

Mental Health Legislation Team
Mental Health Division
St Andrew's House
Regent Road
Edinburgh
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INSERT DATE

Dear Fiona Tyrrell

**Mental Health (Care and Treatment) (Scotland) Act 2003:
Draft Code of Practice Volume 2 & Regulations policy proposals
consultation document**

Children in Scotland appreciates the opportunity to comment on the above documents. The organisation welcomed the Mental Health (Care and Treatment) (Scotland) Act and in particular worked to support the inclusion of the duty on health boards to provide age appropriate services for children and young people. In this context Children in Scotland's key concern in relation to the draft Code of Practice is the weakness of its recommendation in paragraph 15 that children and young adolescents should not be placed in adult wards. This point is expanded below.

Draft Code of Practice Volume 2

- **Provision of services and accommodation for certain patients under 18 (P25)**
 - Children in Scotland strongly advocated the inclusion of this section in the Act. There is currently a severe shortage of psychiatric inpatient beds for children and young people. During the passage of the Mental Health (Care and Treatment) (Scotland) Act through Parliament, the Royal College of Psychiatrists highlighted the importance of not admitting under 18s to adult wards: *"We have admitted adolescent inpatients to adult wards. We think that this is a frightening and distressing experience. A very disturbed adult unit, often with violent and aggressive male patients, is not the place to be at that point in time."*
 - Paragraph 15 of the Code of Practice must give stronger guidance to health boards by clearly stating that placing a child or adolescent in an adult ward is unacceptable. Placing an under 18 year old in such a

ward would be in direct conflict with the duty in section 2 of the Act to 'best secure the welfare of the child'.

- **Care and support services designed to promote well-being and social development (P30-31)**
 - This section should make specific mention of services for people under 18 years of age. The type of services needed to achieve the aims outlined in section 25 of the Act (to 'minimise the effect of the mental disorder on such persons; and give such persons the opportunity to lead lives which are as normal as possible') for children and young people are likely to differ from those that will meet the needs of adults (there are many examples of projects and initiatives designed specifically to respond to the needs of young people such as those undertaken by Penumbra). Children in Scotland would suggest that the Code of Practice recommend that local authorities fully assess the needs of the people these services are aimed at and that consultation with potential service users, including those under 18 years of age, should be central to this.
 - Similarly section 26(2)a of the Act applies to children and young people and the Code of Practice should direct local authorities to provide services which provide 'social, cultural and recreational activities' for under 18s in addition to those provided for adults.
- **Independent Advocacy (P35-45)**
 - It is welcome that paragraph 10 acknowledges the different types of advocacy available. However the Code of Practice should make clear that the person using the advocacy services should be allowed to choose which type they feel is the most appropriate.
 - Children in Scotland would suggest that the wording in paragraphs 11 and 12 could be strengthened. The right to an independent advocate may be undermined if the advocate is not permitted access to the processes listed. Instead of stating that to allow the advocate's involvement would be 'good practice' the Code of Practice should state that this involvement should be allowed unless there is good reason to do otherwise.
 - Paragraphs 22 and 35 (provision of information about independent advocacy) should include specific mention of children and young people. It is welcome that the Code of Practice highlights a number of special communication needs and emphasises that the information should be properly explained. However it is vital that the particularly vulnerable children and young people covered by this legislation are given appropriate information so that they fully understand their right to independent advocacy.
 - Children in Scotland acknowledges the potential difficulties highlighted in Paragraph 48 (people with incapacity) of enabling people with incapacity or complex communication needs to exercise their right to independent advocacy. Children in Scotland would recommend that the Code of Practice provide further guidance on this issue by encouraging close consultation with those close to the person in question (unless inappropriate) and by including signposting to

sources of information about communicating with people with complex needs. There are many organisations with expertise and experience who can assist and advise on this.

- Throughout the section on independent advocacy the Code of Practice makes reference to the role of independent advocacy organisations and Children in Scotland would therefore assume that the Code of Practice will be distributed widely to such organisations.

Regulations policy proposals consultation document Volume 2

- **Safety and security in hospitals (P17-25)**
 - The guidance which will accompany the provisions relating to visitors to hospitals must pay particular attention to visitors under the age of 18. Children who are visiting a relative in hospital may find the experience distressing and are likely to be under significant stress. It is vital therefore that this is not worsened by any of the provisions under section 286(1). Children in Scotland would strongly urge that children are exempt from provisions made under section 286(1)(f) in relation to searching visitors.

If you would like any us to expand on any of the points raised in this response please contact myself on 0131 222 2435 or by emailing sgray@childreninscotland.org.uk.

Best wishes

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Policy Officer

Children in Scotland

Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies, services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society.

Children in Scotland represents over 350 members, including all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It also services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People; the National Children's Voluntary Forum; the National Early Years Forum and the Special Needs Advisory Group. Children in Scotland also hosts Enquire, which is a national information program for parents of children with additional support needs.