



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to Department of Education on  
Guidance for Educational Settings on Restrictive  
Interventions**

**May 2026**

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## 1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to sections 69(1), 69(3) and 69(4) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also required under section 78A(1), 78A(5) and 78A(6) to monitor the implementation of Article 2(1) of the Windsor Framework<sup>1</sup>. Windsor Framework Article 2 is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. The NIHRC welcomes the opportunity to respond to the Department of Education's revised guidance relating to the use of restrictive interventions in NI schools.

## 2.0 General Comments

- 2.1 The UK-wide Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into domestic law. Section 6 of the 1998 Act makes it unlawful for a public authority to act in a way which is incompatible with the ECHR. This means that policies and practices implemented across the education system must not be incompatible with the ECHR. The Department of Education has the primary duty for ensuring that children at school benefit from a legislative framework and supporting guidance that ensures schools act compatibly with the ECHR and within NI domestic law. This is unlikely to be achieved in the absence of clear mandatory policy, training and oversight.
- 2.2 The NIHRC has significant concern that the current draft guidance does not provide a sufficiently clear articulation of the relevant human rights standards for the use of restrictive interventions. There are unfortunate gaps in relation to the full scope of obligations under the Human Rights Act 1998. This is particularly concerning as, in high-pressure situations where staff are required to make rapid decisions, the absence of clear guidance is likely to heighten the potential for unlawful interventions. Importantly, the

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<sup>1</sup> 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.

State cannot “absolve itself from responsibility by delegating its obligations to private bodies or individuals.”<sup>2</sup>

- 2.3 The remainder of this section sets out relevant ECHR standards that are likely to be engaged in relation to the use of restrictive interventions. In particular: Article 3 (the right not to be subjected to torture, inhuman or degrading treatment or punishment)<sup>3</sup>; Article 5 (the right to liberty and security); Article 8 (the right to private and family life, which includes the right to bodily integrity); and Article 14 (prohibition of discrimination in the enjoyment of an ECHR right). The following section will demonstrate how these standards apply. The final section set out additional considerations informed by human rights principles and relevant guidance that would be helpful in the guidance.

### **ECHR Article 3: Freedom from torture**

- 2.4 Article 3 ECHR states that, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. It is an absolute right from which there can be no derogation. Jurisprudence from the European Court of Human Rights (ECtHR) makes clear that there is a positive obligation on the State to take measures to prevent breaches and “provide effective protection, in particular, of children and other vulnerable persons”.<sup>4</sup> Moreover, there must be appropriate procedures to identify and thereafter address suspected instances of abuse or ill treatment. This duty is more than merely passive.
- 2.5 A minimum threshold of severity is required before Article 3 ECHR is engaged. In deciding if treatment reaches the ‘threshold’ of being inhuman or degrading, the court has stated “it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim”.<sup>5</sup> In other words, in

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<sup>2</sup> Costello-Roberts v UK (Application 13134/87) [1993] ECHR 16.

<sup>3</sup> See e.g., Kurt v Turkey (1998) ECHR 44, which held that a defect in the procedural action required of the State under Article 2 may additionally amount to a breach of Article 3 in respect of the impact on the family of the person whose right to life has been violated.

<sup>4</sup> Z and others v the United Kingdom (2001) ECHR, at paras 70 and 73.

<sup>5</sup> Soering v UK (1989) ECHR at para 100. See also: Ireland v. the United Kingdom, 18 January 1978, Series A no. 25.

assessing whether treatment comes within Article 3 it is the impact of the treatment on the individual concerned which is relevant.<sup>6</sup>

## **ECHR Article 5: Right to liberty and security**

2.6 Article 5 ECHR guarantees that "everyone has the right to liberty and security of person".<sup>7</sup> As a qualified right, limitations are allowed if they are lawful, proportionate, and necessary for the protection of one of the objectives set out in the text of Article 5(1) ECHR. The ECtHR has identified three essential components: (i) confinement in a restricted place for a not negligible period of time; (ii) absence of valid consent; and (iii) confinement by or imputable to the State.<sup>8</sup> The UK Supreme Court has observed that compliance should not be assumed to be consent.<sup>9</sup>

