



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Department of Education on
the Draft Statutory Guidance on the Reduction
and Management of Restrictive Practices in
Educational Settings in NI**

November 2023

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Recommendations

The NI Human Rights Commission recommends that:

- 2.9 the statutory guidance should emphasise that the aim of the policy is to eliminate the use of restrictive practices in NI schools through the implementation of minimisation strategies, in accordance with the Concluding Observations from the UN Committee on the Rights of the Child and the UN Committee on the Rights of Persons with Disabilities.**
- 2.10 the statutory guidance highlights that the Department of Education holds overall accountability for regional minimisation of restrictive practices in educational settings in NI and specifies what actions will be taken to achieve this.**
- 2.11 the statutory guidance contains a section on the implementation of proactive and preventative approaches to supporting children and young people with additional needs, with a strong focus on minimising restrictive practices in educational settings in NI.**
- 2.12 the statutory guidance sets out a clearly defined list of general principles that apply to the use of all restrictive practices in accordance with human rights standards. This should include:**
- **All behaviour is communication and a child or young person's distressed behaviour may indicate unmet needs. All efforts should be made to understand and address those needs;**
 - **All children and young people have a right to have their views sought and taken into account;**
 - **Restrictive practices should not be viewed as, or become, routine practice in schools and should not form part of any behaviour, education or care plan;**
 - **Restrictive practices should not be used for reasons relating to disability;**
 - **Restrictive practices must only be used as a last resort, where there is no viable alternative;**
 - **Restrictive practices should never be used to punish, to inflict pain or humiliation, or to replace proper support or care;**
 - **There must be a real possibility of harm to the child or to staff or others if no action is undertaken;**
 - **Any restraint should only be imposed for the shortest time necessary and in the safest, least restrictive manner.**

- 3.3 the statutory guidance uses the FREDA principles to promote a human rights-based approach and ensure that all actions are underpinned by person-centred care and decision-making.**
- 3.6 all educational practitioners who are authorised to use restrictive practices should receive mandatory and standardised training on when it is appropriate to use these measures and how to do so safely. This training should include reference to human rights and be sensitive to the additional needs of children and young people with specialised educational needs and disabilities.**
- 3.7 educational practitioners receive bespoke training on proactive and preventative approaches to supporting children and young people with additional needs, with a strong focus on minimising restrictive practices in educational settings in NI.**
- 4.2 the Department of Education publish an annual report which contains disaggregated data on the use of restrictive practices across all educational settings in NI, setting out the techniques used (how often) and reasons why; whether any significant injuries resulted; and details of ongoing strategies for bringing about the minimisation/elimination of the use of restrictive practices in educational settings in NI.**
- 4.4 the statutory guidance sets out formal requirements for incident reviews and ensures that the process is standardised across all educational settings in NI.**
- 5.7 the Department of Education carefully reviews its updated position on the use of seclusion to ensure consistency with human rights standards and current health and social care guidance. This should include further engagement with the NIHRC, professionals in education and health care, legal practitioners, parents/carers, children and young people and/or appropriate representatives.**

1.0 Introduction

- 1.1. The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also mandated, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.¹ In accordance with these functions, the following advice is submitted to the Department of Education.
- 1.2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:
- European Convention on Human Rights (ECHR);²
 - UN International Covenant on Civil and Political Rights (UN ICCPR);³
 - UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR);⁴
 - UN Convention against Torture (UN CAT);⁵
 - UN Convention on the Rights of the Child (UN CRC);⁶ and
 - UN Convention on the Rights of Persons with Disabilities (UN CRPD).⁷
- 1.3. In addition to these treaty standards, there exists a number of declarations and principles developed by the human rights bodies of the CoE and UN which are non-binding but provide further guidance in respect of specific areas.

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

² Article 31, UN Refugee Convention 1951.

³ Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1976.

⁶ Ratified by the UK 1988.

⁷ Ratified by the UK 1991.

⁸ Ratified by the UK 2009.

- 1.4. The NIHRC encourages the Department to review its [previous submission](#) to the Committee for Education,⁸ which sets out in detail the human rights implications of the use of restrictive practices in schools. In addition, the NIHRC has provided written and oral advice through the Department's Restraint and Seclusion Reference Group.⁹ To avoid duplication, the following advice focuses on new developments that require further consideration in order to align the guidance more closely with international human rights mechanisms.

