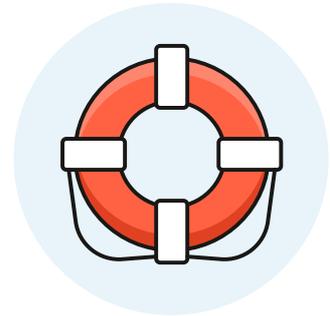


## IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: [info@article39.org.uk](mailto:info@article39.org.uk)

## Restraint and use of force



- ✦ Using physical force on anyone is a very serious matter. It affects a person's feelings and control over their own body.
- ✦ Restraint is when a child or young person is physically held by one or more members of staff.
- ✦ It can also mean restricting your movement, like stopping you getting in and out of rooms.
- ✦ Restraint is only allowed in certain situations – see below.

Children and young people who have been restrained often say it made them feel very upset, angry and scared.

Some children and young people say being held by staff helps them feel protected and safe.

Each child or young person has their own feelings, their own needs and their own views.

- ✦ Staff who work with children should know how to avoid situations getting to the point where restraint is necessary.
- ✦ You probably have your own ideas about how to calm down situations and avoid the need for restraint.

## Your rights – general

- + Restraint is holding, not hitting.
- + Corporal punishment is banned in children's homes, prisons, schools and secure children's homes. This means staff are not allowed to hit you.
- + Staff are allowed to restrain you only in certain situations. Some of the legal rules differ according to where you live – see 'Your rights – extra' below.
- + Restraint used in the wrong situation, or in the wrong way, could be a crime.
- + It could be breaching your human rights.
- + But sometimes restraint is the only way to keep you safe<sup>1</sup> and protect human rights. Or to stop a crime.

The people who look after you must follow the Human Rights Act. This is a law passed by our Parliament in London in 1998.

If you are restrained when there is no good reason, or you are restrained in a way that causes you a lot of suffering, this might be breaching your human rights in the Human Rights Act. The restraint could be against the law.

The United Nations Convention on the Rights of the Child also protects you from violent treatment.

In most places, staff are taught that restraint must be **a last resort – which means nothing else can work.**

To be legally acceptable, restraint must be a fair and acceptable response to a situation. The amount and type of force used must be in line with the situation and the child or young person.

**Restraint must never ever be used as a punishment. The adults restraining you should never swear at you, call you names or threaten to hit you. They should stay as calm as possible.**

Staff must stop restraining as soon as possible. **If you are struggling to breathe they must immediately stop the restraint.**

- + Wherever you live, if you are ever restrained you should be offered the chance to talk about how you feel afterwards.
- + This is so you and staff to learn from what happened, to try and avoid restraint being used again in the future.

## Your rights – extra

This section gives you information about your extra rights in different places.

Words in “quotation marks” come from laws and legal rules. Laws and legal rules must be followed by the people who look after you.

### Children’s home

The law says restraint can only be used in a children’s home for one of the following two reasons:

- + To stop a person being injured\* (this includes the child being restrained) OR
- + To stop serious damage to the property of any person (this includes property belonging to the child being restrained).<sup>2</sup>

\*Injury can be to a person’s body or mind.

The government has given staff in your children’s home advice about restraint. This advice should always be followed. It says any use of restraint should be suitable for the individual child.<sup>3</sup> This means staff should know you, understand you and restrain you in the way that’s best for you.

The government advice also says staff should think about these things when deciding whether or not to use restraint:

- + Your age and understanding.
- + Your size.
- + If any disability or health problem you have is linked to your behavior.
- + If any tablets or medicines you are taking is linked to your behavior.
- + The risks if restraint is not used.
- + Your views on what might help calm down the situation (you should have been asked these when you first came to the children’s home).
- + What type of restraint would be best in the situation.
- + What effect the restraint might have on your relationship with your carer.<sup>4</sup>

**Staff are not allowed to deliberately cause you pain when they restrain you.<sup>5</sup>**

**Staff are not allowed to use restraint methods that may make it difficult for you to breathe. They are also not allowed to use restraint methods that involve holding you around your neck.<sup>6</sup>**

The person in charge of your children’s home must make sure staff are trained properly.