2.7 There is a difference between deprivation of liberty and restriction upon liberty. The ECtHR observed however it is "one of degree or intensity" and "account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question".<sup>10</sup> The ECtHR has held that the purpose of measures taken by the authorities is not decisive for the assessment of whether there has in fact been a deprivation of liberty,<sup>11</sup> and that the courts will only take this into account at a later stage of its analysis, when examining the compatibility of the measures.<sup>12</sup>

## **ECHR Article 8: Respect for private life**

2.8 Article 8 ECHR protects against arbitrary interference by a public authority with private and family life, home, and correspondence. Article 8 is a qualified right, which means that departure from its strict requirements may be permissible but only in certain defined

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<sup>6</sup> See e.g. *Costello-Roberts v UK* (25 March 1993) Application No 13134/87.

<sup>7</sup> See also article 9 of the ICCPR, 'Everyone has the right to liberty and security of person'; article 37(b) of the UN CRC, 'No child shall be deprived of his or her liberty unlawfully or arbitrarily'; and article 14 of the UN CRPD, 'States Parties shall ensure that persons with disabilities... enjoy the right to liberty and security of person'.

<sup>8</sup> *Storck v Germany* (2005) 43 EHRR 6, at paras 74-89. Deprivation of liberty could be imputable to the State where for example there is the direct involvement of public authorities in the deprivation even if the facility was private and where the State has breached its positive obligation to take positive measures to protect against the interference by private individuals in Article 5 rights.

<sup>9</sup> *P v Cheshire West and Chester Council* [2014] UKSC 19, at para 35.

<sup>10</sup> *Guzzardi v Italy* [1980] ECHR 5

<sup>11</sup> *Rozhkov v Russia* (No.2), Application no. 38898/04, 31 January 2017.

<sup>12</sup> *Ibid.* See also, *ZH v Commissioner of the Police for the Metropolis* [2013] EWCA Civ 69, at para 85.

circumstances.

- 2.9 Interferences are allowed if they are “in accordance with the law” or “prescribed by law” and are “necessary in a democratic society” for the protection of one of the objectives set out in Article 8(2) of the ECHR. Even if there is a legitimate reason for imposing a restriction, the restriction must be the least restrictive option available.<sup>13</sup>
- 2.10 In order to determine whether a particular interference in Article 8 ECHR rights is necessary in a democratic society; the ECtHR balances the interests of the State against the right of the individual. The ECtHR has clarified that “necessary” in this context does not have the flexibility of expressions such as “useful”, “reasonable”, or “desirable”, but implies the existence of a “pressing social need” for the interference in question.<sup>14</sup>
- 2.11 It is notable in the current context that, although the right to a private life includes a right to privacy, it is much broader. It encompasses also an individual’s well-being and dignity,<sup>15</sup> and their moral, physical and psychological integrity.<sup>16</sup> It covers, for example, the provision of personal care or medical treatment without consent;<sup>17</sup> and the making of decisions for others as to personal risk.<sup>18</sup> In the case of *Pretty v the United Kingdom*, the ECtHR found that “the notion of personal autonomy is an important principle underlying the interpretation of [Article 8] guarantees”.<sup>19</sup>

## **ECHR Article 14: Non-discrimination**

- 2.12 Article 14 ECHR provides for the enjoyment of ECHR rights “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.
- 2.13 This is not a freestanding right, but a right to protection from discrimination in the enjoyment of other ECHR rights. Importantly,

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<sup>13</sup> *Huang v Secretary of State* [2007] 2 AC 167 at [19]; *Kurnaz v Turkey* (Application no. 36672/97) at [56].

<sup>14</sup> *The Sunday Times v United Kingdom* (1979) 2 ECHR 245.

<sup>15</sup> *Beizaras and Levickas v. Lithuania*, §§ 109 and 11

<sup>16</sup> *X and Y v Netherlands* (26 March 1985) 8 EHRR 235, para 22; and *Pretty v The United Kingdom* (2002) ECHR 427, at para 61.

