Response ID ANON-SYMG-NACR-4

Submitted to The Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 draft proposal
Submitted on 2026-03-19 16:27:54

Questions

1 Do you have any views on the proposed application rights for patients and their named person?

Yes

Please give us your views. :

We support the introduction of application rights for patients and their named person to request modifications to recorded matters. Creating parity between civil and forensic patients is both logical and necessary, and it ensures that treatment related rights do not differ on the basis of the legal route into care rather than clinical need.

However, for these rights to be meaningful, patients and named persons will require accessible information and appropriate support. Not all patients are able to nominate a named person, and some (particularly those with lifelong or fluctuating impairments) may require alternative mechanisms to ensure their interests are represented. There may also be a need for enhanced advocacy or legal assistance, particularly for individuals unfamiliar with tribunal processes.

We note the potential need for support for named persons in that role (to be provided by solicitors) and note that there are some patients – because of lifelong incapacity or unexpected incapacity or mental disorder – who don't have a named person and would need equivalent means whereby the views of relevant others could be exercised in this vein.

We also have concern that, without significantly increased resourcing and investment into the mental health workforce and system, this Order will not go a long way in actually ensuring that the items within a recorded matter are truly delivered. It is important to note that recorded matters generally suffer from a lack of enforceability, and RMOs can be held responsible for delivering services that they do not control and cannot practically make happen. This limitation is a longstanding structural issue with recorded matters themselves rather than a critique of this specific proposal, but it does shape expectations around how effective the mechanism can be in practice.

2 Do you have any comments on the proposed duties and powers across all parties involved in reviews, including RMOs, MHOs, Scottish Ministers, the Tribunal and the MWC?

Yes

Please give us your views. :

The proposed duties closely mirror the existing framework for CTOs, which means the concepts will be familiar to many practitioners. However, their extension to COROs, HDs and TTDs introduces significantly more complexity. The involvement of Scottish Ministers in restricted cases adds an additional layer of oversight, increasing the administrative burden on RMOs and MHOs, and raising questions about how disagreements between clinicians, Ministers and the Tribunal will be resolved in practice.
MHOs, in particular, face additional duties - including consultation, communication, and tribunal reporting - at a time when MHO capacity is already severely constrained across Scotland. Likewise, expectations on RMOs to escalate non provision of recorded matters may create significant workload pressures, especially in complex restricted cases.

While these duties support transparency and accountability, their successful implementation will require careful attention to workload, clarity on processes, and proportionate documentation requirements. The Mental Welfare Commission's expanded oversight role is welcome, provided it is properly resourced.

3 What, if any, operational challenges do you foresee for services, and how might these be mitigated (e.g. training, guidance, forms)?

Please give us your views. :

First and foremost, we require information, training and education for the professionals who will be expected to carry this out.

Most operational challenges stem not from the principle of extending recorded matters, but from the increased volume of reporting, consultation and referral requirements. RMOs and MHOs are likely to experience heightened administrative demands, and without adequate support, this may detract from clinical time – which is already under extreme pressure.

Mental health is consistently a majorly under-resourced area of the frontline NHS spend, despite an exponential rise in demand for mental health services. Mental health services in Scotland are under unprecedented pressure, with demand vastly surpassing resourcing.

The 2022 Scottish Census found that the number of people reporting a mental health condition in Scotland has more than doubled since 2011, rising from 4.4% to 11.3% of the population. This upsurge was the largest increase across all health condition types in the Census. Young people are particularly affected, with reports of mental health conditions among respondents aged 16-24 increasing sixfold between 2011 and 2022. It is therefore vital that this is prioritised.

Scotland is facing a psychiatric workforce crisis. The workforce is not growing sufficiently to keep pace with the well-documented rising scale of demand for services. As such, our workforce is overwhelmed and stretched to its absolute limit. Clinicians are increasingly finding themselves having to work in untenable conditions. As a result of this, we are experiencing a critical loss of our permanent psychiatric workforce, jeopardising the ability of our services to provide safe care and treatment to patients and resulting in increased waiting times.

There is a major shortfall in psychiatrists able to fill roles in Scotland, and vacancy rates for consultant psychiatry roles are as high as 46% in some parts of the country. These workforce gaps have led to the widespread recruitment of locum psychiatrists as a temporary solution. An average of 1 in 4 consultant psychiatry positions are estimated to be vacant or filled by a locum across Scotland. Between September 2014 and September 2024, we lost a staggering 22% of our permanent psychiatric workforce.

Major systems changes are required in order to rebuild our permanent workforce and ensure that there are enough qualified substantive consultant psychiatrists in Scotland to provide the high-quality, timely mental health care which our society requires and deserves.

Mitigation strategies should include the development of national standardised templates for reports and applications, clear guidance on the thresholds for modifying recorded matters, and training for all relevant stakeholders. The Scottish Government's intention to produce accessible information is welcome, and this should be expanded into a coordinated suite of easy read and plain language materials to avoid clinicians having to provide this on an individual patient basis.

