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Additional Educational Needs Team

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Department of Education consultation on Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings

1 Executive Summary

- 1.1 We welcome the opportunity to respond to the Department of Education's Consultation on Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings.
- 1.2 Previous research has shown a disproportionate use of restrictive practice on children with special educational needs¹. Behaviours considered challenging are often strongly associated with certain developmental difficulties and disabilities. Having a learning disability may impact on how a person understands information and how they communicate.
- 1.3 Our response does not consider all areas of the consultation proposals, but rather focusses on areas where the Commission has established key policy positions or advice. In some instances, we draw the Departments attention to the recommendations of key international bodies such as the UNCRC.

¹ For further details, see: [Restraint and Seclusion of Children with Additional Needs in Schools \(niassembly.gov.uk\)](https://www.niassembly.gov.uk)

- 1.4 We note the aims of the policy are “to provide clarity on the use of restrictive and supportive practices in educational settings with the aim of reducing and minimising the use of restrictive practice, wherever possible. The guidance aims to ensure that when restrictive practices are used, it is a measure of last resort, must be the minimum force necessary, and is in the best interests and welfare of the child”.
- 1.5 We note the emphasis that restrictive practice “should only ever be used as a last resort in crisis situations when it is necessary and proportionate to do so in order to keep children, young people, and others from coming to harm”, that “restrictive practices should never be used as a punitive measure” and that “Educational settings should develop a policy on the reduction and elimination of the use of restrictive practices”. In this context, the Department should be cognisant of the UNCRC (June 2023) recommendations to the UK State Party “To develop statutory guidance on the use of restraint on children to ensure that it is used only as a measure of last resort and exclusively to prevent harm to the child or others and monitor its implementation” and that the UK State Party should “take legislative measures to explicitly prohibit, without exception, the use of: (iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools²”.
- 1.6 The Guidance could more comprehensively integrate a Child’s Rights and Child Centred approach, in line with Article 12 of UNCRC “Every child has the right to express their views on matters that affect them, and for these views to be taken into consideration.” For example, ensuring the child’s perspective is considered during planning and evaluation processes following incidents of use of restrictive practice, where appropriate.
- 1.7 More detail and clarity is required regarding training for teachers, principals, and Board of Governors on how to use and implement the Guidance. Training should be

² UNCRC [Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland, 2023](#) E(a) “To take legislative measures to explicitly prohibit, without exception, the use of (iii) iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools. E (b) “To develop statutory guidance on the use of restraint on children to ensure that it is used only as a measure of last resort and exclusively to prevent harm to the child or others and monitor its implementation”.

comprehensive, mandatory, ongoing, and sufficiently resourced.

1.8 Section 75 EQIA requires further consideration by the Department and the final Stage 6 EQIA report should reflect the following summary advice. Further detailed Section 75 EQIA advice is provided in Section 5 of this response.

- The Department should clearly set out the Section 75 data and evidence it has relied on when determining the likely impacts of the guidance on Section 75 categories.
- Given the lack of data and evidence in the consultation EQIA, the Department's assessment of impacts are unclear and should be reconsidered when the data section is updated.
- There are no mitigations or alternative policies considered in the EQIA, which address the impacts identified by the Department in relation to pupils with a disability/SEN, younger children, and boys. The final EQIA should be transparent in outlining how the Department has 'taken into account' consultees views on alternative policies and mitigation proposed.
- The consultation period should be extended to the full 12 weeks or rationale for not doing so be made transparent in the Stage 6 EQIA report.
- There are no relevant Section 75 monitoring arrangements. The Department should also ensure that the final Stage 6 EQIA report outline sets out its Section 75 monitoring arrangements for monitoring the actual impact of the guidance on Section 75 groups, once the policy is implemented.

1.9 Further detail on our recommendations is provided in the following sections.

2 Child-centred approach

- 2.1 International treaties, such as the United Nations Convention on the Rights of the Child (UNCRC)³ and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)⁴, highlight the right to education, the primacy of the best interests of the child, and the rights of all children including children with disabilities to inclusive education and reasonable accommodation of their requirements.
- 2.2 We welcome acknowledgement within the Guidance that the best interests of the child must be a primary consideration when using and applying the guidance, in accordance with Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) and Article 7 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- 2.3 Despite this, the Guidance could more comprehensively integrate a Child's Rights and child centred approach, particularly with regard to Article 12 of UNCRC "Every child has the right to express their views on matters that affect them, and for these views to be taken into consideration."
- 2.4 For example, the guidance currently states that "All use of supportive practices must be agreed in advance with parents / carers" (pg. 30). Where appropriate, use of supportive practices should also involve the perspective of the child.
- 2.5 Draft monitoring forms (Appendix 4) could include space for recording whether actions taken align with specific plans in place for the child in question. Further space for the input of the

³ ARTICLE 2 (non-discrimination) The rights set out in the UNCRC apply to every child whatever their race, colour, gender, language, religion, ethnicity, disability or any other status.

