

Scottish Government Consultation on the future of secure care

Children and Young People's Commissioner Scotland

16 April 2026

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Question 1

Do you think the new criteria for authorising a child's placement in secure accommodation by a children's hearing are sufficient?

Placing children in secure accommodation and thereby depriving them of their liberty must be subject to strict tests under human rights law. Article 5 ECHR sets out that this must only happen in specific circumstances as prescribed by law. Article 37 of the UNCRC sets out in regard to children that this must only ever be done lawfully, as a last resort and for the shortest appropriate amount of time.

The criteria for authorising placement in secure care must ensure a strict test that means children and young people are only placed in secure when absolutely necessary for their safety or the safety of others.

CYPCS has previously expressed concern at creating overly broad criteria for secure authorisation and the risks this poses to children's rights. During the passage of the Children (Care and Justice) Act 2024 we raised our concern that the test, including as amended by the CCJ Act was too broad, particularly when referencing psychological harm. We recommended the inclusion of the terms "significant risk" or "severe harm" similarly to their use in the application of Movement Restriction Conditions (MRCs), in order to ensure children's right to liberty was not unduly restricted.¹

We would not recommend a further broadening of these criteria.

Question 2

Should the criteria for secure care be revised to include children who, while not posing an immediate risk to others, may still require intensive secure, or near secure,

¹ CYPCS, 2023. *Children (Care & Justice) (Scotland) Bill – Stage 1 evidence*, <https://www.cypcs.org.uk/resources/children-care-justice-scotland-bill/>

support, protection from self-harm, or stability in near-secure residential provision, including on premises currently registered and approved to deliver secure care?

The criteria noted in Question 1 include where a child is likely to engage in self-harming conduct or abscond in such a way that puts them at risk. As we state in response to that question, a strict objective criteria including with regards to immediacy and seriousness of harm is necessary to guarantee children's rights and we do not support a widening of the current standard for secure care authorisations.

Doing so in order to apply these criteria to more children being brought into flex-secure is inappropriate, as it risks permitting the deprivation of liberty of a higher number of children who don't meet the current test.

It's not clear what the proposed approach to flex-secure is, but the consultation states that "flex secure' could provide intensive support for children who do not meet the current legal criteria yet still need intensive support".

This suggests those expected to be placed in flex secure would present a lower level of risk to themselves and others. The criteria for flex-secure should set clear and distinct standards which must be met when a child is being placed in flex-secure as opposed to secure, which reflect that flex secure still may amount to a deprivation of liberty at times, depending on its proposed operation. Flex-secure requires its own criteria.

Secure care must only be used as a last resort, and any changes to the system to implement flex secure should be for the purpose of ensuring that is the case with the purpose of reducing the , and providing the most appropriate and human rights compliant care to children depending on their needs.

It is currently unclear whether or how children would move between secure and flex secure, and we do not believe sufficient evidence has been put forward of a need to widen secure criteria in order to implement flex secure.

More detail is needed on these proposals before their human rights implications can be fully considered.

Question 5

How could a model with adaptable levels of restriction within the one setting help protect and advance children's rights and ensure deprivation of liberty is always a last resort and for the shortest possible time, as required by Article 37 of the UNCRC and in accordance with Article 5 ECHR?

The key to any successful model which provides adaptable levels of restriction is ensuring it continues to meet the safeguards required by human rights laws, as set out in response to Question 1.

There must be clarity around when a child's liberty is being deprived, when it is not and what other levels of restriction exist. There must be narrow legislative criteria to be met appropriate for each level of restriction bearing in mind the significance of the

interference on children's right to liberty. There must also be clarity on how and by whom these decisions are made. Where it is possible for example for children and young people to be moved from secure to flex-secure, and vice versa, its important there are checks on decision-making processes to ensure that any movement into secure care is for the minimum possible time and as a last resort in line with the UNCRC.

The Committee on the Rights of the Child's General Comment No. 24 (General Comment 24) on children's rights in the child justice system states that children being deprived of their liberty is only "*justified as a last resort, ensuring that its application is for older children only and is strictly time limited and is subject to regular review*".² Whilst General Comment 24 focusses on children deprived of their liberty through justice systems (including Children's Hearings), these principles apply equally to children deprived of their liberty for their own or someone else's safety.

The human rights of children and young people (over 18) deprived of their liberty by the state for any reason are also protected by Article 5 of the European Convention on Human Rights (ECHR).³ There is extensive case law applying Article 5 ECHR to non-judicial deprivations of liberty.⁴ In certain cases, deprivation of liberty can also constitute inhuman or degrading treatment and therefore engage Article 3 of the ECHR.