Given the current pressures on MHOs, consideration should also be given to supporting local authorities to meet these new statutory obligations.

4 What impacts - positive or negative - do you anticipate for people with lived experience, families and carers?

Please give us your views. :

Extending recorded matters to forensic orders is likely to bring positive impacts for people with lived experience, addressing a highlighted human rights deficit and ensuring greater equity between civil and forensic pathways. It may also strengthen clarity around care planning and give patients and families more confidence that key services and supports will be kept under review.

However, significant risks remain. Recorded matters often lack enforcement mechanisms, which can lead to frustration when services specified by a tribunal cannot in fact be delivered - for example, where specialist therapies are unavailable or workforce shortages persist. The risk of over specification of care is real, potentially raising expectations beyond what services can provide and placing clinicians in difficult positions.

While parity is welcome, recorded matters must not be seen as a tool for resolving systemic resource shortages - otherwise, they may inadvertently create inequities between detained and non detained populations.

5 In relation to the Interim Equality Impact Assessment, please tell us about any potential impacts you think there may be on protected characteristics?

Please give us your views. :

The proposed changes appear broadly neutral in terms of equalities. They address a disparity that currently disadvantages a group of patients.

However, careful attention is needed for groups who may have communication, cognitive or cultural barriers when engaging with tribunal processes. People with learning disabilities, neurodevelopmental conditions, or language/communication needs may require accessible formats and enhanced advocacy support. Ensuring consistent availability of easy read materials and culturally appropriate support will be essential to avoid new inequities emerging as the framework expands.

6 In relation to the Child Rights and Wellbeing Impact Assessment, please tell us about any potential impacts you think there may be on children's wellbeing?

Please give your views. :

Although few children are detained under these forensic orders, the proposal has broader implications for children whose parents or caregivers are detained. Maintaining family relationships is important for many children, but recorded matters should not be used to direct complex family contact arrangements, which properly fall under social work and Children's Hearings processes.

There have been civil cases around access to a parent of an adult child where the care team have believed that that would be detrimental to the patient - and that being sought as a recorded matter. That discrepancy could lead to a Mental Health Act recorded matter conflicting with other protection mechanisms for that child.

There is also a gap in the proposals regarding developmentally appropriate care for young people in secure settings or those transitioning into adult services. These groups may have specific needs relating to education, social development, or specialist environments, and the framework should make clear how recorded matters can support these needs where appropriate.

7 In relation to the Partial Business Regulatory Impact Assessment, please tell us about any potential impacts you think there may be to particular businesses or organisations?

Please give us your views. :

The BRIA suggests that changes can be absorbed within existing processes, but this underestimates the likely workload implications, especially for MHOs, local authorities and community based services.

Recorded matters frequently relate to housing, social care, community services, or third sector supports - areas already under significant pressure. Local authorities, in particular, may experience increased demands where recorded matters direct actions relating to discharge planning or community packages. Without additional resource, the risk is that the framework highlights unmet need without materially improving service capacity.

8 What do you think about how the changes will be introduced and when they will start?

Please give us your views. :

The proposed commencement date of November 2026 is ambitious given the scale of preparatory work required. Successful implementation depends on timely development of updated guidance, standardised forms, accessible patient materials and training for professionals. Any delays in these areas risk inconsistent application of the new rights, limited awareness, and uneven understanding across services.

Early publication of materials, clear communication with services, and practical training will be essential to ensure the rights are meaningful from day one.

9 In your view, are there any unintended consequences that could arise as a result of changes to the 2003 Act?

Please give us reasons. :

Several potential unintended consequences warrant consideration. First, although tribunal practice may mitigate it, there is a possibility of increased or strategic use of applications, potentially contributing to workload pressures for services already under strain.

Second, extending recorded matters to forensic orders will expose the same structural weaknesses long recognised in civil cases - namely, that recorded matters cannot compel resource creation. This may heighten both patient frustration and clinician moral distress when needs cannot be met.

Third, there is a risk of creating new inequities if detained patients receive access to scarce services ahead of community patients, simply because a tribunal has highlighted their need.

Finally, for restricted patients, unresolved tension between clinical recommendations and ministerial oversight could create delays and uncertainty unless clear dispute resolution processes are developed.

10 Do you have any other comments on the 2026 Proposed Draft Order?

Please give us your views. :

While the proposed Order addresses a specific ECHR incompatibility, it highlights longstanding issues with the recorded matters framework more broadly. Reform of recorded matters may be required in the future to clarify their role, strengthen their practical impact, and ensure they are used proportionately and effectively.

The proposal also underscores the need for consistently available easy read materials and accessible communication standards across the Mental Health Act framework. This is a gap that predates the present reform but should be addressed as part of its implementation.

About you

What is your name?

Name:
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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:
Royal College of Psychiatrists in Scotland (RCPsychiS)

Further information about your organisation's response

Please add any additional context:

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

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Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:
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Where did you hear about this consultation?

Scottish Government website

If other, please say where::

Evaluation

How satisfied were you with this consultation?

Not Answered

Please enter comments here.:

How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

Not Answered

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