ARTICLE 3 (the best interests of the child) In all decisions and actions that concern children, the best interests of the child shall be a primary consideration.

ARTICLE 12 (respect for children's views) Every child has the right to express their views on matters that affect them, and for these views to be taken into consideration.

ARTICLE 28 (education) Every child has the right to education.

ARTICLE 29 (education and children's development) Education should help develop every child's personality, talents and mental and physical abilities to the full.

⁴ UNCRPD, Article 7 Children with Disabilities, sets out that 'States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children' and that 'In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.'

UNCRPD Article 24 Education, sets out, inter alia, that States Parties shall ensure an inclusive education system at all levels; reasonable accommodation of the individual's requirements is provided; and that persons with disabilities receive the support required, within the general education system, to facilitate their effective education.

child is essential. For example, current text outlining “Any comments parents / carers may wish to make”, should be extended to also include the perspective of the child, where appropriate.

- 2.6 A child-friendly version of the Guidance materials would have more fully enabled participation of children and young people to participate in the consultation process.

3 Principle of Last Resort

Restrictive Practices

- 3.1 We note that the guidance highlights that the use of restrictive practices should only be used as a last resort, in line with UNCRC recommendations⁵; that using positive behaviour support and working to de-escalate behaviours which require intervention must always be the preferred approach; and that restrictive practice should never be used as a punitive or disciplinary measure.
- 3.2 Further clarity and standardisation should be provided across all the different types of Restrictive Practices listed in Section 5, that restrictive practices must only be used as a last resort.
- 3.3 We welcome acknowledgement within the Guidance that restrictive practices should never be used as a form of discipline, punishment, or as a punitive measure. The Guidance states, “Restrictive practices should never be used as a punitive measure”.
- 3.4 We note that the Guidance includes that “*Educational settings should develop a policy on the reduction and elimination of the use of restrictive practices*”. The objective of elimination of restrictive practices could be further emphasised throughout the Guidance, in line with wider UNCRC recommendations⁶.

⁵ UNCRC [Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland, 2023](#) E (b) “To develop statutory guidance on the use of restraint on children to ensure that it is used only as a measure of last resort and exclusively to prevent harm to the child or others and monitor its implementation”;

⁶ UNCRC [Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland, 2023](#) E(a) “To take legislative measures to explicitly

Seclusion

- 3.5 We note within the Guidance that “Enforced seclusion should never be used in educational settings, unless in a crisis situation where it is necessary for the prevention of serious physical harm to individuals”.
- 3.6 As highlighted above, the Department should be cognisant of the UNCRC (June 2023) recommendation to the UK State Party “To develop statutory guidance on the use of restraint on children to ensure that it is used only as a measure of last resort and exclusively to prevent harm to the child or others and monitor its implementation” and that the UK State Party Should “take legislative measures to explicitly prohibit, without exception, the use of: (iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools”.
- 3.7 The definition of enforced seclusion could be further broadened beyond the physical elements of seclusion to be cognisant of the social and psychological forms in which seclusion and isolation can occur.

4 Provision of Training on the Guidance

- 4.1 Further detail is required within the Guidance regarding training provisions for principals, teachers, classroom assistants and Boards of Governors. Standalone training and communication on the Guidance, with appropriate resourcing, is essential to ensuring compliance. Training should be mandatory and ongoing.
- 4.2 The Commission has recommended⁷ that equality and good relations issues should be mainstreamed into initial teacher education (ITE) and continuous professional development (CPD). In light of the diversity of life experiences and educational needs within the Northern Ireland student population, we consider it essential that all teachers are equipped to ensure students’ particular requirements are understood and met. Initial teacher education (ITE) and

prohibit, without exception, the use of (iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools”. & I (j) “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”.

⁷ ECNI (2018) [Equality in Education: Policy Recommendations](#)

continuing professional development (CPD) are key methods of achieving this.