Our 2021 investigation into secure care raised concerns about the degree to which children were consulted and understood decisions around their movement into secure care, and their legal and human rights in the decision-making process. It's important that any alterations to the secure care system, including the development of a 'flex-secure' alternative, are accompanied by appropriate rights respecting policy and guidance which guarantees children's right to be informed about and consulted in decisions about them in line with the requirements of the UNCRC.

Question 13

What gaps currently exist in the availability of alternatives to secure care across Scotland?

We are concerned that a lack of appropriate care for young people experiencing mental health issues risks placing more of them in secure care, when this is not the best place for them to receive the treatment they need. This risks infringing children's right to the highest attainable standard of health under Article 24 UNCRC, which the UNCRC Committee has set out in General Comment 15 includes "prevention, promotion, treatment, rehabilitation and palliative care services".⁵

² UN Committee on the Rights of the Child. <https://digitallibrary.un.org/record/3899429?v=pdf> section 6

³ European Convention on Human Rights. https://www.echr.coe.int/documents/d/echr/convention_eng

⁴ European Court of Human Rights. *Guide on Article 5 of the European Convention on Human Rights*. https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng Section E

⁵ UNCRC Committee, 2013. *General Comment No. 15 on the right of the child to the highest attainable standard of health*. <https://digitallibrary.un.org/record/778524>

In particular, the lack of available mental health beds and concerns around treatment in some inpatient settings show more needs to be done within the medical system to provide this type of care for those who need it, without a need to place children in secure.

The Foxgrove Adolescent Inpatient Unit which was promised to open in February 2023 is still not in operation, and pressure on the number of mental health beds for young people in need of acute care remains. There continue to be issues around the number of young people being placed in adult wards, as a result of a lack of appropriate spaces and staff resources in other units.⁶ This was specifically raised by the UNCRC as a concern in its recommendations to the UK during its 2023 review. The Committee also called on the Government to “ensure the availability of community-based therapeutic mental health services and programmes for children”.⁷

This is also in the context of a wider overall increase in young people’s mental health problems, in particular an increase in eating disorders.⁸ It’s essential appropriate mental health care is provided for young people at all levels, to prevent these concerns escalating to a level of severity which may reach secure care, and to ensure young people who do need in-patient healthcare are provided this in the most appropriate environment.

Question 17

How can we measure the effectiveness of community-based supports in meeting the needs of children and young people?

Community based supports can play an important preventative role in supporting children and young people’s mental health and wellbeing. The UNCRC Committee in its General Comment 24 on children’s rights in the child justice system has highlighted the importance of community-based services in prevention.

General Comment 24 identifies the importance of prevention and early intervention, including intensive and family based treatment for children at risk of being in conflict with the law. This includes, but is not limited to, “community and family-based prevention programmes, such as programmes to improve parent-child interaction, partnerships with schools, positive peer association and cultural and leisure activities.”⁹

Prevention and early intervention, in the form of mental health supports within the community, are equally important in reducing the number of children in secure care.

⁶ Mental Welfare Commission, 2025 *Children and young people monitoring report 2024-25*. <https://www.mwscot.org.uk/sites/default/files/2025-12/CYPMonitoringReport2024-25.pdf>

⁷ UNCRC Committee, 2023. *Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland*. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

⁸ SPICe Briefing, 2022. *Eating Disorders in Scotland*. <https://bprcdn.parliament.scot/published/2022/6/30/276ef556-c1e2-49af-b92c-317e65ce4568/SB%2022-45.pdf>

⁹ UNCRC Committee, 2019. *General comment No. 24 (2019) on children’s rights in the child justice system*. <https://digitallibrary.un.org/record/3899429?v=pdf> Part IV A.

Research we commissioned in 2025 found that despite improvements in the funding of community supports since 2019, data on what supports were provided where, and how consistent provision was, was not easily available.¹⁰ In order to measure the effectiveness of support it's important for Government to be able to access a clear picture of what national provision looks like. This would also support children and young people trying to access services to understand what they can find in their area. Scottish Government should seek to collect and publish data on community mental health provision across Scotland, to enable greater scrutiny and clarity on what is available for young people.

We would also recommend provision of better data on the availability of youth work services across the country. We have previously raised the importance of appropriately funded youth work services, including targeted youth work.¹¹ Gathering data on these services and ensuring adequate, long term funding is available to enable meaningful evaluation, is important to assess whether the available supports are sufficient to meet needs.

Question 18

What support should be in place to ensure successful transitions, including to Young Offenders' Institutions, and reintegration for children and young people leaving secure care into their communities, including as they transition into adulthood and more independent living?

