Children and Young People's Centre for Justice

Consultation on Updates to the Code of Practice for the Mental Health (Care and Treatment) (Scotland) Act 2003

CYCJ response

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Collaborating for rights-respecting justice
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Summary

The Children and Young People's Centre for Justice (CYCJ) welcomes this opportunity to update the Code of Practice for the Mental Health (Care and Treatment) (Scotland) Act 2003. We believe it is particularly important for children and young people to have the Code of Practice better reflect the various changes in policy and legislation over the past two decades, including the incorporation into Scots Law of the United Nations Convention on the Rights of the Child (UNCRC) in 2024. We commend the strong emphasis placed in the draft update on embedding both the UNCRC and the European Convention on Human Rights (ECHR) into the code.

Although we welcome the principles and the purpose as outlined, we do note a wider point around the lack of consistency across definitions, practice and the reporting of restraint and seclusion. This is especially significant given that many children will move across a range of health and care settings. Greater coordination is needed across agencies and services to ensure greater consistency, increasing the understanding of children and young people and encouraging their participation to voice their views. As well as better fulfilling article 12 of the UNCRC on the right to participation, this will also ultimately improve the practice and evaluation of the use of restraint and seclusion for children and young people.

In our submission below we answered only the questions relevant to our work. You can read the full consultation document here: the Code of Practice for the Mental Health (Care and Treatment) (Scotland) Act 2003.

CYCJ response

1a. Do you agree with the general principles and the purpose of restraint and seclusion, as described in the draft update?

Yes

1.b To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

1c. Please tell us more about your answer.

The Children and Young People's Centre for Justice (CYCJ) welcomes this consultation on updating the Code of Practice for the Mental Health (Care and Treatment) (Scotland) Act 2003. We believe it is particularly important for children and young people to have the Code

of Practice better reflect the various changes in policy and legislation over the past two decades, including the incorporation into Scots Law of the United Nations Convention on the Rights of the Child (UNCRC) in 2024.

We commend the strong emphasis placed in the draft update on embedding both the UNCRC and the European Convention on Human Rights (ECHR) into the principles and purpose of restraint and seclusion. This includes the emphasis on restraint and seclusion being used only where necessary, proportionate and for the shortest possible duration, alongside prevention, early identification of distress and de-escalation. The draft appropriately recognises the potential for restraint and seclusion to cause physical and psychological harm, including re-traumatisation and loss of trust in services. This is acutely important for children and young people who come into conflict with the law for serious harm.

There is growing evidence that many of these children and young people have histories of high levels of childhood adversity that can lead to trauma responses (Gibson, 2020, 2021, 2026; Murphy, 2018; Vaswani, 2018). CYCJ recently conducted a census of children in secure care which showed that the children who have been subjected to harm, and/or caused harm have also been exposed to the most entrenched levels of poverty, inequality, and generational trauma (Gibson, 2026). Amongst those children living in relative poverty, some 94% had encountered four or more adverse childhood experiences (ACEs). The census also examined a range of adversities beyond the traditional ACE framework and identified that a significant proportion of children had experiences that could place them at risk of harm (Gibson, 2026). Mental health concerns remain widespread, including high rates of self-harm, suicidal ideation and diagnosed mental ill-health conditions. This cohort's experiences and circumstances, and some of the responses from systems/agencies, can lead to the development of further mental health difficulties later in childhood or adulthood (Fox et al., 2015; Nelson et al., 2020; Perry et al., 2018).

That said, though we welcome the principles and the purpose as outlined, we do note a wider point around the lack of consistency across definitions, practice and the reporting of restraint and seclusion. This is particularly important given that many children will move across a range of health and care settings. Greater coordination is needed across agencies and services to ensure greater consistency, increasing the understanding of children and young people and encouraging their participation to voice their views. As well as better fulfilling article 12 of the UNCRC on the right to participation, this will also ultimately improve the practice and evaluation of the use of restraint and seclusion for children and young people.

2a. How clear, accurate and useful do you find the section on United Nations Convention on the Rights of the Child?

- clarity (is the guidance easy to follow and understand?)

Strongly Agree

Agree
Disagree
Strongly Disagree

- accuracy (does it correctly reflect the current processes?)

Strongly Agree
Agree
Disagree
Strongly Disagree

- usefulness (does it support your practice or understanding of UNCRC requirements?)

