



Restraint and Seclusion (Prevention in Schools) (Scotland) Bill

October 2023

1. Introduction

- 1.1 The General Teaching Council for Scotland (GTC Scotland) is the teaching profession's independent registration and regulation body. We were established in 1965 to ensure standards for the teaching profession in Scotland. Our role is to register and regulate teachers and college lecturers, which we do by keeping a public register and setting and regulating the standards for entering and remaining in the teaching profession. Our functions are set out in the [Public Services Reform \(General Teaching Council for Scotland\) Order 2011](#).
- 1.2 We work to maintain and enhance trust in teaching. Our role provides us with an opportunity to highlight some systemic issues that we believe influence the intention and implementation of these proposals. We previously responded to the Scottish Government's consultation on its draft guidance on physical intervention in schools. That response is available [here](#)¹.
- 1.3 We welcome the opportunity to respond to this consultation on the proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill and have the following comments to make.

2. General Comments

- 2.1 The teaching profession in Scotland sets high standards for itself. At the heart of our professional standards and underpinning our Code of Professionalism and Conduct are our professional values of social justice, trust and respect, and integrity. As part of their commitment to social justice, teachers commit to respecting the rights of all learners as outlined in the UNCRC.
- 2.2 GTC Scotland ensures these standards are maintained and improved by requiring teachers to undertake professional learning throughout their career.
- 2.3 As a professional regulator, we also investigate serious concerns about teachers and college lecturers. The purpose of professional regulation can sometimes be

¹ <https://www.gtcs.org.uk/wp-content/uploads/2022/12/gtc-scotland-response-to-draft-physical-intervention-in-schools-guidance.pdf>

misunderstood. Bodies like GTC Scotland (such as the Scottish Social Services Council, Health Care and Professionals Council and the General Medical Council), have among their functions, a responsibility to investigate serious concerns about individuals registered by them.

- 2.4 The regulation of individuals by a professional regulator is distinct from the role employers have over those they employ. Employers of teachers (predominantly local authorities) manage employment matters directly affecting them in their local context, making decisions about disciplinary matters, including in some cases managing dismissal of an individual from employment. By comparison, professional regulation focuses on whether an individual meets the standards and suitability to remain in a profession as a whole despite specific issues that have arisen regarding their competence or conduct (which can include conduct outwith their employment).
- 2.5 In other words, it focuses on future prevention of risk rather than 'punishing' any alleged behaviour or shortfalls.
- 2.6 GTC Scotland's [Fitness to Teach](https://www.gtcs.org.uk/fitness-to-teach/)² process considers allegations against the civil standard of proof - the balance of probabilities - and our own rules of evidence apply to our process. This is different to criminal proceedings, where the standard of proof is beyond reasonable doubt, and where there are particular evidential requirements, for example the requirement for corroboration. GTC Scotland can and does take forward cases that do not meet the higher standard of proof (beyond reasonable doubt) and evidential requirements that apply to criminal proceedings. This is an important public safeguard.
- 2.7 It is through our professional regulation work, specifically our fitness to teach process, that GTC Scotland has gained insight into some issues in relation to physical restraint and seclusion in schools which we offer as feedback in consideration of this proposed legislation.