- 4.3 Language and terminology should be reviewed throughout the Guidance to improve clarity and accessibility and ensure that it can be easily understood by a wide range of stakeholders, including parents and carers.
- 4.4 We note in the Guidance that “Educational settings should ensure that they have policy and procedures in place in relation to the use of restrictive and supportive practices. This is important to ensure that staff, pupils, and parents / carers are clear about the educational setting’s approach to the use of restrictive and supportive practices. The EA will develop a model policy on the reduction and management of restrictive practices for all schools”.
- 4.5 It is important that clear guidance and tight parameters are placed upon policy and procedures that different educational settings put in place. Under the Guidelines as drafted, there is potentially too much discretion left with individual educational settings regarding policy and procedures for restrictive practice. This risks undermining the objectives of this Guidance, and places undue stress on individual educational settings.
- 4.6 Despite the challenging context of the 2023-24 Budget, resourcing for comprehensive training and communications strategies should be prioritised.

5 Equality Impact Assessment and Section 75

- 5.1 The Commission’s Advice and Compliance team made contact with the Department early in the consultation process to provide advice in relation to the EQIA, upon which this further advice elaborates.

Aims of the Policy

- 5.2 Although the aims of the policy are clearly defined, they are largely limited to reducing or minimising the use of restrictive practices. We are aware that UNCRC and some stakeholders have advocated for the elimination of restrictive practices and the Department’s consideration of this policy option, including its rationale for rejection should be evident in the EQIA.

Data and Evidence

- 5.3 There appears to be little or no Section 75 data within the EQIA i.e. data/information relevant to how this policy impacts children across the Section 75 groups. Although the EQIA suggests that ‘data also suggests younger children may be disproportionately affected’, ‘evidence outlined suggests use of restraints may be more relevant on men’ and ‘needs of children and young people with disabilities have been at forefront in drafting guidance’ there is no data or evidence provided or sources of data referenced. There is also no outline of what are the identified ‘needs’ of children and young people with disabilities.
- 5.4 The EQIA indicates that extensive research through assessment of existing policy, engagement with key stakeholders, and review of other jurisdictions’ approaches has taken place. While this review is welcomed, the summary of findings presented is very general and includes little Section 75 evidence across each of the nine Section 75 categories. The findings relate mainly to a review of existing practices, analysis of the context in which restrictive practices are used, and identification of areas for improvement. This is not a substitute for Section 75 data and information. If there are gaps in Departmental Section 75 data, they should be addressed by establishing Section 75 monitoring arrangements.

Assessment of Impacts

- 5.5 Given the lack of data and evidence presented in the EQIA in relation to Section 75 categories, the degree to which the assessment of impacts are accurate remains unclear. The Department’s assessment of impacts on the Section 75 categories, should be based on evidence/data. The Department has determined with little or no data that:
- in relation to disability - ‘it is likely, based on engagement with both special and mainstream settings, that the use of restrictive practices is more prevalent for children with children with physical or neurological disabilities.’
 - In relation to age ‘...there may be a minor differential impact on school aged children and young people in comparison to the population as a whole. Data also suggests younger children may be disproportionately affected.’

- In relation to gender – ‘evidence outlined suggests the use of restraints may be more prevalent on men.’
- In relation to multiple identities – ‘Given the major impact in relation to disability and the minor impact in relation to gender and age, it is acknowledged that a young person with a multiple identity (i.e. who is both male and has a disability) has greater potential to be significantly impacted.’

5.6 Whilst the evidence relating to disabled children is qualitative and based on engagement with schools, the sources of and key findings from the data relating to age and evidence relating to ‘men’ is unclear and has not been outlined in the EQIA. This should be provided in the final Stage 6 EQIA.

5.7 The Department concludes that the Guidance will have a positive impact on the above groups as it aims to reduce and minimise the use of restrictive practices.

5.8 In relation to some of the other Section 75 categories, for example religion, political opinion, race, sexual orientation and dependency, the assessment refers to there being ‘no evidence of adverse impact.’ ‘No evidence’ does not necessarily mean no impact and these gaps in data should be addressed in the monitoring section of the EQIA.

Consideration of Mitigations / Alternative policies

5.9 There are no mitigations or alternative policies considered in the EQIA, which address the equality ‘impacts’ identified by the Department in the EQIA. The section on mitigations simply refers to the Guidance itself. While it is recognised that the Guidance aims to reduce or eliminate the use of restrictive practice on all children and young people in educational settings, given the acknowledgement that restrictive practice may be disproportionately experienced by children with SEN and/or a disability, specific actions should be identified in order to mitigate potential inequalities for this group.

