

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

### **Social Work Scotland response**

**October 2026**

#### **Introduction**

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social work and social care services. We welcome the opportunity to respond to the consultation on the proposed revisions to the Mental Health (Care and Treatment) (Scotland) Act 2003 Code of Practice.

#### **Summary**

Overall, members were supportive of the proposed changes and considered them to represent a step forward in strengthening rights-based, trauma-informed and least restrictive approaches to care and treatment. The introduction of dedicated guidance on restraint and seclusion was welcomed and viewed as an important development that reflects evolving human rights standards, contemporary mental health practice and a greater emphasis on dignity, autonomy, participation and prevention.

While there was broad agreement with the principles and direction of the draft guidance, members consistently identified a need for greater operational detail to support implementation. Key themes throughout the discussion included the importance of preventing restrictive interventions wherever possible; recognising the impact of care environments, service availability and workforce pressures on practice; strengthening oversight, monitoring and review arrangements; and ensuring that guidance is applicable across a wider range of health and care settings. Members also highlighted the need for supplementary guidance, training and practical resources to support consistent application of the Code and to promote continuous reduction in the use of restraint and seclusion across Scotland.

This document presents the consultation questions, followed by the response from Social Work Scotland members.

**Questions:**

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

Yes

**To what extent do you agree or disagree?**

Agree

**Please tell us more about your answer.**

Social Work Scotland members are broadly supportive of the general principles underpinning the proposed chapter and welcome the introduction of explicit guidance on restraint and seclusion within the Code of Practice. Members considered the proposed framework to be an important and overdue development which reflects the evolution of human rights legislation, trauma-informed practice and contemporary approaches to mental health care since the Code of Practice was first published. Support was expressed for the emphasis on dignity, proportionality, least restrictive practice, autonomy, participation and prevention.

Members welcomed the clear articulation that restraint and seclusion should only ever be used as measures of last resort. However, there was a strong view that the guidance should place greater emphasis on preventing circumstances in which restrictive interventions become necessary. It was felt that restraint and seclusion cannot be considered solely as matters of clinical decision-making but must also be understood in the context of wider system factors, including service design, availability of specialist resources, appropriate environments and access to community alternatives.

A recurring theme from members was that many of the situations in which restraint or seclusion occur involve individuals being cared for in environments that are not well suited to their needs. This was particularly evident in discussion about autistic people, people with learning disabilities and children and young people. Members felt the guidance would benefit from acknowledging more explicitly that restrictive interventions may sometimes reflect wider shortcomings in care pathways, service availability or environmental suitability.

Members also noted that whilst the guidance references neurodivergence, the discussion is relatively brief and would benefit from further development to reflect the growing evidence base and increased understanding of the needs of neurodivergent individuals within mental health services.

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

Clarity

Agree

**Accuracy**

Agree

**Usefulness**

Agree

**Comments**

Members generally found the section clear, accurate and helpful. The section effectively reinforces existing legal and human rights obligations and provides a useful framework for practitioners.

However, members highlighted the need for accompanying training and workforce development to support implementation. There was also a view that the guidance should more explicitly recognise children's rights to education while detained and reference relevant child protection frameworks.

Social Work Scotland would also welcome greater clarity regarding practical responsibilities following restrictive interventions, including multidisciplinary reviews, timescales, and expectations regarding debriefing processes.

**Do you agree with our definitions of restraint and seclusion?**

Yes

**To what extent do you agree or disagree?**

Agree

**Please tell us more about your answer.**

Members generally agreed that the proposed definitions provide greater clarity and consistency than currently exists. The inclusion of physical restraint, mechanical restraint, medication as restraint and seclusion was welcomed and was viewed as assisting a common understanding across services and professional groups.

However, members identified a few areas where further clarification would strengthen the guidance. Concerns were expressed regarding the distinction made between restraint and seclusion in relation to deprivation of liberty. Several members questioned whether the draft risks implying that restraint is inherently less restrictive than seclusion, whereas both interventions may engage significant human rights considerations and, depending upon circumstances, may amount to a deprivation of liberty.