2.0 Vision and Principles

- 2.1 Following separate review processes, the Department of Education and the NI Commissioner for Children and Young People both identified that the use of restrictive practices in educational settings in NI may be necessary as a last resort where there is a real risk of harm to the child or to others.¹⁰ Therefore, the NIHRC welcomes the provision of statutory guidance for ensuring that when restrictive practices are applied, they are managed in a proportionate and well-governed system that aims to reduce the risk of misuse and any potential over reliance on these practices.
- 2.2 The NIHRC welcomes the reference to human rights from the outset of the revised guidance, particularly the UN Convention on the Rights of the Child (UN CRC), the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the principle of the best interests of the child. Further, the NIHRC welcomes the additional clarity brought by definitions and the commitment to a trauma-informed approach which focusses on "identifying triggers and ensuring sensitivity to the needs of all the children and young people involved".¹¹
- 2.3 However, the NIHRC highlights the updated position of the UN CRC Committee in its Concluding Observations from June 2023.¹² The UN CRC Committee specifically recommend that the UK Government and NI Executive:

⁸ NI Human Rights Commission, 'Submission to the Northern Ireland Committee for Education on the Human Rights Implications of Current Guidance Relating to the Use of Restrictive Practices in School' (NIHRC, 2021).

⁹ Email correspondence to Department of Education from NI Human Rights Commission, 4 May 2023; Email correspondence to Department of Education from NI Human Rights Commission, 31 May 2023.

¹⁰ NI Commissioner for Children and Young People, 'Neither Seen nor Heard: Rights Based Review on the Use of Restraint and Seclusion in Educational Settings in NI' (NICCY, 2021); Department of Education, 'Review of the Use of Restraint and Seclusion in Educational Settings in NI' (DoE, 2022).

¹¹ Department of Education, 'Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings in Northern Ireland: Understanding and responding to behaviour in crisis situations' (DE, 2023) at 6.

¹² CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023.

explicitly prohibit the use of restraint and seclusion in educational settings and adopt a child rights-based approach to addressing violence or other disturbances in schools, including by prohibiting the presence of police in schools and providing regular training for teachers on relevant guidance for addressing such disturbances in a child-sensitive manner.¹³

- 2.4 In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive “adopt appropriate measures to eradicate the use of restraint for reasons related to disability within all settings and prevent... practices of segregation and isolation that may amount to torture or inhuman or degrading treatment”.² The UN CRPD Committee also recommended that the UK Government and NI Executive “set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities”.³
- 2.5 While the outcome of the NI-specific reviews and consultation processes are acknowledged, the NIHRC considers that the statutory guidance should refer to both the UN CRPD Committee’s and the UN CRC Committee’s recommendations and reiterate the importance of working towards their full implementation. Accordingly, the statutory guidance should emphasise that the overall vision of the policy is to *eliminate* the use of restrictive practices in NI schools through the implementation of minimisation strategies. This should also be incorporated within the governance and monitoring arrangements set out in section 12 and appendix 8 of the current guidance.
- 2.6 For instance, the draft guidance sets out the responsibilities of individual schools, the Board of Governors and the Education and Training Inspectorate in relation to the monitoring of incidents. The NIHRC additionally highlights the importance of specifying what actions the Department of Education will take at the regional level to oversee the minimisation/elimination of restrictive practices in all educational settings across NI. Particular attention is drawn to the Department of Health’s policy on the use of restrictive practices in health and social care settings, which states that the Department holds “overall accountability for regional minimisation of restrictive practices”.¹⁴

¹³ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 47(j).

¹⁴ Department of Health, 'Regional Policy on the use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion', (DoH, 2023), at paras 10.1 – 10.5.

- 2.7 Further, it would be useful if the statutory guidance outlined how the use of proactive and preventative approaches can contribute towards the aim of minimising and eliminating the use of restrictive practices. The purpose of proactive and preventative approaches is to understand a child's needs and, where possible, meet those needs. This approach emphasises the importance of preventing distressed behaviour occurring, rather than focussing solely on approaches to be used when it does, thereby working towards reducing reliance on restrictive practices. Proactive and preventative strategies could include building positive relationships; ensuring person-centred and trauma-informed communication; building values-driven leadership and culture of a school; co-regulation and de-escalation techniques.¹⁵
- 2.8 The NIHRC reiterates the importance of ensuring that restrictive practices are only ever considered as a method of last resort when all other interventions have been exhausted and there is a presenting risk of harm to the child or to others.¹⁶ The Department may wish to consider clearly setting out what would constitute an unlawful use of restraint from the outset of the guidance to ensure educational practitioners are aware of key legal safeguards, particularly under the ECHR.¹⁷ The NIHRC encourage the Department to review the Equality and Human Rights Commission's human rights framework for the use of restraint.¹⁸
- 2.9 The NIHRC recommends that the statutory guidance should emphasise that the aim of the policy is to eliminate the use of restrictive practices in NI schools through the implementation of minimisation strategies, in accordance with the Concluding Observations from the UN Committee on the Rights of the Child and the UN Committee on the Rights of Persons with Disabilities.**
- 2.10 The NIHRC recommends that the statutory guidance highlights that the Department of Education holds overall accountability for regional minimisation of restrictive practices in educational**