<sup>17</sup> *Storck v Germany* (16 June 2005) 43 EHRR 96.

<sup>18</sup> *X v Belgium* (6 February 1968) 18 DR 225.

<sup>19</sup> *Ibid*, at para 62.

the grounds of discrimination contained in (and prohibited by) Article 14 are not exhaustive. Discrimination on other grounds or status have included by way of example, age<sup>20</sup> and disability.<sup>21</sup>

**2.14 The NIHRC considers that the draft guidance, in its current form, may not adequately support schools to meet their obligations under the Human Rights Act 1998. The guidance should more clearly set out the relevant human rights legal obligations and provide further explanation to ensure that restrictive practices are only used when strictly necessary.**

## 3.0 Section 4: Legal Framework

### Article 4(1)(c) of the Education (NI) Order 1998

3.1 In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

take legislative measures to explicitly prohibit, without exception, the use of... seclusion and restraint as disciplinary measures in schools;

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]

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.<sup>22</sup>

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<sup>20</sup> See e.g. *Schwizgebel v. Switzerland* (Application no. 25762/07), in which different treatment of the applicant for child adoption was found on the basis of age but was justified and within the margin of appreciation for the State in the best interests of the child. Discrimination on grounds of age is often more readily accepted as justified if based upon a State's objective analysis of need and the proportionality of measures to protect minors.

<sup>21</sup> *Glor v. Switzerland* (Application no. 13444/04)

<sup>22</sup> 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 paras 30(a), 30(b) and 47(j).

- 3.2 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”. 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”.<sup>23</sup>
- 3.3 Concerns regarding the breadth of “good order and discipline” as a justification for the use of reasonable force have also been raised domestically. In its 2015 assessment of UK compliance to the UN CRC, the Westminster Joint Committee on Human Rights noted their concerns regarding the use of restrictive practices against children and young people in secure accommodation in England and Wales. The Joint Committee concluded that “ensuring ‘good order and discipline’ was far too broad and vague a justification and that force should only be used to prevent harm to the child or to others and only the minimum force necessary should be used”.<sup>24</sup>
- 3.4 In *C v Secretary of State for Justice*, the Court of Appeal in England and Wales considered the lawfulness of rules permitting the use of restrictive interventions on children in secure training colleges to ensure “good order and discipline”.<sup>25</sup> The Court found that the relevant provisions (the “Amendment Rules”) were incompatible with Article 3 ECHR and Article 8 ECHR.
- 3.5 In reaching this conclusion, the Court of Appeal took into account ECtHR jurisprudence that Article 3 may be engaged in circumstances that fall below a high level of extreme violence, deprivation or humiliation. In addition, the Court noted “the very open-ended terms of GOAD [good order and discipline] leave a great deal of discretion in the hands of officers on the ground”,<sup>26</sup> the

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<sup>23</sup> Ibid, at para 37(b).

<sup>24</sup> Human Rights Joint Committee The UK's compliance with the UN Convention on the Rights of the Child - Human Rights Joint Committee (parliament.uk) , at para 121.

<sup>25</sup> *C v Secretary of State for Justice* (2008) EWCA Civ. 882, at para 3.

<sup>26</sup> Ibid, at para 72.

Court also noted that decisions on the appropriateness of restrictive techniques seemed to be made on an “ad hoc” basis.<sup>27</sup>

