations into the use of physical intervention or seclusion in schools? (as a result of a complaint or concern being raised)

The majority of authorities confirmed that there had been investigations as a result of physical intervention and seclusion. In some cases these investigations had led to a review of policy or additional training and support being given to the school.

What systems are in place for the debriefing of staff/children and young people involved in incidents?

Almost all authorities have a system in place for debriefing based on their specific training programme. Some are currently updating their system based on their new draft policies. Some recording systems take account of the debrief having taken place. Some also specify that both staff and children and young people have been involved in a debriefing process and a few request that their views are recorded.

Debriefing systems are usually managed by headteachers or authority trainers and can be used in complex cases. A few authorities use restorative meetings as a debriefing process.

Action point

Debriefing systems should be clearly outlined within the authority's policy. Records should be maintained and confirm that this process has taken place and the views of children, young people and their parents should be recorded.

Monitoring

How does the EA monitor and review the use of physical intervention and seclusion across the EA?

All authorities monitor their Health and Safety reports. In most authorities there are also ASL groups in place that monitor data on a regular basis. In a few authorities the reports are sent directly to ASL managers who analyse straight away and provide follow up support as required. There are also a number of informal systems in place that allow monitoring to take place through meetings of Educational Psychology teams and special school headteachers for example.

Action point

Authorities should consider developing a clear formal system for monitoring incidents involving physical intervention and seclusion as part of their overall policy.

Is the monitoring and reviewing system used to inform practice?

Almost all authorities reported that their monitoring process was used to inform practice through the provision of additional training, support and review of policy and practices.

Training

Is training required to be completed by staff prior to their use of physical intervention? If so what type of training is provided? Who is trained? Does the authority provide training in the use of physical intervention and seclusion?

All authorities expect that staff have undertaken training before using physical Intervention. All authorities provide training in promoting positive relationships and behaviour and de-escalation. Almost all provide training on physical intervention although this is generally on a needs led basis. Some authorities have systems in place to screen requests for physical intervention training which has to be agreed by an ASN manager. One ASN manager approves any plan that contains physical intervention and seclusion as an intervention to be used if required.

Almost all authorities have their own trainers who are able to provide support and guidance to schools experiencing challenges and respond to need swiftly.

Some authorities are rolling out de-escalation training to all their schools, some are targeting schools with an identified need and others will respond to requests for de-escalation and physical intervention training as appropriate.

There are a range of commercial programmes being used across all local authorities to train their staff on physical intervention. All programmes require the trainers to take part in regular refresher programmes. Staff who have undertaken physical intervention training are also required to participate in refresher courses to ensure their skills are updated. Some authorities have records of their staff trained which is maintained by trainers, ASN officers and in some cases by corporate staff who manage the training programme for the wider authority.

Action point

Consideration should be given to rolling out de-escalation training to all front line staff in schools. Education authorities should develop and maintain robust records of staff trained in physical intervention and seclusion.

Is training required to be completed by staff prior to their use of seclusion?

Where there is specific guidance on the use of seclusion within an authority it is expected that staff will have undertaken appropriate training.

Children's and Young People's Commissioner's report

Officials discussed recommendations 2 and 4 from the Children's and Young People's Commissioner's report with education authority officers.

Recommendation 2: The Scottish Government should publish a rights-based national policy and guidance on restraint and seclusion in schools. Children and young people

should be involved at all stages of this process to inform its development. The policy and guidance should be accompanied by promotion and awareness raising.

All authorities indicated that national guidance on physical intervention and seclusion should be located within the wider context of promoting positive relationships and behaviour and preventing the escalation of challenging behaviour. There was no appetite for separate national policy and guidance given the extensive number of existing policy documents local authorities are required to take account of. All authorities indicated that they would welcome current guidance on physical intervention and seclusion to be refreshed, updated and strengthened but still be within the context of Included, Engaged and Involved Part 2.

Recommendation 4: The Scottish Government should analyse and publish this data as part of its official statistics

Almost all authorities indicated that national data collection on the number of incidents of physical intervention and seclusion would bring significant challenges. The inevitable league tables would make unfair comparisons and the small number of incidents particularly in small authorities could potentially identify individuals. The different training programmes, with their different use of language and range of safe holds would again make comparisons between authorities unfair.