¹⁵ See: Scottish Government, 'Included, engaged and involved part 3: A relationship and rights based approach to physical intervention in Scottish schools' (Scottish Government, 2022), at paras 23-48; Department of Health, 'Regional Policy on the use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion', (DoH, 2023), at paras 7.1 – 8.12.

¹⁶ NI Human Rights Commission, 'Submission to the Northern Ireland Committee for Education on the Human Rights Implications of Current Guidance Relating to the Use of Restrictive Practices in School' (NIHRC, 2021); Email correspondence to Department of Education from NI Human Rights Commission, 4 May 2023; Email correspondence to Department of Education from NI Human Rights Commission, 31 May 2023.

¹⁷ NI Human Rights Commission, 'Submission to the Northern Ireland Committee for Education on the Human Rights Implications of Current Guidance Relating to the Use of Restrictive Practices in School' (NIHRC, 2021), at para 2.10.

¹⁸ Equality and Human Rights Commission, 'Human rights framework for restraint: principles for the lawful use of physical, chemical, mechanical and coercive restrictive interventions' (EHRC, 2019), at 5.

settings in NI and specifies what actions will be taken to achieve this.

2.11 The NIHRC recommends that the statutory guidance contains a section on the implementation of proactive and preventative approaches to supporting children and young people with additional needs, with a strong focus on minimising restrictive practices in educational settings in NI.

2.12 The NIHRC recommends that the statutory guidance sets out a clearly defined list of general principles that apply to the use of all restrictive practices in accordance with human rights standards. This should include:

- All behaviour is communication and a child or young person's distressed behaviour may indicate unmet needs. All efforts should be made to understand and address those needs;**
- All children and young people have a right to have their views sought and taken into account;**
- Restrictive practices should not be viewed as, or become, routine practice in schools and should not form part of any behaviour, education or care plan;**
- Restrictive practices should not be used for reasons relating to disability;**
- Restrictive practices must only be used as a last resort, where there is no viable alternative;**
- Restrictive practices should never be used to punish, to inflict pain or humiliation, or to replace proper support or care;**
- There must be a real possibility of harm to the child or to staff or others if no action is undertaken;**
- Any restraint should only be imposed for the shortest time necessary and in the safest, least restrictive manner.**

3.0 Implementing a Human Rights Based Approach

3.1 The NIHRC welcomes the integration of international human rights standards throughout the draft statutory guidance. However, the NIHRC considers that further detail is required to improve understanding of how human rights standards and principles can be implemented in practice. Embedding a human-rights based approach from the outset of the policy will help schools and educators make decisions about child-centred care and support, including during crisis situations involving the use of restrictive practices.

3.2 A human rights-based approach will continue to be underpinned by the legal framework set out in section 6 and appendix 3, however it may be more useful for practitioners to think of these obligations in terms of principles during their everyday duties. The 'FREDA principles' are often used in settings requiring complex decision-making on person-centred care and support.¹⁹ They helpfully demonstrate how a human rights-based approach can be applied in practice by promoting adherence to the underlying core values of:

- Fairness – individuals should have a say in matters which impact their human rights.
- Respect – an obligation to refrain from interfering or undermining a person's rights.
- Equality – all forms of discrimination should be eliminated and those that face the biggest barriers should be prioritised.
- Dignity – a person must be recognised, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.
- Autonomy – a person should be allowed to make free and informed decisions about how they wish to live their lives.

3.3 The NIHR recommends that the statutory guidance uses the FREDA principles to promote a human rights-based approach and ensure that all actions are underpinned by person-centred care and decision-making.