- 3.6 The Court of Appeal placed significant weight on the absence of evidence that the use of restrictive interventions for the purpose of maintaining good order and discipline was necessary.<sup>28</sup> Assertions as to the operational need were not considered sufficient,<sup>29</sup> not least as the Court sought clear justification for an interference with ECHR Articles 3 and 8.
- 3.7 While this case concerned secure training colleges, the underlying legal principles are directly relevant to the use of restrictive intervention in schools. In particular, it highlights the risks associated with relying on broad and undefined terms, and the importance of demonstrating, with evidence, why powers to use such interventions are considered strictly necessary.
- 3.8 In the present context, the Department’s guidance does not define what is meant by “good order and discipline” under Article 4(1)(c) of the Education (NI) Order 1998. The guidance does not identify the types of scenarios in which the use of force for this purpose would be considered necessary.
- 3.9 The NIHRC acknowledges that the guidance reiterates that “use of force as a punitive or disciplinary measure is unlawful as well as a breach of human rights standards”.<sup>30</sup> However, the guidance then creates a tension by defining what is ‘lawfully reasonable’ in the following terms (emphasis added):

The use of reasonable force in educational settings is a measure of last resort, when the pupil, other pupils, members of staff, or property are at risk, or the pupil is seriously compromising good order and discipline, must be the minimum force necessary, and the best interests and welfare of the child must underpin any decision to use it.<sup>31</sup>

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<sup>27</sup> Ibid, at para 73.

<sup>28</sup> Ibid, at paras 20-34.

<sup>29</sup> Ibid, at para 26.

<sup>30</sup> Department of Education, ‘Consultation Version – Restrictive Interventions: Guidance for Educational Settings’ (DE, 2026), at para 4.4.

<sup>31</sup> Ibid, at para 4.3. See also, p.14 (definition of physical restraint).

- 3.10 The NIHRC is concerned that the lack of detail in the current guidance as to what is meant by “good order and discipline”, together with the inherent tension between with concept and the requirements of ECHR Articles 3 and 8, creates a risk of inconsistent application and potential breaches of rights.
- 3.11 The NIHRC further notes that the Department of Education previously undertook a review of restrictive practices in 2022, which concluded that Article 4(1)(c) of the Education (NI) Order 1998 should be repealed at the earliest legislative opportunity.<sup>32</sup> This recommendation was accepted by the then Minister of Education,<sup>33</sup> indicating a recognition that the provision was not necessary and carried a risk of non-compliance with ECHR standards.
- 3.12 In the absence of any new evidence demonstrating the necessity of the provision, its retention raises significant concern. This should be addressed.
- 3.13 **The NIHRC advises that the use of restrictive intervention for the permitted purpose to “maintain good order and discipline” creates a real risk of non-compliance with ECHR Article 3 and Article 8. The NIHRC recommends that the Education (Northern Ireland) Order 1998 be amended to remove Section 4(1)(c) to ensure that restrictive interventions are not permitted to maintain good order and discipline but only as a measure of last resort for the safety of the child or others. Guidance from the Department of Education should be updated to reflect this. In the interim, Departmental guidance should be amended to expressly address the risk of non-compliance with ECHR in relation to section 4(1)(c).**

### **Omission of Article 5 ECHR**

- 3.14 The primary purpose of Article 5 ECHR is to ensure that no one is deprived of their physical liberty in an arbitrary fashion. ECtHR

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<sup>32</sup> Department of Education, ‘Review of the Use of Restraint and Seclusion in Educational Settings in Northern Ireland’ (DE, 2022), at Recommendation 1.

<sup>33</sup> Department of Education, ‘Press Release: Review of restraint and seclusion in educational settings published’, 25 March 2022.

jurisprudence makes clear that a 'deprivation of liberty' within the meaning of Article 5 is not confined to the classic case of detention following arrest or conviction but may take numerous other forms.<sup>34</sup>