Strongly Agree
Agree
Disagree
Strongly Disagree

3a. Do you agree with our definitions of restraint and seclusion?

Yes

3b. To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

3c. Please tell us more about your answer.

CYCJ welcomes the definitions of restraint and seclusion as set out, as well as the section outlining the lawful limits to both. That said, we do believe that, as far as possible, there should be consistency in the definition and understanding of restraint and seclusion across health, social care and other relevant settings. The Care Inspectorate has developed a clear position and guidance on restrictive practices within children's services, including for restraint, seclusion and other forms of restriction. The code of practice should, where possible, align with this wider approach to support a shared understanding across health, social care and secure care. This is particularly important for children who may move between different services and settings, where differences in terminology or thresholds could create uncertainty for children, families and practitioners.

4a. Do you agree with our guidance on the lawful limits of restraint and seclusion?

Yes

4b. To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

4c. Please tell us more about your answer.

CYCJ supports the emphasis on necessity, proportionality, lawful authority, minimum restriction and shortest possible duration. We commend the comprehensive grounding of this within both the UNCRC and the ECHR. We welcome the need to take account of an individual's wishes and feelings, as well as the emphasis on procedural safeguards and to ensure that restrictive interventions do not amount to unlawful breaches of rights, such as around deprivation of liberty.

5a. Do you agree with our recommendations around future care planning?

Yes

5b. To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

5c. Please tell us more about your answer.

CYCJ strongly supports proactive and person-centred future care planning. Plans should be developed with the child wherever possible and should identify their communication preferences, triggers, early indicators of distress, helpful approaches and preferred de-escalation strategies.

Future care plans should be living documents, accessible to those supporting the child and reviewed regularly, particularly following any incident of restraint or seclusion. This approach provides an important opportunity to learn from previous experiences and reduce the likelihood of restrictive intervention being required again.

6a. Do you agree with our guidance for using restraint and seclusion with children and young people?

Yes

6b. To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

6c. Please tell us more about your answer.

CYCJ welcomes the specific guidance relating to children and young people and the recognition that restraint and seclusion must be considered through a rights and best-interests framework. Children require approaches that reflect their developmental stage, communication, relationships and individual experiences. Practitioners should understand the potential impact of trauma, adverse childhood experiences and previous restrictive interventions, including the risk of re-traumatisation.

Child-specific training should therefore include child development, trauma, attachment, communication, relational practice, children's rights and effective alternatives to restraint and seclusion.

9a. Do you agree with our recommendations for monitoring and recording the use of restraint and seclusion?

Yes

9b. To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

9c. Please tell us more about your answer.

CYCJ strongly supports consistent monitoring and recording and the proposed development of national reporting. The draft recognises the importance of improving and standardising data collection to support national understanding of restraint and seclusion.

For children and young people, recording should capture not only what intervention was used, but the circumstances leading to it, alternatives considered, the child/young person's views, duration, impact, injuries or distress, and learning identified following the incident. Where possible, data should enable consideration of patterns affecting different groups of children, including age, gender, disability and other relevant characteristics. Monitoring

should be used to identify opportunities for prevention and reduction rather than simply recording the frequency of restrictive interventions.

10a. Do you agree with our recommendations for staff planning, training and welfare?

Yes

10b. To what extent do you agree or disagree?

Strongly Agree
Agree
Disagree
Strongly Disagree

10c. Please tell us more about your answer.

CYCJ strongly supports the emphasis on staff planning, training and welfare. Staff need the skills, confidence, supervision and organisational support necessary to prevent and respond to distress without relying on restrictive interventions.

There would be benefit in ensuring that training and practice expectations support a consistent understanding of restraint and seclusion across relevant settings. This is particularly important where children and young people move between services and may be supported by practitioners working within different professional and legislative frameworks.

13a. Do you have any other comments on the proposed changes to the Code of Practice Volume 1?

CYCJ welcomes the proposed updates and the stronger emphasis on human rights, least restrictive practice, trauma-informed approaches, the ECHR and the UNCRC.

A key consideration is the need for greater alignment across definitions, practice, recording and reporting of restraint and seclusion, as far as possible across settings. Children and young people may move between mental health services, social care, secure care and justice settings, and differences in terminology or approaches can create difficulties for children, young people, families and practitioners. Greater consistency would support continuity of care, shared understanding between agencies and a clearer picture of a child's experience.

References

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