When your social worker and council found you this children's home they should have checked that the training given to staff about restraint fits with the care they want for you. They should check that the restraint methods have been looked at by medically qualified people, and that they are safe for use with children.

If restraint is used in your children's home, the law says a written record must be made within 24 hours. This written record must include:

- + The name of the child who was restrained.
- + Information about the child's behaviour which led to the restraint.
- + The date, time and place of the restraint.
- + A description of the restraint and how long it lasted.
- + Information about anything staff did to avoid the use of restraint.
- + The name of the person who restrained the child and the names of any other people who were there at the time of the restraint.
- + What happened as a result of the restraint, and whether it helped the situation.
- + A description of any injury to the child or any other person, and any medical treatment received by anyone.<sup>7</sup>

If you are ever restrained, you should get the chance to talk about your feelings as soon as you feel comfortable to do this. You should be able to add your views to the written record of restraint.<sup>8</sup> You should be offered help from an advocate.<sup>9</sup>

Within 5 days of you being restrained, the law says the person in charge of your home must speak with you about it. They must then sign the written record to say they have done this.<sup>10</sup>

## Hospital or other health place

The law says restraint is allowed in hospital or another health place only if:

- + It is necessary to stop a risk of harm OR
- + It is an acceptable response to a risk of harm.<sup>11</sup>

Nurses and other staff should try their best to avoid using restraint.

If you are in hospital or another health place for mental health reasons, staff must follow a set of legal rules. This is called the Mental Health Act Code of Practice.<sup>12</sup>

The Mental Health Code of Practice says that restraint should, wherever possible, be used in line with a plan that has been agreed with you and your parents.<sup>13</sup> It should be used very carefully so that you don't suffer harm and your freedom, privacy and dignity are protected.<sup>14</sup>

Nurses and other staff should always take into account your age and your physical and emotional maturity before ever using restraint. If you have a disability or other difficulties, these should be taken into account too.<sup>15</sup>

The Mental Health Code of Practice warns nurses and other staff to only ever use restraint “with caution” because children and young people are still growing and there are greater risks of injury than with adults.<sup>16</sup>

The Mental Health Act Code of Practice says that restraint should never be used to humiliate you or punish you. Staff should never use restraint to deliberately cause you pain unless you are in a very extreme situation where there is an immediate risk to somebody’s life.<sup>17</sup>

Nurses and staff should never deliberately restrain you in a way that affects your breathing and blood circulation (an example of blood circulation being affected is when we get pins and needles, or our feet have ‘gone to sleep’). Your mouth or nose must never be covered, and pressure should not be put on your neck, ribs or stomach. Restraint where you are lying on your front – on the floor, a bed or other surface – should always be avoided.<sup>18</sup>

During restraint a member of staff should keep check on you to make sure you are not harmed or injured.<sup>19</sup>

## Immigration detention

The law says staff working in detention centres must not use force when it is not needed.

Staff who work in detention centres have to follow government rules. These say that restraint will only be used as a last resort. This means that nothing else is possible.

Restraint can only be used:

- + To keep someone in the centre.
- + To stop violence.
- + To stop property being destroyed.
- + To stop a person trying to prevent themselves or another person being removed from the centre and the country.<sup>20</sup>

When restraint is necessary, only as much force must be used as is needed in the situation.<sup>21</sup>

Staff are banned from acting in a way that provokes you.<sup>22</sup>

Only staff who have been trained are allowed to carry out restraint.<sup>23</sup>

Every use of restraint must be written down and reported to people who work in the

government.<sup>24</sup>

You must be seen by a nurse or someone else from health care as soon as possible after you have been restrained.<sup>25</sup>

## Prison

If you are in a **young offender institution**, the law says:

- + Officers must only use force when it is needed.
- + When force is necessary, officers must use only as much force as the situation needs.
- + Officers must not deliberately try and provoke you.<sup>26</sup>

The use of force on children and young people will only be legal if:

- + It is fair in the situation.
- + It is necessary.
- + No more force than was needed was used.
- + The amount of force used matches the situation.<sup>27</sup>

When looking at whether it is necessary to restrain somebody, officers must take into account any risk of harm to a person's life, their body, their own or others' property and to the good order of the prison.