5.10 We are aware that some stakeholders have suggested as an alternative policy that there should be a complete removal of restrictive practices⁸. In the final Stage 6 report, this section of

⁸ For example, we note recommendations from NICCY’s Neither Seen nor Heard: A Rights Based Review on the Use of Restraint and Seclusion in Educational Settings, that DE must create legislation which should include a provision to ban the use of seclusion in educational settings.

the EQIA should clearly set out the Departments consideration of this alternative policy and provide an open, transparent and rational explanation for its rejection. It should also outline what consideration it has given to any suggestions for mitigating measures identified by stakeholders during the consultation process.

- 5.11 Although it is intended that the guidance will have a positive impact on all Section 75 categories it will be important to monitor this to ensure that this is realised in practice, i.e. not just in reducing the overall number of instances where restrictive practices are used, but also reducing the differential in relation to younger children, boys and pupils with SEN / disabilities.
- 5.12 If monitoring of the policy indicates that these Section 75 categories are still more likely to be subject to restrictive practices, the Department should review the Guidance to see if any mitigating measures or alternative policies could be implemented.

Consultation Period

- 5.13 The consultation timeline is less than committed to in the Departments equality scheme, which commits to a 12-week period.
- 5.14 We note that consultation on the EQIA will be for just over 9 weeks (initially 8 weeks and later extended). As consultation timelines are shorter than those set out in DE's equality scheme, the Department should record its rationale for deviation from scheme commitments. Where the 'exceptional circumstances' provisions of an equality scheme are relied upon, public authorities should be in a position to stand over these decisions.
- 5.15 We note that no alternative formats of the EQIA have been issued alongside the EQIA but that alternative formats are available on request. Equality schemes state that there should be 'equal time to respond' for people who are using any alternative formats that are provided after the initial consultation release.

6 Equality Data and Section 75 Monitoring

- 6.1 The Commission has longstanding positions and recommendations regarding monitoring the relevant inequalities experienced by the Section 75 equality groups, including children with SEN.
- 6.2 The Commission has consistently recommended that public authorities collect detailed equality information and disaggregated data to inform public policy making and service delivery, so that equality considerations are at the heart of public policy making and are informed by the specific needs of those experiencing inequalities.
- 6.3 It is essential that instances of use of restrictive practice are recorded, and that robust monitoring of schools' processes for responding to and recording instances of restrictive practice are in place.
- 6.4 It is essential that further Section 75 data is collected within the monitoring and follow-up forms (Appendix 4) highlighted within the draft Guidance. We note that the pro-forma for recording the use of restrictive practices includes a requirement to record 'SEN/any protected characteristics of the child.' This could be expanded to specifically record age, gender, race, dependency and sexual orientation (where appropriate). Disaggregated data across equality grounds is essential to best meeting the needs to all children. Children with SEN may have multiple identities and may face cumulative and combined negative impact.
- 6.5 There are no arrangements outlined in the EQIA for monitoring the actual impacts of this policy, when implemented, on Section 75 groups of children/children with multiple identity and this is a requirement of the legislation/equality scheme commitments. This section refers to 'any adverse differential impact on equality of opportunity or good relations that may be identified through this assessment process will be taken into account in informing this guidance. Any such findings will be used to inform further development of mitigations and revisions to the guidance if necessary.'
- 6.6 The purpose of the EQIA assessment process is to help public authorities to anticipate the potential impact of policies. The Department's equality scheme also commits to monitoring the

actual impact of policies once implemented and the Department is required to provide an outline of the arrangements it will put in place for doing this in the monitoring section of the EQIA.

- 6.7 Robust monitoring arrangements will help the Department to assess whether the guidance has actually reduced the differential in relation to younger pupils, boys and pupils with SEN / a disability. It should also address the data gaps identified in relation to race, religious belief, political opinion, sexual orientation and dependency.

7 Additional information

- 7.1 For the Commission's full position and recommendations regarding Equality Data, please see:
<https://www.equalityni.org/EqualityData>
- 7.2 The Commission remains available to discuss any specific equality issues identified.
- 7.3 The Commission has developed extensive Education policy positions, which include recommendations and evidence on a wider range of issues of potential interest. Please see:
<https://www.equalityni.org/Education/Policy>

Equality Commission for Northern Ireland

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