Members also noted some inconsistency within the draft regarding whether seclusion is intended to address risks posed to others only, or whether it may also be

utilised in situations involving significant risk to the individual themselves. Greater precision in this regard would improve the coherence of the guidance.

There was also a view that the guidance should acknowledge more explicitly that restrictive practices occur across a wide range of settings and can take forms that practitioners do not always recognise as restraint. Examples from older adult services, dementia care and acute hospital settings were cited as areas where restrictive interventions may not be routinely identified or recorded as such.

### **Do you agree with our guidance on the lawful limits of restraint and seclusion?**

Yes

### **To what extent do you agree or disagree?**

Agree

### **Please tell us more about your answer.**

Social Work Scotland supports the general approach taken within this section and welcomes the emphasis on legality, necessity and proportionality. Members agreed that clarity regarding lawful authority is essential when interventions involve significant restrictions on an individual's rights and freedoms.

During discussion, several areas were identified where greater operational clarity would be beneficial. Members felt the Code should be more explicit about the relationship between restraint and legal authority where an individual is being treated on an informal basis. There was a strong view that where restraint is being used repeatedly or in circumstances that significantly restrict liberty, practitioners should be required to consider whether the individual remains appropriately situated outside formal detention powers.

Members also highlighted uncertainty regarding the role of Mental Health Officers and multidisciplinary review processes when restraint has been used. The Code could usefully provide greater detail regarding notification requirements, review arrangements, timescales and accountability for ongoing oversight. Clearer expectations would support consistency across services and strengthen safeguards.

Further consideration should also be given to how the guidance reflects evolving legal developments relating to deprivation of liberty and restrictions on liberty, particularly where restrictive interventions may become part of ongoing care arrangements rather than isolated incidents.

### **Do you agree with our recommendations around future care planning?**

Yes

### **To what extent do you agree or disagree?**

Agree

#### **Please tell us more about your answer.**

Social Work Scotland supports the emphasis on future-focused and anticipatory care planning. Members welcomed the expectation that services should actively identify triggers, preventative measures and preferred approaches to support individuals safely while minimising the risk of restrictive interventions.

The discussion highlighted the importance of viewing care plans as dynamic and evolving documents rather than static records. Where restraint or seclusion has been used, learning from the incident should inform future planning and lead to ongoing review of environmental factors, support arrangements and risk management approaches. Reviews should be meaningful and focused on preventing recurrence wherever possible.

Members also considered that independent advocacy should be referenced within the guidance, given the important role advocacy services can play in ensuring that individuals' views, preferences and experiences are reflected within care planning and review processes.

Concerns were also raised regarding accountability. While social workers and Mental Health Officers may identify concerns and recommend alternatives, opportunities to implement those alternatives can be limited by the availability of suitable placements, specialist services or community supports. The Code should therefore be clearer regarding responsibility for escalation when professionals identify that an individual's needs cannot be met within the existing care environment.

### **Do you agree with our guidance for using restraint and seclusion with children and young people?**

Yes

### **To what extent do you agree or disagree?**

Agree

#### **Please tell us more about your answer.**

Social Work Scotland broadly supports the proposed guidance and welcomes the strong emphasis on children's rights, safeguarding, proportionality, welfare and the provision of age-appropriate care. Members agreed that restraint and seclusion can have a particularly significant impact on children and young people and therefore require additional safeguards, scrutiny and oversight. The guidance appropriately reflects the principles of the UNCRC and reinforces the expectation that restrictive

interventions should only be used as measures of last resort where there is an immediate and significant risk of harm.

However, members considered that further operational detail would strengthen implementation and support greater consistency across Scotland. There was a view that the guidance should more clearly address the interface between the Mental Health (Care and Treatment) (Scotland) Act 2003, children's rights legislation, child protection responsibilities and wider children's services frameworks. Members suggested that explicit reference should be made to relevant child protection guidance and that the Code should help practitioners understand when child protection processes, alongside mental health measures, should be considered in response to concerns arising from the use of restraint or seclusion.

Members also highlighted the importance of recognising educational rights for children and young people who are detained. Consideration should be given to referencing the need to maintain access to education and continuity of learning wherever possible, recognising that educational participation forms an important component of wellbeing, development and recovery. This was identified as a notable omission within the current draft.