3.4 In addition, it is imperative that educational practitioners who are authorised to use restrictive practices must receive adequate supervision and training on how to integrate human rights-based approaches. For instance, a practitioner must be able to identify and assess the risks associated with each restrictive practice in order to address complex questions of proportionality. This requires making a human rights-based assessment to strike a fair balance between the severity and consequences of the interference for the child being restricted, and the aim and duration of the intervention. For example, the Council of Europe Committee of Ministers adopted a recommendation that mental health staff should have mandated training not just on physical restraint, but also on:

¹⁹ See: Royal College of Nursing, 'Understanding a human rights based approach'. Available at: <https://www.rcn.org.uk/news-and-events/Blogs/understanding-a-rights-based-approach>; and Care Quality Commission, 'Our human rights approach for how we regulate health and social care services' (CQC, 2019).

- protecting the dignity, human rights and fundamental freedoms of persons with mental disorder;
- understanding, prevention and control of violence;
- measures to avoid the use of restraint or seclusion;
- the limited circumstances in which different methods of restraint or seclusion may be justified, taking into account the benefits and risks entailed, and the correct application of such measures.²⁰

3.5 The NIHRC is concerned by the following proposal: “If educational settings plan to source their own training, then it would be considered good practice to discuss the training options they are considering with the [Education Authority] for advice”.²¹ The intention of this statutory guidance is to standardise the management of restrictive practices, including minimisation strategies, therefore all training should be standardised across all NI schools and not left to individual discretion.

3.6 The NIHRC recommends that all educational practitioners who are authorised to use restrictive practices should receive mandatory and standardised training on when it is appropriate to use these measures and how to do so safely. This training should include reference to human rights and be sensitive to the additional needs of children and young people with specialised educational needs and disabilities.

3.7 The NIHRC recommends that educational practitioners receive bespoke training on proactive and preventative approaches to supporting children and young people with additional needs, with a strong focus on minimising restrictive practices in educational settings in NI.

4.0 Recording and Monitoring

4.1 The NIHRC welcomes the improved recording procedures for incident monitoring. However, there continues to be a critical gap in the reporting and oversight arrangements. Robust data collection and transparent monitoring processes are crucial for ensuring human rights compliance and government accountability. The NIHRC emphasises the importance of ensuring that data is disaggregated, which will identify if restraint is being used disproportionately. The Department of Education’s review

²⁰ Committee of Ministers (2004) Recommendation Number Rec 2004(10) (Strasbourg: Council of Europe), at art 11(2).

²¹ Department of Education, ‘Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings in Northern Ireland: Understanding and responding to behaviour in crisis situations’ (DE, 2023) at 29.

recommended the publication of a periodic report on the use of restrictive and supportive practices in educational settings, yet this has not been reflected in the current guidance.

4.2 The NIHRC recommends that the Department of Education publish an annual report which contains disaggregated data on the use of restrictive practices across all educational settings in NI, setting out the techniques used (how often) and reasons why; whether any significant injuries resulted; and details of ongoing strategies for bringing about the minimisation/elimination of the use of restrictive practices in educational settings in NI.

4.3 The NIHRC welcomes section 13 for establishing learning reviews as an opportunity to reflect on the use of restrictive practices and promote the minimisation of their use. However, further detail is required in order to standardise the incident-by-incident review process and support supervisors to manage the impact of restrictive practices in each setting. For example, the Department of Health's policy requires that all incident reviews take account of the following:²²

- undertaken within 72 hours of the incident;
- undertaken in collaboration with people who use services;
- includes staff independent of the service where the incident took place;
- uses information recorded in the immediate post-incident debrief, including reports from staff, the person involved and any witnesses if further information is needed;
- identifies any triggers for the incident and what could have been done differently;
- includes analysis of agreed strategies, how they were used, use of a rights based methodology and why these measures were unsuccessful in de-escalating;
- how could impact have been minimised;
- review of risk assessments/plans and any required inclusion for new evidence based therapeutic interventions; and
- barriers that prevent change and how they can be addressed.

4.4 The NIHRC recommends that the statutory guidance sets out formal requirements for incident reviews and ensures that the process is standardised across all educational settings in NI.

²² Department of Health, 'Regional Policy on the use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion', (DoH, 2023), at para 10.14.