- 3.15 In order to determine whether there has been a deprivation of liberty, courts will evaluate the individual's actual situation, in particular whether there had been "confinement to a certain limited place for a not negligible length of time" and whether they "validly consented" to this happening.<sup>35</sup> The UK Supreme Court has clarified that compliance should not be assumed as consent.<sup>36</sup> The courts' assessment will take account of a wide range of criteria such as the type, duration, effects and manner of implementation of the measure in question.<sup>37</sup>
- 3.16 The ECtHR has held that the context in which the measure is taken is important, acknowledging that "situations commonly occur in modern society where the public may be called on to endure restrictions on freedom of movement or liberty in the interests of the common good".<sup>38</sup> However, even measures intended for protection or taken in the interest of the person concerned may be regarded as a deprivation of liberty.<sup>39</sup> Therefore, the purpose of measures taken by the authorities is not in itself decisive for the assessment of whether the threshold for Article 5 has been crossed, but will inform whether the deprivation is justified under one of the defined purposes and in accordance with a procedure prescribed by law, Article 5(1).<sup>40</sup>
- 3.17 It is acknowledged that Article 5 ECHR may not be engaged by all incidences of restraint. However, it will be engaged where the level of restriction is of such a nature, duration or intensity that it amounts to a deprivation of liberty. While this assessment is highly dependent on the individual circumstances, case law provides clear guidance on the relevant factors that should be taken into account. Relevant factors include: the possibility to leave the restricted area;

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<sup>34</sup> *Guzzardi v Italy* [2006] ECHR 5.

<sup>35</sup> *Storck v Germany* [2005] ECHR 406, at para 74.

<sup>36</sup> *P v Cheshire West and Chester Council* [2014] UKSC 19, at para 35.

<sup>37</sup> *De Tommaso v Italy* (Application No. 43395/09) 23 February 2017, at para 80.

<sup>38</sup> *De Tommaso v Italy* (Application No. 43395/09) 23 February 2017, at para 81.

<sup>39</sup> *Khlaifia and Others v. Italy* (Application No. 16483/12), 15 December 2016, at para 71.

<sup>40</sup> *Austin v UK* [2012] 55 EHRR 14, at para 58

the degree of supervision and control; the extent of isolation; and the availability of social contacts.<sup>41</sup> These factors should therefore inform policy, guidance, and training to ensure that restrictive practices are applied lawfully.

- 3.18 In addition, the ECtHR has held that, if the facts indicate that there has been a deprivation of liberty, the relatively short duration of the deprivation does not without more undermine that finding.<sup>42</sup> In *ZH v Commissioner of Police of the Metropolis*, by way of example, the Court of Appeal in England and Wales found that the “intense” restraint of a 16 year old boy with autism for a period of 40 minutes amounted to a deprivation of his liberty.<sup>43</sup>
- 3.19 Significantly, it is not necessary for an individual to be held under locked conditions for Article 5 to be engaged.<sup>44</sup> Preventing movement, whether by use of physical, chemical or environmental restraints, for a period of time may engage an individual’s right to liberty.<sup>45</sup> Further, the ECtHR has held that detention based on “behaviour correction” or the need to prevent a minor from committing further delinquent acts are not “valid” grounds under Article 5.<sup>46</sup>
- 3.20 Any deprivation of liberty must be “in accordance with a procedure prescribed by law”, comply with the principle of non-arbitrariness, and fall within one of the defined purposes set out in Article 5(1).
- 3.21 Article 4 of the Education (NI) Order 1998 under the heading “power of a member of staff to restrain” provides a power to use “such force as is reasonable in the circumstances for the purpose of preventing the pupil from” doing any of three defined actions, including behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise. Article 5 exempts after school detention without consent from illegality if certain conditions stated are met. Whether or not such detention

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<sup>41</sup> *HL v. UK* [2004] ECHR 471, at para 91; *Storck v Germany* [2005] ECHR 406, at para 73.

<sup>42</sup> *Rantsev v. Cyprus and Russia* (Application No. 25965/04), 7 January 2010.

<sup>43</sup> *ZH v Commissioner of the Police for the Metropolis* [2013] EWCA Civ 69.

<sup>44</sup> *M.A. v. Cyprus*, (Application no. 41872/10), 23 July 2013, at para 193.

<sup>45</sup> *Novotka v Slovakia* (Application No 47244/99), 4 November 2003.

<sup>46</sup> *Blokhin v Russia* [2016] ECHR 47152/06, at para 171.

would amount to a deprivation of liberty would depend on the facts of the case but potentially could involve such a deprivation. If it is a deprivation of liberty within the meaning of Article 5 ECHR, it must be authorised to be lawful. The Education Order does not provide for authorisations for deprivation of liberty.