² <https://www.gtcs.org.uk/fitness-to-teach/>

3. Specific Comments

- 3.1 These proposals develop some of the key areas that were raised by the Scottish Government's consultation on its draft guidance, including issues that we raised in our response, for example the need to have an implementation plan, including access to effective professional learning. Through our fitness to teach work we have experience of investigating matters involving the use of restraint and/or seclusion and we would agree with Mr Johnson's observation that this is an area where further guidance and support for teachers regarding safe best practice is required.
- 3.2 We note that the consultation document makes reference to us in seeking views on what a national programme of training would contain and how it would be delivered. We agree that a national approach should be taken to professional learning but would caution against overly standardising the content, as account needs to be taken of the very different contexts in which teachers operate and learners learn.
- 3.3 As Mr Johnson further observes, the lack of specialist ASN knowledge exacerbates this issue. Our fitness to teach work suggests that an area of need for teachers is access to high quality education and learning about additional support needs. The [professional standards for teachers](https://www.gtcs.org.uk/professional-standards/professional-standards-for-teachers/)³ outline teachers' responsibilities in this area and it is embedded into the content of initial teacher education programmes but teachers need access to continuing professional learning in additional support needs throughout their career. We would welcome further discussions with interested parties about this, recognising that as the national body for education, Education Scotland will have the lead role in ensuring appropriate content and access.
- 3.2 The proposals also identify the need for a national inspectorate, which would oversee restraint and seclusion practice and suggests that Education Scotland (or its replacement) would be a possible candidate. While we agree with the need for clarity with regard to oversight, we would caution against focusing on a solution for this specific issue without looking more broadly at the framework in which it would

³ <https://www.gtcs.org.uk/professional-standards/professional-standards-for-teachers/>

operate. There is an opportunity to address systemic issues that exist within the wider child protection context.

- 3.2 We have used the platform provided by the education reform programme to promote the need for clear system regulation. For the education system to work well, individual bodies need to work in partnership where respective roles and remits are clear and understood. This relies, for instance, on effective information sharing to ensure each part of the system can play its distinct role. It requires trust that partners will do what is expected of them and manage situations effectively where mistakes have been made, or things have gone wrong. For example, that employers fully and effectively investigate serious disciplinary matters and discharge their duty to refer matters to the professional regulator where appropriate.
- 3.3 This joined-up approach is key to ensuring a trusted and effective system and enhancing public confidence. This prompts the question about who regulates the education system to ensure this trust and confidence is maintained in the round so that appropriate checks and balances are in place. It also leads to the question of who has a role in situations where trust has broken down. Which bodies are responsible for ensuring that employers of teachers work within statutory requirements and take effective action, who ensures that referrals are being made to the appropriate regulatory body, or that services operate in the best interests of service users.
- 3.4 While this consultation suggests that a national inspectorate would play a necessary role in identifying and recording instances of physical restraint and/or seclusion, it is only one part of a wider system that needs to work cohesively to address this and other child protection and safeguarding issues.
- 3.5 Related to this, we agree with the observation in the consultation document that the system for reporting issues relating to seclusion and restraint is complex and that parents, carers or guardians require support to navigate it. This applies to other child protection issues as well. We are of the view that by looking at this issue in isolation and creating a specific route for addressing it risks complicating the landscape further.

- 3.6 GTC Scotland recently made submissions at the Scottish Child Abuse Inquiry (SCAI) calling for improvements to be made to information flow and the quality and coordination of child protection investigations to make the regulatory system more effective. We made the point that improvements should be made to the regulatory system to help ensure that what survivors of abuse reported to the Inquiry never happens again in our schools. To achieve this, we believe that respective roles in child protection and safeguarding in education must be transparent, understood and joined up.
- 3.7 Furthermore, while placing guidance on seclusion and restraint on a statutory footing would no doubt give it further weight, in our opinion, using legislation to address single issues also risks complicating the landscape. We would be in favour of introducing overarching and comprehensive statutory guidance, similar to the guidance that is in place in England⁴, that is aimed at keeping children safe in schools and colleges.
- 3.8 In relation to this issue, as well as in matters of child protection generally, we are committed to identifying and highlighting areas where improvements can be made and lessons learned. We would welcome the opportunity to discuss any of the issues we have raised in this response further and to share relevant details of the work that we do to set and regulate standards for teachers.

⁴ [Keeping Children Safe in Education – September 2023](#)

GTC Scotland

Comhairle Choitcheann Teagaisg na h-Alba

We are the teaching profession's independent registration and regulation body. We work to maintain and enhance trust in teaching.

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