It will obviously be easier for officers to justify using restraint when they have done so to protect a person from serious harm. It will be less easy to justify restraint when it is used to protect the good order of the prison.

For example, if a child or young person is immediately restrained after swearing or refusing to leave a room, then it's probably going to be difficult for an officer to justify this.<sup>28</sup>

Officers are always expected to do their best to avoid using restraint – by listening and talking, being calm and trying to help you out of difficult situations.<sup>29</sup>

If you are in a **secure training centre**, the law says:

- + Officers must only use force when it is needed.
- + When force is necessary, officers must use only as much force as the situation needs.
- + Officers must not deliberately try and provoke you.<sup>30</sup> Provoking someone means making them upset or angry so that they act in a certain way.

The use of force on children and young people in secure training centres will only be legal if it is used to stop a child or young person:

- + Escaping OR
- + Injuring himself, herself or another person OR
- + Damaging property OR
- + Encouraging another child or young person to escape, injure themselves or others or damage property
- + **AND there was no other way of stopping any of the above.**<sup>31</sup>

Officers are only allowed to restrain if they have been trained in approved methods.<sup>32</sup>

A written record of every restraint must be made within 12 hours of it happening.<sup>33</sup>

In both young offender institutions and secure training centres, officers must follow these government rules:

- + Officers are only ever allowed to deliberately cause you pain during restraint when there is **an immediate risk of serious physical harm**. This means it should be extremely rare. If a situation can clearly be handled without hurting you, it would **not** be legal for an officer to cause you pain.
- + After every use of restraint, you must be given the chance to speak about your thoughts and feelings. This is to help you recover from the restraint and to try and stop restraint being used again in the future. You should get the chance to speak with someone separate from your prison, like an advocate.
- + Officers must arrange for you to see a doctor or nurse immediately if you have been injured during restraint or if you don't feel right or you are in pain. If you ask to see a doctor or nurse after restraint, this must also be arranged – you don't have to give a reason.<sup>34</sup>

## School

The law says school staff can use force when it is needed to avoid or stop a child or young person:

- + Committing a crime OR
- + Causing an injury to themselves or another person OR
- + Damaging property OR
- + Harming the smooth running of your school, or the behavior of other children and young people who go to your school.<sup>35</sup>

Teachers in your school also have to follow government advice. This says they can use force in these situations:

- + To stop you hurting yourself or others.

- + To stop you damaging property.
- + To stop you harming order in your school.
- + To remove children and young people from a classroom if they are being disruptive and have refused to leave the classroom.
- + To stop a child or young person from behaving in a way that harms a school event or a school trip or visit.
- + To stop a child or young person from leaving the classroom where this would risk their safety or lead to disruptive behavior.
- + To stop a child or young person from attacking a member of staff or another pupil, or to stop a fight in the playground.
- + To protect a child or young person who is at risk of harming themselves through physical outbursts.<sup>36</sup>

Government advice says that restraint – when a teacher or other member of staff uses force to hold a child or young person – is usually used only in very extreme situations, like when two children are fighting and refuse to stop.<sup>37</sup>

## Secure children's home

The law says restraint can only be used in a children's home for one of the following three reasons:

- + To stop a person being injured\* (this includes the child being restrained) OR
- + To stop serious damage to the property of any person (this includes property belonging to the child being restrained) OR
- + To stop you running away from your secure children's home.<sup>38</sup>

\*Injury can be to a person's body or mind.

The government has given staff in your children's home advice about restraint. This advice should always be followed. It says any use of restraint should be suitable for the individual child.<sup>39</sup> This means staff should know you, understand you and restrain you in the way that's best for you.

The government advice also says staff should think about these things when deciding whether or not to use restraint:

- + Your age and understanding.
- + Your size.
- + If any disability or health problem you have is linked to your behavior.
- + If any tablets or medicines you are taking is linked to your behavior.
- + The risks if restraint is not used.
- + Your views on what might help calm down the situation (you should have been asked these when you first came to the children's home).

