

Health, Care and Sport Committee
7 October 2026
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Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026: Background briefing for members

The Mental Health (Care and Treatment) (Scotland) Act 2003

The [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (as amended by the [Mental Health \(Scotland\) Act 2015](#)) is the main mental health legislation in Scotland. The 2003 Act followed the [2001 report of the Millan Committee](#) which reviewed earlier legislation. It recommended that law and practice relating to mental health should be driven by ten principles, focused on minimising interference in people's liberty and maximising the involvement of service users in treatment.

The [2003 Act](#) applies to people who have a "mental disorder". This is defined under section 328 of the 2003 Act and includes any mental illness, personality disorder or learning disability, however caused or manifested. It sets out when and how people can be treated if they have a mental disorder, when people can be treated or taken into hospital against their will and what a person's rights are and the safeguards to ensure that these are protected. The Act aims to be rights-based legislation which allows people to express their views about their care and treatment.

Under the Act there are three types of orders emergency detention certificates, short term detention certificates and compulsory treatment orders.

A compulsory treatment order (CTO) allows for a person to be treated for their mental illness. A CTO is granted by the [Mental Health Tribunal for Scotland](#) and authorises detention and treatment in hospital or the community for an initial period of six months. It is then reviewed annually. A CTO requires two medical reports, a report by the MHO making the application, and a proposed care plan. The CTO will set out a number of conditions that an individual will need to comply with. These conditions will depend on whether the individual has to stay in hospital or is in the community.

Criminal Procedure (Scotland) Act 1995

The provision for disposal¹ of people by the criminal courts for people with mental disorders is set out in the Criminal Procedures (Scotland) Act 1995, this was amended by the 2003 Act. It makes provision for a number of orders including:

- Assessment orders, which authorise detention in hospital for 28 days and is used as the starting point into investigation into mental disorder. They can be extended once for seven days (this was provided for by the 2003 Act).
- Treatment orders, which authorise detention and treatment in hospital until certain conditions have been met. It is used to facilitate treatment whilst the patient is undergoing court process (this was also provided for by the 2003 Act).
- Temporary compulsion orders, which are used when a court decides that a person's trial cannot start or must stop because of their mental disorder.
- Interim compulsion orders, which are used when an individual is convicted of an offence and the punishment is prison but instead is admitted to hospital for examination; this lasts for 12 weeks and can be renewed by further periods of 12 weeks for up to one year.
- Compulsion orders (CO), which authorise detention and treatment in a hospital or community setting for six months and are then reviewed annually. This is an equivalent of the compulsory treatment order.
- Restriction orders (CORO), which are made by a court at the time of disposal and are added to a compulsion order. It is the same as a compulsion order but without a time limit. It is reserved for the most serious and high risk offenders.
- Hospital directions (HD), which authorise the detention of a patient in hospital until they are well enough to be transferred to prison to complete their sentence.
- Transfer for treatment directions (TTD), which are issued by Scottish Ministers when a serving prisoner requires hospital treatment for mental disorder.

Recorded matters

Recorded matters are defined under the 2003 Act as such medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate. The 2003 Act allows the Tribunal to specify recorded matters when it makes or reviews a CTO. These are particular services or treatments that must be delivered. If a recorded matter is not being provided, the Responsible Medical Officer [makes a reference back to the Tribunal](#). However, no

¹ Disposal refers to how a case or proceeding is completed. In mental health cases court disposals include compulsion orders, hospital directions, restriction orders, assessment orders and treatment orders

equivalent recorded-matters mechanism currently exists for forensic mental health orders².

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

The [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Remedial Order 2026](#) aims to amend the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) to remedy discrimination identified by the Courts (X v Mental Health Tribunal for Scotland [2022], [CSOH 78](#)).

“In my view the appropriate remedy in this case is to grant decree of declarator that, in the case of the forensic patient who has been acquitted on Section 51A grounds, the absence of any power in the 2003 Act for the Tribunal to specify recorded matters, where such a power is available for the benefit of civil patients, amounts to unjustified discrimination contrary to Article 14 of the Convention [European Convention on Human Rights], and is therefore unlawful.”

Detailed information on the policy intent of the Order can be found in the [Scottish Government's policy note](#). This states “The policy objective is to ensure parity between civil and forensic patients by enabling the Tribunal to specify, review, and modify recorded matters for patients subject to relevant forensic orders, being CO, CORO, HD and TTD.

Consultation analysis

The Scottish Government undertook a consultation on the draft Order and published its analysis of the 23 [consultation responses](#), this said:

“Most respondents voiced strong support for extending recorded matters to forensic mental health orders and saw this as a way to address an unjustified difference between civil and forensic patients. Many respondents commented that the changes would also support parity, participation, procedural fairness and compliance with human rights standards.”

It went on to say:

“Some respondents raised wider concerns around the enforceability of recorded matters, resource constraints, accommodation shortages, community service availability or broader reform of mental health and capacity law.”

The Scottish Government noted that “these points were generally presented as issues for implementation planning and future reform, rather than reasons to oppose the proposed Order”.

² [What are Recorded Matters? - Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Remedial Order 2026: consultation paper](#)

Wider concerns were also raised by some respondents in relation to the implementation rather than policy intent. These included:

- Tribunal capacity
- Additional responsible medical officer and mental health officer workload
- Scottish Ministers' restricted patient processes
- Mental Welfare Commission for Scotland notification arrangements
- Service delivery and funding
- Respondents also highlighted the importance of monitoring implementation after commencement

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