



**VOX
scotland**

voices of experience

**Mental Health (Care and
Treatment) (Scotland) Act
2003 Remedial Order 2026
Consultation:
VOX Scotland Response**



VOX Scotland is Scotland's national collective advocacy organisation for mental health. We are a membership organisation run for and by our members, all of whom have living or lived experience of mental ill health. We represent our members' views to the Scottish Government, the NHS and others to influence mental health policy and practice, making sure that our laws and services reflect their needs and interests.

We are eager to respond to the consultation on the Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026. To inform our response to this consultation, we consulted members both via telephone and through an online questionnaire. We also consulted group and associate member organisations, including the State Hospital Patient Advocacy Service and Bipolar Scotland. A total of 26 members contributed to our response. We ensured that members could respond in a way that felt safe and comfortable for them, making sure to share the numbers of support helplines due to the sensitive nature of the consultation. We are very grateful for your consideration of our members' views.

We have structured this report to match the relevant questions in the consultation paper. Our report therefore focuses on consultation questions 1, 3, 4, 8, and 9.

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

Our members were unanimously supportive of the proposed application rights for patients and their named person. We agree that extending these rights to those subject to forensic mental health orders (and their named persons) can address unjustified discrimination and ensure that ECHR rights are met. We also support the establishment of a parallel recorded matters framework for people subject to forensic mental health orders.

Members who reported that they had direct personal experience of forensic mental health orders expressed support for the change. Some noted that this could make the system fairer and potentially create opportunities to ‘hold hospitals to account’. One wrote that the proposal is ‘an excellent idea and long overdue’, which the Scottish Government should pursue ‘enthusiastically’. Another respondent described their experience of the forensic mental health system as ‘challenging’ and noted that ‘any possible improvement is welcome.’

A small number of members were less enthusiastic, with one arguing that the Mental Health Tribunal is an ‘artificial construct to make the patient think they have a say in their detention’.

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

Our members' overriding concern related to resources. They suggested that the proposed change could increase demand, resulting in delays across all mental health services. Services – including independent advocacy services – are already under very significant financial pressure, so any increase in demand could be very challenging for providers and recipients. One member noted that ‘forensic services need to be properly funded and staffed’ if the proposed change is to have its intended effect in practice. While almost all who responded were supportive of the proposed change in principle, many expressed concern that mental health services are not sufficiently well resourced to meet even a small increase in demand.

Similarly, members noted that a greater number of people eligible for Tribunal could increase demand for legal and advocacy services. One noted that ‘well-

funded independent advocacy should be bolstered to ensure appropriate voice for people and their relatives'. VOX Scotland reiterates the importance of well-resourced advocacy services; they are a central pillar of Scotland's mental health system.

Some members added that the Tribunal itself must be adequately resourced so that it can manage the increased number of applications that the proposed change would generate.

One member noted that there is a 12-week wait in place for those on forensic orders, which they considered to be an 'inequity' in comparison to civil orders, and queried whether the proposed change to the legislation would address this.

A member who had relevant experience through caring for a family member noted that due consideration must be given to the person subject to the order's state of mind and level of anxiety. Another member with direct personal experience noted that the Tribunal and recorded matters framework should consider both physical and mental health needs, and be mindful of accessibility requirements.

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

Our members felt that the proposed change would have broadly positive impacts.

Because the use of recorded matters specifies treatments, one member felt that the proposed change would lead to greater clarity on 'what needs to be achieved to move on from hospital'.

Another member (who reported being subject to a Compulsion Order with Restriction Order) noted that if recorded matters had been an option for them, they would have been able to 'get firm answers on the treatment they need to complete before being able to move to medium secure'. Therefore, the proposed change to the law would make a positive difference to those subject to it.

A third member noted that while recorded matters are influential, the Responsible Medical Officer decides whether to implement them. The member commented that the proposed change to the legislation would not affect where the decision-making power lies, so it may have limited influence on implementation in practice.

One member reflected that forensic mental health should focus on public safety and as a result, 'the experiences or priorities of people under compulsion will not be paramount.' This, in their view, underlines the need for properly resourced independent advocacy, which is something VOX Scotland has called for repeatedly.

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

Members felt the change should be implemented as quickly as possible, given that discrimination has already been identified. Therefore, VOX Scotland members support the intention to have the changes take effect on 12th November 2026.

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

Members questioned whether the change to the 2003 Act would result in a greater number of recorded matters being provided, and if so, whether this would place greater pressure on already stretched services operating with scarce resources. As a result, members have called for 'futureproofing', to ensure that bed availability (in particular) is considered. Additional requirements may also be placed on hospitals or other service providers as demand rises. For some members, this raised the question of whether a 'bottleneck' could take place due to the proposed changes and whether this could result in some people spending longer in secure care than they otherwise would have done. The unintended consequence could be a diminution in the quality of services for both those subject to civil mental health orders and those subject to forensic mental health orders.

Another member, who reported that they are subject to an Order of Lifelong Restriction (OLR) questioned what would be done if their recorded matter contradicted the OLR's requirements. This raises an important question which the Scottish Government may wish to address as part of the Remedial Order.

Summary

VOX Scotland's overarching message on this consultation is that the legislative change proposed in the Remedial Order must be backed by adequate resourcing to ensure that rights are realised in practice.

There has been a clear imbalance in the way the Mental Health (Care and Treatment) (Scotland) Act 2003 operates. The fact that recorded matters had not been extended to those subject to forensic mental health orders does appear to be discriminatory, and therefore in breach of the ECHR. As a result, VOX Scotland's members and respondents welcome the proposed amendment to the 2003 Act.

Any reservations or caveats expressed here relate to the provision of resources. Our broader conversations with the NHS, Scottish Government, third sector organisations and individuals with lived experience across Scotland depict a mental health system struggling to meet demand. The 2003 Act defines recorded matters as 'medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate'; all such services are currently facing significant financial and workforce-related pressures. For example, [VOX Scotland recently illustrated the difficulties Scotland faces in recruiting and retaining psychiatrists](#). We have also highlighted the sector's lack of resources in our [2026 Manifesto](#) and strongly believe that a substantial increase in government funding is required. Moreover, [we have repeatedly called for the protection and expansion of independent advocacy services](#), reflecting the recommendations of the Scottish Mental Health Law Review. We are therefore concerned that service providers are not prepared for an increase in appeals to the Mental Health Tribunal and any additional recorded matters that arise from those appeals.

We are grateful for the opportunity to share our members' views on the Remedial Order. Please do not hesitate to contact VOX Scotland for further information. We would also like to thank all our individual and group members who contributed to our response.

Jonathan Grant - Policy and Participation Officer, VOX Scotland

Mental Health Foundation, Moncrieff House, 69 West Nile Street, Glasgow G1 2QB

0141 226 9856

jgrant@mentalhealth.org.uk www.voxscotland.org.uk