Workforce considerations were also discussed. Members noted that in many areas Mental Health Officers undertaking duties in relation to children and young people predominantly come from adult services backgrounds. While these practitioners bring substantial expertise in mental health law and rights-based practice, members considered that there may be benefits in promoting closer joint working between Mental Health Officers and children's services, strengthening access to specialist training opportunities and ensuring that child-focused expertise is readily available when required. Greater recognition of multidisciplinary collaboration would support more informed decision-making and strengthen safeguards for children and young people.

Finally, members suggested that the guidance should provide clearer expectations regarding post-incident debriefing, review and learning processes following episodes of restraint or seclusion. There was strong support for multidisciplinary review arrangements that include appropriate involvement from CAMHS, social work, Mental Health Officers, families, carers and independent advocacy services where appropriate. Members considered that meaningful debriefing and reflective review processes are essential both to uphold children's rights and to reduce the likelihood of future restrictive interventions.

**Do you agree with our guidance for using restraint and seclusion with autistic people and people with learning disabilities?**

Yes

**To what extent do you agree or disagree?**

Agree

**Please tell us more about your answer.**

This was an area of particular concern for members and Social Work Scotland welcomes the recognition that autistic people and people with learning disabilities are disproportionately affected by restrictive practices.

Members considered that the guidance would benefit from a stronger focus on the environments in which care is provided. A recurring theme throughout the discussion was that individuals are frequently placed in settings which are not designed to meet their needs. Distress and escalation may therefore arise not simply from the individual's condition but from the interaction between the individual and an unsuitable environment. Members were particularly concerned about hospital environments that are not sensory-informed or appropriately adapted for autistic people or people with learning disabilities.

There was also concern about limited availability of specialist services and placements. Members noted that access to specialist learning disability inpatient provision can be difficult and that many practitioners face challenges in identifying appropriate alternatives when existing placements are no longer suitable. The guidance should acknowledge these realities and encourage the development of appropriate community and specialist pathways.

The section would also benefit from practical examples, greater reference to positive behavioural support approaches, and stronger discussion of preventative and sensory-informed interventions. Members additionally suggested that the guidance should recognise people with milder or undiagnosed learning disabilities and neurodevelopmental conditions who may not be known to specialist services, but who nevertheless require reasonable adjustments and tailored care approaches.

**Do you agree with our recommendations for using restraint and seclusion in the context of nasogastric tube feeding?**

Yes

**To what extent do you agree or disagree?**

Agree

**Please tell us more about your answer.**

Social Work Scotland members recognise the complexity and sensitivity of nasogastric (NG) tube feeding where this is undertaken under restraint. Members agreed that the draft appropriately acknowledges the potentially traumatic nature of the intervention and the importance of ensuring that any use of restraint is considered only where there is a clear clinical necessity and where all less restrictive options have been exhausted.

Members considered it important that the guidance maintains a strong focus on the individual's rights, dignity and participation in decision-making, whilst also recognising the clinical realities associated with severe eating disorders and life-threatening physical deterioration. Members agreed that the use of restraint in these circumstances may sometimes be unavoidable to preserve life but should never become normalised or viewed as a routine intervention.

There was a view that the draft would benefit from greater clarity regarding the safeguards that should accompany repeated episodes of NG tube feeding under restraint. Members questioned whether repeated use should automatically trigger enhanced scrutiny, senior clinical review or independent oversight rather than being considered as separate individual incidents. There was support for a requirement that repeated use should prompt a multidisciplinary review of the overall treatment plan and consideration of whether alternative approaches or settings may be more appropriate.

Members also suggested that greater reference should be made to the role of the Designated Medical Practitioner (DMP) and other independent clinical safeguards where treatment involves significant restriction of liberty and autonomy. The relationship between the proposed guidance, existing Mental Welfare Commission guidance and wider treatment safeguards would benefit from further clarification.

Finally, members stressed the importance of ensuring that practitioners continue to seek opportunities to achieve voluntary engagement wherever possible. The availability of legal authority to deliver treatment should not diminish ongoing efforts to develop trust, strengthen therapeutic relationships and support individuals towards consensual treatment.