- 3.22 In the case of *ML and Special Needs and Disability Tribunal and Others*, the High Court of NI (Family Division) considered the interaction between special educational provision and ECHR rights in circumstances where a proposed school placement involved a highly controlled environment.<sup>47</sup> While the Court upheld the Tribunal's decision on educational appropriateness, it made clear that Article 5 ECHR may be engaged in school settings and that any deprivation of liberty must be separately authorised under the Mental Capacity Act (NI) 2016 or, where that is not available, through the High Court's "inherent jurisdiction".<sup>48</sup>
- 3.23 Further, the High Court stressed the positive obligation imposed upon State authorities under Article 5 ECHR, stating that "all public authorities need to be aware of this and even if the special educational provision is deemed to be appropriate there is a lawfulness issue if it is thought to be a deprivation of liberty and not authorised".<sup>49</sup> As noted in the ML Judgment,<sup>50</sup> the Department of Education had committed to reviewing the management of deprivation of liberty authorisations in educational settings.<sup>51</sup> It is not clear from the current consultation document whether and if so what progress has been made on that.
- 3.24 Instead, the Department of Education's revised guidance removes any reference to Article 5 ECHR, when compared to previous iterations.<sup>52</sup> Separately, the Department advised the NIHRC that Article 5 was considered outside the scope of the guidance as it "does not seek to authorise deprivation of liberty beyond

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<sup>47</sup> *ML and Special Needs and Disability Tribunal and Others* [2021] NIFam 15.

<sup>48</sup> *Ibid*, at para 47.

<sup>49</sup> *ML and Special Needs and Disability Tribunal and Others* [2021] NIFam 15, at para 51.

<sup>50</sup> *Ibid*, at para 39.

<sup>51</sup> Department of Education, 'Interim Guidance on the Use of Restraint and Seclusion in Educational Settings: Circular 2021/13'. Available at: [DE Circular 13 of 2021 - Restraint and Seclusion.pdf](#)

<sup>52</sup> 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).

emergency, necessity-based interventions”.<sup>53</sup> The NIHRC reiterates that schools do not have the power to authorise *any form of* deprivation of liberty. The revised guidance should therefore clarify that a deprivation of liberty is not permissible and requires adherence to a separate legal framework or through the High Court’s “inherent jurisdiction”.

3.25 The High Court in *ML and Special Needs and Disability Tribunal and Others* also underscored the importance of ensuring that all public authorities are aware of their obligations under Article 5 ECHR, even where arrangements are considered lawful and appropriate. This is particularly pertinent to the current context, as schools could be acting within their prescribed powers and still breach the ECHR if care is not taken to ensure the law, policy and procedures are in conformity with the ECHR and its general principles.

3.26 The NIHRC considers that the absence of reference to Article 5 in the guidance creates the risk that restrictive interventions amounting to a deprivation of liberty may occur inadvertently, in the absence of appropriate oversight arrangements or mechanisms for challenge. In accordance with its obligations under the Human Rights Act 1998, the Department of Education should require schools to identify and avoid any measures that amount to an unauthorised deprivation of liberty. Schools should receive adequate support in doing so.

3.27 While Article 5 considerations apply to all restrictive interventions, the NIHRC is particularly concerned about the use of seclusion within school settings. As per the definition in the draft guidance, seclusion involves the confinement of a child in a space from which they are not free to leave.<sup>54</sup> It therefore presents a significant risk of meeting the threshold for a deprivation of liberty under Article 5.<sup>55</sup> Where this threshold is crossed, it cannot be justified solely by reference to the statutory power under the Education Order and will require separate legal authorisation, in advance. The current draft

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<sup>53</sup> Email correspondence from Department of Education to NI Human Rights Commission, 24 April 2026.

<sup>54</sup> Department of Education, ‘Consultation Version – Restrictive Interventions: Guidance for Educational Settings’ (DE, 2026), at 14.