Authorities were clear that data on physical intervention should not be analysed in isolation at a national level. They were clear it should be considered within the context of approaches which promote positive relationships and behaviours, early intervention and de-escalation to prevent the need for the use of physical intervention, seclusion and exclusion from school.

Data collection at a local level informs, is part of and promotes, effective planning, organisation, control, monitoring and reviewing of any incidents of physical intervention and seclusion. The local context, professional judgment, and other relevant information should be considered alongside data collected. Authorities acknowledged that there were improvements needed in relation to recording and monitoring incidents but that where they were collated at a local level, local authorities and schools are able to identify trends or themes emerging and address issues and make improvements to support the wellbeing of all children and young people.

There is a risk that any stand-alone guidance would increase the risk of inappropriate or unsafe use of physical intervention and restraint because it is not embedded within overarching policy/practice based on relationships and Nurture - both of which prevent and minimise the use of physical intervention and seclusion. Schools and local authorities should therefore analyse their data to look for improvements in practice which have a direct impact on such a reduction.

There were some concerns expressed in relation to the negative presentation of the use of physical intervention and seclusion within the Commissioner's report and the potential for this to lead to a hesitancy in the use of appropriate physical intervention and seclusion in order to secure the safety of children and young people. It is hoped that the proposed actions will further reassure school and education authority staff of the basis for appropriate use of physical intervention and seclusion.

Summary of action points

Policy Guidance - Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2. Scottish Government will provide more clarity on the definition of seclusion and further guidance on its use in practice.

Policy Context - Authorities should continue to review and update their policies based on the advice within IEI2 and 'Developing a positive whole school ethos and culture: relationships, learning and behaviour 2018' which is the policy guidance in response to the Behaviour in Scottish Schools research (BiSSR 2017.)

Policy Context - Authorities should continue to review and update their policies on physical intervention and seclusion and take account of their own individual context. Parents, carers, children and young people should be involved in the development and consultation of the policy. The rights of all individuals involved in the physical intervention and seclusion incident should be taken into account.

Scottish Government will refresh their guidance on physical intervention and seclusion within the wider context of Included, Engaged and Involved Part 2.

Physical Intervention and Seclusion Policy - Further consideration should be given to developing a system within authorities that enables a streamlined method of recording violence and aggression incidents and instances where physical intervention and seclusion have taken place.

Physical Intervention and Seclusion Policy - All authorities should consider including a clear timescale within which to inform parents that an incident has taken place

Reporting - Debriefing systems should be clearly outlined within the authority's policy. Records should be maintained that this process has taken place and the views of children, young people and their parents should be recorded.

Monitoring - Authorities should consider developing a clear formal system for monitoring incidents involving physical intervention and seclusion as part of their overall policy.

Training - Consideration should be given to rolling out de-escalation training to all front line staff in schools. Education authorities should develop and maintain robust records of staff trained in physical intervention and seclusion.

Next steps

A short life working group to be set up to take forward the action points identified in this report. Draft Terms of Reference and membership are attached at Annex D. The key focus of the group will be to strengthen the guidance contained within IEI2, consider the need for a minimum dataset which local authorities will collect against when recording incidents of physical intervention and seclusion. In order to identify trends or where improvements could be made at a school / local level that a streamlined and uniformed approach to monitoring and recording is required. The group will therefore also explore how local authorities can get to a position where they have a consistent and uniform approach to recording and monitoring incidents of physical intervention and seclusion. The approach should aim to minimise the amount of additional workload for local authority and school staff.

It is clear from the engagement with local authorities that there are very clear examples of good practice being implemented across Scotland. A sharing good practice event will therefore take place by October 2019 to showcase these examples.

It is anticipated that the strengthened guidance will be published by Spring 2019 and to support implementation of the guidance implementation events will take place in February/March 2020.

The short life working group will come together 12 months after the implementation of the strengthened guidance to review the impact that the revised guidance has had on local authority guidance and practice. They will report directly to the Deputy First Minister.