### **Do you agree with our recommendations for monitoring and recording the use of restraint and seclusion?**

Yes

### **To what extent do you agree or disagree?**

Agree

### **Please tell us more about your answer.**

Social Work Scotland members strongly support robust recording, review and oversight arrangements. Members agreed that effective monitoring is essential both for safeguarding individual rights and for identifying patterns and trends across services.

However, members felt that the current proposals remain relatively high-level and would benefit from greater specificity. There was a strong view that monitoring systems should be designed not only to record incidents but to facilitate learning,

accountability and service improvement. Recording should have a clear purpose and should trigger review processes where appropriate, rather than becoming a purely administrative exercise.

Several members highlighted the need for clear escalation arrangements where restraint or seclusion is used repeatedly. Consideration should be given to whether repeated incidents should automatically trigger multidisciplinary review, senior management oversight, or independent scrutiny to ensure that restrictive interventions do not become embedded within routine practice.

Members were also concerned that the proposed arrangements appear primarily focused on specialist mental health inpatient settings. Significant concerns were raised regarding general hospitals, older adult wards, dementia services, community hospitals and other healthcare environments where restrictive practices may occur, but where awareness of the relevant legal and human rights frameworks may be less developed. Members considered that stronger guidance should be provided in relation to these settings.

The role of Mental Health Officers within monitoring and review arrangements was identified as an area requiring further clarification. Members noted that MHOs are frequently not informed of incidents until sometime after they have occurred and suggested that clearer expectations regarding notification, review and involvement would strengthen safeguards.

### **Do you agree with our recommendations for staff planning, training and welfare?**

Yes

### **To what extent do you agree or disagree?**

Agree

### **Please tell us more about your answer.**

Members agreed with the broad direction of the proposals but considered that the requirements around training and workforce development require further strengthening.

There was strong support for training that extends beyond the safe management of restrictive interventions to include prevention, de-escalation, trauma-informed practice, positive behavioural support, communication strategies and environmental adaptations. Members felt that training should focus as much on preventing the need for restraint and seclusion as on ensuring lawful practice once an intervention becomes necessary.

Members repeatedly highlighted the importance of multidisciplinary and shared learning approaches. The guidance should recognise that MHOs, social workers,

nurses, medical staff, independent advocates and other professionals all contribute to the safe and rights-based care of individuals who may experience restrictive interventions. Joint training would support shared understanding and improve consistency of practice.

Emphasis was placed on the need for ongoing continuing professional development. Members noted that while some professional groups are required to undertake regular refresher training in specialist areas, equivalent opportunities are not always available to MHOs and others who may be expected to scrutinise or challenge the use of restrictive interventions.

Concerns were also raised regarding implementation. Members emphasised that the effectiveness of the proposed guidance will depend on adequate staffing, access to specialist services and appropriate resourcing. Without corresponding investment, expectations regarding prevention, review and oversight may be difficult to achieve consistently.

Members additionally suggested that the guidance should explicitly reference organisational cultures that support challenge, reflective practice and safeguarding. Consideration should be given to including reference to whistleblowing policies and mechanisms that allow practitioners to raise concerns where restrictive interventions are believed to be inappropriate or excessive.

### **Are there any other specific groups or clinical contexts that would need specific guidance?**

Yes.

Whilst members welcomed the inclusion of sections relating to children and young people, autistic people and people with learning disabilities, there was strong agreement that additional groups and settings would benefit from specific consideration.

Concern was expressed regarding acute general hospital settings. Members reported that restrictive interventions can occur in these environments without practitioners necessarily recognising them as restraint or seclusion, and without the same degree of familiarity with mental health and human rights legislation that may exist in specialist psychiatric services.

Members also highlighted older adult services, dementia care, community hospitals and rehabilitation settings as areas where restrictive interventions may arise, but which receive relatively little attention within the draft chapter. Consideration should also be given to supported accommodation, care homes and other settings where individuals may be subject to significant restrictions on their liberty.

Several members highlighted the interaction with Adults with Incapacity legislation and private guardianship arrangements. It was suggested that further guidance

would be beneficial regarding the relationship between restraint, deprivation of liberty, guardianship powers and mental health legislation.

