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Health, Care and Sport Committee

Report on the Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 [draft]



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Health, Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Care, and on matters relating to sport



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Background

1. At its meeting on 7 October 2026, the Health, Care and Sport Committee considered the Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 [draft].
2. This report summarises the Committee's consideration of the order.

The Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 [draft]

3. [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Remedial Order 2026 \[draft\]](#) was laid in Parliament on 4 September 2026 under the affirmative procedure.
4. The draft Order amends Parts 9, 10 and 11 of the [Mental Health Care and Treatment \(Scotland\) Act 2003](#) (the 2003 Act) to remove an incompatibility with the European Convention on Human Rights (ECHR).
5. As explained in the [Policy Note](#), the ability of the Mental Health Tribunal for Scotland to specify and subsequently modify, “recorded matters” in a “civil” order such as a community treatment order but not in a “forensic” order such as a compulsion order was found to violate article 14 (protection from discrimination) of the ECHR in the case of *X v Mental Health Tribunal for Scotland [2022]*.
6. The Order extends the ability to specify “recorded matters” to patients subject to a Compulsion Order, Compulsion Order with Restriction Order, Hospital Direction and Transfer for Treatment Direction. The Scottish Government’s Policy Note states that recorded matters aim to ensure that identified needs are met, reflecting the principle of reciprocity in the 2003 Act: where compulsory treatment is imposed, health and social care authorities have a corresponding duty to provide appropriate services.
7. The Order creates duties on responsible medical officers and on the Scottish Ministers to take steps, consult key persons and, where appropriate, make applications or references to the Tribunal when modification of recorded matters may be required or where recorded matters are not being provided, and confers corresponding powers on the Tribunal to vary recorded matters when determining relevant applications, reviews or references.
8. The Scottish Government consulted on the Proposed Draft Order between 23 January 2026 and 23 March 2026. During this time, the Session 6 Health, Social Care and Sport Committee considered the Proposed Draft Order and, at its meeting on [17 February 2026](#), agreed to make no recommendations in relation to the proposed draft order. The Policy Note highlights that several impact assessments have been conducted and updated following the consultation.

Consideration by the Delegated Powers and Law Reform Committee

9. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument on 15 September 2026 and reported on it in its [4th Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Consideration by the Health, Care and Sport Committee

10. At its meeting on [7 October 2026](#), the Committee took evidence on the draft order from Maree Todd MSP, Minister for Mental Wellbeing, Public Health, Sport, Alcohol and Drugs (the Minister) and Scottish Government officials. In her opening statement, the Minister set out the Scottish Government's reasons for laying the order.
11. Following the statement, the Minister moved the motion—

S7M-01217—That the Health, Care and Sport Committee recommends that the Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 [draft] be approved.
12. The motion was agreed to without division.
13. The Health, Care and Sport Committee therefore recommends that the Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 [draft] be approved.