5.0 Seclusion

- 5.1 The outcome report from the Department of Education’s review distinguished between enforced seclusion, that must never be used in educational settings, and seclusion for health reasons, which should only be used in line with a care plan signed off by health and social care professionals.²³ Since then, the revised draft has acknowledged that the use of seclusion cannot be considered a supportive or therapeutic practice and has removed this aspect from the guidance. This is welcomed; however, the NIHRC considers that all references to “enforced seclusion” should be reverted to “seclusion” as a point of clarification, and to maintain consistency with national and international approaches to this matter.
- 5.2 As set out above, the UN CRC Committee’s recommendation is that the UK Government and NI Executive explicitly prohibit the use of seclusion in educational settings. The NI Commissioner for Children and Young People and the NI Department of Health have each identified the use of seclusion as a potentially traumatic experience, with evidence it can cause lasting psychological harm and compromise the well-being of those involved.²⁴ The Department of Health states that “children and young people should not be subject to seclusion”.²⁵ The NI Commissioner for Children and Young People recommends the development of legislation to ban its use in educational settings.²⁶
- 5.3 In the current draft guidance, the Department of Education has amended its previous position and proposed that the use of seclusion may be permissible in “a crisis situation where it is necessary for the prevention of serious physical harm”. The NIHRC is concerned by this amendment and the relatively short period of consultation to consider the Department’s position. Without further context, the NIHRC does not consider it reflects previous consultations or the majority view among members of the Restraint and Seclusion Reference Group.
- 5.4 Furthermore, the NIHRC previously set out its concerns regarding the human rights implications of the use of seclusion in NI schools and advised

²³ Department of Education, ‘Review of the Use of Restraint and Seclusion in Educational Settings in NI’ (DoE, 2022), at 21-22.

²⁴ NI Commissioner for Children and Young People, ‘Neither Seen nor Heard: Rights Based Review on the Use of Restraint and Seclusion in Educational Settings’ (NICCY, 2021); Department of Health, ‘Regional Policy on the use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion’, (DoH, 2023), at para 5.63.

²⁵ Department of Health, ‘Regional Policy on the use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion’, (DoH, 2023), at para 5.60.

²⁶ NI Commissioner for Children and Young People, ‘Neither Seen nor Heard: Rights Based Review on the Use of Restraint and Seclusion in Educational Settings’ (NICCY, 2021), at 20.

that any guidance proposing its use should clarify when and how it can be applied in accordance with international standards.²⁷ The additional reference to Article 5 (deprivation of liberty) of the European Convention on Human Rights (ECHR) is welcomed. However, the NIHRC does not consider that the guidance provides sufficient practical advice and procedural safeguards that will support practitioners to identify and prevent unlawful deprivation of liberty and ensure human rights are protected.

5.5 The level of detail and scrutiny required by procedural safeguards will increase in line with the gravity of the interference with an individual's human rights and the risk of harm occurring.²⁸ Given the increased risk that the use of seclusion will interfere with a child's ECHR rights, the statutory guidance should set specific safeguards to be taken into consideration before, during and after such a significant intervention. Particular attention is drawn to the Department of Health policy²⁹ and the Scottish Government's draft guidance on physical intervention in schools.³⁰

5.6 For example, the guidance should identify when the use of seclusion can never be justified, this requires specific consideration due to severity of the interference and the risk of harm (e.g. seclusion should never be used where there is a risk of suicide or evidence of self-harm). Further consideration should also be given to data recording and monitoring procedures, and whether any additional safeguards may need to be added to the proforma (e.g. was an appropriate room used; was the child supervised for the duration; was the designated safeguarding lead called/present; witness statement). In addition, any post-incident safeguards should be clearly set out, such as an immediate health, safety and wellbeing assessment.

5.7 The NIHRC recommends that the Department of Education carefully reviews its updated position on the use of seclusion to ensure consistency with human rights standards and current health and social care guidance. This should include further engagement with the NIHRC, professionals in education and health care, legal practitioners, parents/carers, children and young people and/or appropriate representatives.

²⁷ NI Human Rights Commission, 'Submission to the Northern Ireland Committee for Education on the Human Rights Implications of Current Guidance Relating to the Use of Restrictive Practices in School' (NIHRC, 2021), at para 3.6.

²⁸ Equality and Human Rights Commission, 'Human rights framework for restraint: principles for the lawful use of physical, chemical, mechanical and coercive restrictive interventions' (EHRC, 2019), at 8.

²⁹ Department of Health, 'Regional Policy on the use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion', (DoH, 2023), at paras 5.59 – 5.78 and 11.1 – 11.105.

³⁰ Scottish Government, 'Included, engaged and involved part 3: A relationship and rights based approach to physical intervention in Scottish schools' (Scottish Government, 2022), at 73 – 87.

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