<sup>55</sup> The ECtHR has identified three essential components of deprivations of liberty: (i) confinement in a restricted place for a not negligible period of time; (ii) a lack of valid consent; and (iii) the confinement is attributable to the state. See: *Storck v Germany* (2005) 43 EHRR 6, at paras 74-89.

guidance does not address this or provide practical direction to schools on how to respond in such circumstances.

**3.28 The NIHRC recommends that the guidance is amended to include explicit reference to Article 5 of the ECHR, including clear guidance to support staff in identifying when restrictive interventions may amount to a deprivation of liberty. Guidance should emphasise critical factors for decision-making, including the degree, duration, intensity and manner of the intervention, rather than focussing solely on the type of intervention used.**

**3.29 The NIHRC recommends that the use of seclusion is prohibited in all but the most exceptional, time-limited situations where it is necessary to prevent immediate and serious harm. The guidance should emphasise the significant risk that seclusion, in certain circumstances, may amount to a deprivation of liberty under Article 5 of the ECHR, which cannot be authorised under the current arrangements.**

### **Omission of Article 14 ECHR**

3.30 The NIHRC welcomes that the draft guidance refers to domestic equality and disability legislation, including the Special Educational Needs and Disability (Northern Ireland) Order 2005. However, it does not explicitly address the requirements of Article 14 ECHR which applies as a legal duty on public authorities under the Human Rights Act 1998. As an ancillary right, it will apply in conjunction with the substantive rights engaged by the use of restrictive interventions. Article 14 requires public authorities to not only avoid direct discrimination, but to address practices which may have a disproportionate impact on certain groups.

3.31 The use of restrictive practices in educational settings in NI has been identified as a particular concern for children with special educational needs.<sup>56</sup> There is evidence to suggest that the negative effect of the use of restrictive practices is magnified for children and

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<sup>56</sup> See e.g. Northern Ireland Commissioner for Children and Young People (NICCY), 'Too Little Too Late: A Rights Based Review of Special Educational Needs Provision in Mainstream Schools' (NICCY, 2020), at 79; British Association of Social Workers, 'Policy Statement: Restraint and Seclusion of Children and Young People in Schools and Educational Facilities' (BASWNI, 2019).

young people who have special educational needs and disabilities. Moreover, those children and young people are likely to be less able to advocate for themselves.<sup>57</sup> Children may have difficulty communicating distress, which is intensified in children who are non-verbal who have other complex needs.

3.32 The NIHRC welcomes that the draft guidance includes requirements for reporting and monitoring the impact of the use of restrictive interventions. However, the NIHRC considers that the guidance should more clearly emphasise how harm is experienced differently by each child, which must form a central part of any risk assessment. Any risk assessment should include the consideration of less restrictive measures. Additionally, there should always be consideration of preventative approaches and de-escalation or co-regulation strategies, including before restraint is used in any case.

**3.33 The NIHRC recommends that the guidance is amended to include explicit reference to Article 14 of the ECHR and its interaction with other ECHR rights. This should include guidance on the need for individualised, needs-based approaches, the use of reasonable adjustments and the importance of monitoring to identify and address any disproportionate use of restrictive interventions.**

## 4.0 Additional Considerations

### Section 6: Withdrawal

4.1 The draft guidance distinguishes between “pupil-led withdrawal” and “staff-led withdrawal” as separate from seclusion on the basis that the child is free to leave.<sup>58</sup> While the provision of a space for pupils to withdraw voluntarily may be appropriate, particularly where this forms part of an agreed care plan, “staff-led withdrawal” has the potential to interfere in ECHR rights unjustifiably therefore must be carefully proscribed and managed.

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<sup>57</sup> Children and Young People’s Commissioner Scotland, ‘No Safe Place: Restraint and Seclusion in Scotland’s Schools’ (CCYP, 2018), at 41; NI Children and Young People’s Commissioner, ‘Too Little Too Late: A Rights Based Review of Special Educational Needs Provision in Mainstream Schools’ (NICCY, 2020).