Our statutory remit covers children under 18, and young people up to the age of 21 who are care experienced, which includes all children in secure care. The UNCRC, however, only covers children up to the age of 18, with the rights of older young people being protected by the European Convention on Human Rights through the Human Rights Act

As noted in our response to the Children (Care and Justice) Bill proposals, the UNCRC contains a strong presumption against detaining children with adults (Article 37(c)), however General Comment 24 provides clear guidance to States in relation to transition from child to adult services, "The above rule does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility."¹²

We are aware of concern at how transitions are currently being implemented, particularly where young people face a cliff edge and are being moved from secure into a Young Offenders Institution (YOI) on their 18th birthday for the continuation of

¹⁰ CYPSCS, 2025. *The Youth Commission On Mental Health Services: What progress has been made with the recommendations?*. <https://www.cypscs.org.uk/resources/the-youth-commission-on-mental-health-services-what-progress-has-been-made-with-the-recommendations/#h-download-report-pdf>

¹¹ CYPSCS, 2024. *Commissioner supports proposal for law to ensure youth work provision*. <https://www.cypscs.org.uk/news-and-stories/commissioner-supports-proposal-for-law-to-ensure-youth-work-provision/>

¹² UNCRC Committee, 2019. *General comment No. 24 (2019) on children's rights in the child justice system*. <https://digitallibrary.un.org/record/3899429?v=pdf>

a sentence, sometimes for a relatively short period. We would welcome commencement of the provision in the CCJ Act¹³ which would address this issue.

Question 21

Do you agree Scotland should introduce a single national system for co-ordinating secure care placements for children?

We noted in response to the Children (Care and Justice) Bill consultation that a coordinated national approach to secure care would support consistency and a better awareness of the role and types of support available, and we are in favour of such an approach in principle. While we do not take a view on which specific form this should take, any reformed national system must be sufficiently funded to ensure sufficient placements, and that decisions on placements are made on the basis of the best interests of the child as opposed to funding limitations. We are concerned that the current model creates the potential for service gaps as a result of complex funding systems, putting children's rights at risk.

Question 29

Based on the areas expected to be covered in the standards, as referred to above, do these fit with your expectations?

We welcome the development of clear standards around secure transport, in order to prevent children being transported with adults or subject to unnecessary waits to access things such as their right to healthcare. We previously contributed comments to the draft National Secure Transport for Children Service Specification noting the need for clarity on legal obligations and children's rights.¹⁴

While we generally agree with the areas set out to be covered in the standards, it is not possible to provide meaningful comment at this stage on the basis of broad subject areas.

Question 35

In order to provide support and explanation to victims whose cases are not disposed of by a Children's Reporter or children's hearing decision, do you agree that the SPOC service should be able to access information from others, including the chief constable of the Police Service of Scotland and local authorities, where cases are dealt with by diversionary measures like Early and Effective Intervention?

When supporting victims of crime and harmful behaviour, including child victims, it is important to ensure appropriate, coordinated support and relevant information are provided. Children and adult victims have a right to be protected from harm,

¹³ Children (Care and Justice) Scotland Act 2024.
<https://www.legislation.gov.uk/asp/2024/5/section/18>

¹⁴ CYPSCS, 2022. *Children's Care & Justice Bill: Response to Scottish Government Consultation on Policy Proposals*. <https://www.cypscs.org.uk/wp-content/uploads/2022/06/CYPSCS-Response-Childrens-Care-and-Justice-Bill-Consultation-Bill-22.6.2022.pdf>

including after a case has been resolved, and to certain information regarding legal processes and how the matter has been dealt with.

Children in the justice system must have their rights protected, in line with UNCRC principles that response to their behaviour must take into account their age and promote reintegration, rehabilitation, and respect for human rights. Children's right to privacy in line with Article 40(2)(vii)¹⁵ in proceedings is vital, and includes confidentiality in relation to proceedings within children's hearings and courts.

Any single point of contact system needs to make sure both the rights of victims and the rights of children in conflict with the law are considered and appropriately balanced. There must be safeguards in place on decisions around information sharing, to ensure young people's right to privacy is protected. It is also important that young people who are victims of crime and harmful behaviour from other young people are able to access the support services they need to recover and feel safe and supported in their community. We have detailed some of our view on the resourcing of such support services in our evidence to the UNCRC Committee on their draft General Comment 27 on children's right to access to justice and effective remedy.¹⁶ Decisions in this area should consider the contents of this General Comment once published.

For further information, please contact Emma Hunter, Policy Officer
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¹⁵ Children's privacy rights are also protected by UNCRC Article 16 and Article 8 ECHR

¹⁶ CYPICS, 2025. *Response to Draft General Comment 27 on children's right to access to justice and effective remedy*. <http://cypcs.org.uk/resources/draft-general-comment-27-on-childrens-right-to-access-to-justice-and-effective-remedy/>