- + What type of restraint would be best in the situation.
- + What effect the restraint might have on your relationship with your carer.<sup>40</sup>

Staff are not allowed to deliberately cause you pain when they restrain you.<sup>41</sup>

Staff are not allowed to use restraint methods that may make it difficult for you to breathe. They are also not allowed to use restraint methods that involve holding you around your neck.<sup>42</sup>

The person in charge of your children's home must make sure staff are trained properly.

When your social worker and council found you this secure children's home they should have checked that the training given to staff about restraint fits with the care they want for you. They should check that the restraint methods have been looked at by medically qualified people, and that they are safe for us with children.

If restraint is used in your secure children's home, the law says a written record must be made within 24 hours. This must include:

- + The name of the child who was restrained.
- + Information about the child's behaviour which led to the restraint.
- + The date, time and place of the restraint.
- + A description of the restraint and how long it lasted.
- + Information about anything staff did to avoid the use of restraint.
- + The name of the person who restrained the child and the names of any other people who were there at the time of the restraint.
- + What happened as a result of the restraint, and whether it helped the situation.
- + A description of any injury to the child or any other person, and any medical treatment received by anyone.<sup>43</sup>

If you are ever restrained, you should get the chance to talk about your feelings as soon as you feel comfortable to do this. You should be able to add your views to the written record of restraint.<sup>44</sup> You should be offered help from an advocate.<sup>45</sup>

Within 5 days of you being restrained, the law says the person in charge of your home must speak with you about it. They must then sign the written record to say they have done this.<sup>46</sup>

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- 1 Section 3(5) Children Act 1989 provides that, “A person who (a) does not have parental responsibility for a particular child; but (b) has care of the child, may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare”.
  - 2 Regulation 20, The Children’s Homes (England) Regulations 2015.
  - 3 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
  - 4 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
  - 5 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
  - 6 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
  - 7 Regulation 35, The Children’s Homes (England) Regulations 2015.
  - 8 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
  - 9 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
  - 10 Regulation 35, The Children’s Homes (England) Regulations 2015.
  - 11 Regulation 13, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
  - 12 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 13 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 14 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 15 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 16 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 17 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 18 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 19 Department of Health (2015) Mental Health Act 1983: Code of Practice.
  - 20 Home Office (2011) Detention services operating standards manual.
  - 21 Rule 41, The Detention Centre Rules 2001.
  - 22 Rule 41, The Detention Centre Rules 2001.
  - 23 Home Office (2011) Detention services operating standards manual.
  - 24 Rule 41, The Detention Centre Rules 2001.
  - 25 Home Office (2011) Detention services operating standards manual.
  - 26 Rule 50, The Young Offender Institution Rules 2000.
  - 27 PSO 1600 Use of force (amended 2015).
  - 28 PSO 1600 Use of force (amended 2015).
  - 29 Ministry of Justice (2012) Use of restraint policy framework for the under-18 secure estate.
  - 30 Rule 37, The Secure Training Centre Rules 1998.
  - 31 Rule 38, The Secure Training Centre Rules 1998.
  - 32 Rule 38, The Secure Training Centre Rules 1998.
  - 33 Rule 38, The Secure Training Centre Rules 1998.
  - 34 Ministry of Justice (2012) Use of restraint policy framework for the under-18 secure estate.
  - 35 Section 93, Education and Inspections Act 2006.
  - 36 Department for Education (2013) Use of reasonable force. Advice for headteachers, staff and governing bodies.
  - 37 Department for Education (2013) Use of reasonable force. Advice for headteachers, staff and governing bodies.
  - 38 Regulation 20, The Children’s Homes (England) Regulations 2015.

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- 39 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
- 40 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
- 41 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
- 42 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
- 43 Regulation 35, The Children’s Homes (England) Regulations 2015.
- 44 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
- 45 Department for Education (2015) Guide to the children’s homes regulations including the quality standards.
- 46 Regulation 35, The Children’s Homes (England) Regulations 2015.