Members from rural and remote areas also noted that service availability and access to specialist provision can have a significant impact on restrictive practices. Consideration should therefore be given to how the guidance applies across different geographical contexts.

**Would you be in favour of the development of further guidance that sets out the requirements for the use of restraint and seclusion in mental health settings in Scotland in greater detail?**

Yes

**To what extent do you agree that further guidance is needed?**

Strongly Agree

**Please tell us more about your answer.**

Social Work Scotland would strongly support the development of further guidance on the use of restraint and seclusion. While the proposed chapter provides an important high-level framework, members consistently identified the need for greater operational detail to support consistent implementation across services and settings. The principles contained within the draft are widely supported; however, practitioners would benefit from additional guidance that translates these principles into clear expectations for practice.

Future guidance should provide greater clarity regarding the respective roles and responsibilities of different professionals involved in care, treatment, review and oversight processes. Members considered that further guidance is required on escalation pathways, review arrangements and accountability where restraint or seclusion is used, especially in cases involving repeated incidents or ongoing restrictive practices. There should also be greater clarity regarding expectations of Mental Health Officer involvement, including notification arrangements, participation in reviews, care planning and learning processes.

Members also felt that supplementary guidance should include practical examples and case studies demonstrating how principles should be applied in different situations. The inclusion of examples of good practice would support consistency, assist professional judgement and help services move beyond compliance towards restraint reduction and prevention. Standardised recording templates, review documentation and reporting frameworks would also be welcomed to support governance, monitoring and national consistency.

Further guidance should not be limited to specialist mental health inpatient settings. Members identified a need for additional guidance covering wider healthcare and

community contexts, including acute hospitals, community hospitals, older adult and dementia services, care homes and supported accommodation, where restrictive practices may also occur.

There was also strong support for further guidance on environmental and sensory considerations, particularly in relation to autistic people, people with learning disabilities and children and young people. Members considered that reducing the use of restraint and seclusion requires greater attention to care environments, communication needs, sensory differences and preventative approaches, rather than focusing solely on the management of incidents once they occur.

Finally, members felt that further guidance should address the interface between the Mental Health (Care and Treatment) (Scotland) Act 2003 and other legislative frameworks, including child protection legislation, Adults with Incapacity legislation, Adult Support and Protection legislation and wider safeguarding responsibilities. Clearer guidance on these interactions would support practitioners navigating complex situations where multiple statutory duties apply.

While recognising the purpose of the current consultation is to update the Code of Practice, members also suggested that consideration should be given to whether some aspects of the framework would benefit from a stronger statutory underpinning in the future, particularly in relation to recording, monitoring, governance and review arrangements, in order to promote greater consistency across Scotland.

### **Do you have any other comments on the proposed changes to Code of Practice Volume 1?**

Overall, Social Work Scotland members welcome the proposed changes and support the objective of strengthening rights-based practice in relation to restraint and seclusion. Members agreed that the proposed chapter represents a significant improvement on the absence of dedicated guidance in the current Code of Practice.

A consistent theme throughout the discussion was that many of the challenges associated with restraint and seclusion are rooted in wider systemic issues, including limited access to specialist services, workforce pressures, shortages of appropriate placements and environments that are not adequately designed to meet individual needs. While members welcomed the ambition of the guidance, there was concern that guidance alone will not resolve these underlying issues.

Members also highlighted the importance of ensuring consistency between the proposed chapter and wider legal and policy frameworks, including Adult Support and Protection legislation, Adults with Incapacity legislation, child protection frameworks and emerging developments in mental health law reform.

There was strong support for the development of supplementary guidance and implementation resources, including examples of good practice, case studies,

flowcharts and operational tools that would assist practitioners in applying the principles consistently.

Some members also suggested that consideration should be given to whether a more formal statutory framework or supporting secondary legislation may ultimately be required to achieve the level of consistency, accountability and oversight envisaged by the proposed guidance.

### **How clear, accurate and useful do you find the revised Chapter 14 (Cross-Border Transfers)?**

#### **Clarity**

Strongly Agree

#### **Accuracy**

Agree

#### **Usefulness**

Strongly Agree

### **Do you have any comments or suggestions to improve the clarity, accuracy or usefulness of the revised Chapter 14?**

Members were generally very positive about the revised chapter on cross-border transfers and considered it to be substantially clearer and more accessible than previous guidance. The chapter was viewed as well-structured and sufficiently detailed to provide practical assistance to practitioners involved in these processes.