<sup>58</sup> Department of Education, ‘Consultation Version – Restrictive Interventions: Guidance for Educational Settings’ (DE, 2026), at Section 6.

- 4.2 As an example of a practical scenario, the following is commonplace. A member of staff redirects a pupil to withdraw to a particular space, and the child does not feel able to refuse or may not understand that they are free to leave. Given that schools are structured environments in which children are generally not free to move around or leave without permission such a staff-led withdrawal may amount to forced seclusion. The guidance should emphasise that care will need to be taken to ensure withdrawal spaces are seen as purely voluntary, particularly for younger children or those with additional needs.
- 4.3 In addition, the NIHRC considers that the guidance does not provide sufficient clarity for staff on how to manage situations where a pupil does not wish to engage with a withdrawal space. For example, where a member of staff directs a pupil to move to a different space and the pupil refuses or indicates that they do not wish to do so, there is no guidance on further handling. If the redirection is pursued or enforced, there is a risk that the intervention will move beyond voluntary withdrawal and into a more restrictive intervention, potentially engaging considerations associated with seclusion and deprivation of liberty under Article 5 ECHR.
- 4.4 The absence of clear guidance on this point will likely risk inconsistency in decision-making and situations where interventions are escalated without sufficient consideration of their legal implications. The NIHRC is particularly concerned by the suggestion that staff-led withdrawals should not be subject to the same recording and monitoring requirements as other interventions. The absence of oversight in relation to a practice that, in certain circumstances, may amount to a restriction on liberty risks undermining the procedural safeguards required by the ECHR. It also creates a risk that patterns of use, including any disproportionate impact on children with disabilities, may not be identified or addressed.
- 4.5 The NIHRC recommends that the draft guidance is amended to ensure that any intervention which involves directing a pupil to withdraw from their environment should be subject to appropriate recording, monitoring and review. The guidance should emphasise that withdrawal spaces must be**

**voluntary and not used in a manner that may give rise to an interference with Article 5 of the ECHR.**

## **Section 8: Recording, monitoring and reporting**

4.6 The NIHRC, in 2023, identified a gap in the reporting and oversight arrangements for restrictive practices.<sup>59</sup> In 2022, the Department of Education's review recommended the publication of a periodic report on the use of restrictive and supportive practices in educational settings, but this has not been reflected in the current guidance.<sup>60</sup> Robust data collection and transparent reporting arrangements are crucial for ensuring human rights compliance and accountability. The NIHRC emphasises the importance of ensuring that data is disaggregated, so that it will identify if and how restraint is used disproportionately.

**4.7 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.**

### **Mandatory training**

4.8 The draft guidance does not contain any detail on the key considerations or factors that should inform mandatory training on the use of restrictive interventions. In the absence of clear expectations, there is a risk of inconsistency in training and practice. This creates a risk that staff will not understand or apply the relevant human right standards and considerations.

4.9 The NIHRC highlighted the importance of ensuring that any educational practitioner who may use restrictive practices receive

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<sup>59</sup> NI 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' (DE, 2023), at para 4.1.

<sup>60</sup> Department of Education, 'Review of the Use of Restraint and Seclusion in Educational Settings in Northern Ireland' (DE, 2022), at Recommendation 6.

adequate training and supervision on how to apply human rights-based approaches in practical settings.<sup>61</sup> As explored above, 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, and the aim and duration of the intervention. For example, the Council of Europe Committee of Ministers adopted a recommendation, with which the NIHRC agrees, that mental health staff should have mandatory training not just on physical restraint, but also on:

- 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.<sup>62</sup>

**4.10 The NIHRC recommends that all educational practitioners who may use restrictive practices must receive adequate and effective training on when it is appropriate to use these measures and how to do so safely. This training should include relevant human rights standards and be sensitive to the additional needs of children and young people with specialised educational needs and disabilities.**

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<sup>61</sup> NI 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' (DE, 2023), at para 3.4.

<sup>62</sup> Committee of Ministers (2004) Recommendation Number Rec 2004(10) (Strasbourg: Council of Europe), at art 11(2).

## Contact us

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