The pathway-based approach was particularly welcomed as it provides a logical framework for navigating what can often be complex procedures. Members considered the clarification of roles and responsibilities to be helpful and felt that the chapter is likely to support greater consistency in practice.

The principal suggestion for improvement related to usability. Members noted that the volume of detail may make the chapter difficult to navigate quickly when practitioners are managing live cases. Consideration should therefore be given to the inclusion of flowcharts, visual process maps, quick-reference guides and summary tools to complement the detailed narrative guidance.

Members also suggested that consideration be given to the use of protocols alongside risk assessments, care and treatment plans, and any legal powers authorising restrictive measures. In practice, there is increasing scrutiny from courts regarding how authorised restrictions will be implemented, monitored and reviewed. The guidance could usefully acknowledge the role of clear protocols in setting out

safeguards, decision-making arrangements and review processes, and consideration might be given to providing an illustrative example of such a protocol to support consistent practice.

Subject to these observations, members were broadly satisfied with the content of Chapter 14.

**How clear, accurate and useful do you find the new Chapter 17 (Detention in Conditions of Excessive Security)?**

**Clarity**

Agree

**Accuracy**

Agree

**Usefulness**

Agree

**Do you have any comments or suggestions to improve the clarity, accuracy or usefulness of the new Chapter 17?**

Members generally regarded the new chapter on detention in conditions of excessive security as clear, accurate and helpful. The chapter was considered to provide a useful explanation of a complex legal framework and was welcomed as a positive addition to the Code of Practice.

However, some members felt that the chapter could be streamlined and that there are areas where repetition could be reduced. While the level of detail is helpful, practitioners may benefit from a more concise presentation of key processes and duties.

Members also raised concerns regarding the practical realities of excessive security cases. Whilst they support the emphasis on progression, step-down planning and timely transfers, there was significant discussion about current pressures across the secure care system. Members questioned the extent to which Health Boards will be able to fulfil some of the expectations set out in the guidance when there continue to be substantial bottlenecks across low, medium and high secure pathways.

There was a view that the guidance should better acknowledge these operational realities and the challenges that services face in identifying appropriate placements. While such challenges should not undermine patients' rights, recognising them would provide a more realistic context for implementation.

Members also suggested that the chapter could make more explicit reference to the relationship between legal authorisation, risk assessment, care planning and the use of protocols where restrictive practices are required. It was noted that, particularly in court proceedings relating to Adults with Incapacity, there is an increasing expectation that practitioners can demonstrate not only the legal basis for a restriction but also the practical arrangements governing its application, safeguards, oversight and review. An example protocol illustrating how these elements work together in practice would be a valuable addition to the guidance.

Finally, members noted that consideration should be given to ensuring that any recent or forthcoming legislative and procedural developments relevant to excessive security are reflected within the chapter to maintain its accuracy and usefulness over time.

## **Conclusion**

Social Work Scotland welcomes the proposed revisions to the Code of Practice and supports the introduction of dedicated guidance on restraint and seclusion. Members consider the draft to be a positive step towards strengthening rights-based, trauma-informed and least restrictive practice across mental health services in Scotland. The principles underpinning the guidance are widely supported, particularly the emphasis on dignity, proportionality, prevention, participation and safeguarding.

Throughout the consultation, members highlighted the importance of complementing these principles with greater operational clarity, practical examples and implementation support. There was a strong view that reducing the use of restraint and seclusion requires attention not only to individual incidents, but also to wider systemic factors including service availability, workforce capacity, care environments and access to appropriate community and specialist support. Members therefore support the development of further guidance, training and governance arrangements to promote consistent practice, effective oversight and continuous learning across all settings where restrictive interventions may occur.

Overall, Social Work Scotland believes the proposed changes provide a foundation for improving practice and protecting individuals' rights, while acknowledging that successful implementation will depend on adequate resources, multidisciplinary collaboration and ongoing attention to prevention and service improvement.

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