SCOTTISH STATUTORY INSTRUMENTS

2026 No. 35

TRIBUNALS AND INQUIRIES

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2026

Made - - - -	*27th January 2026*
Laid before the Scottish Parliament	*29th January 2026*
Coming into force - -	*1st April 2026*

The Scottish Ministers make the following Rules in exercise of the powers conferred by paragraph 10 of schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**), section 44(2) and (3) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**b**) and all other powers enabling them to do so.

Citation and commencement

1. These Rules may be cited as the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2026 and come into force on 1 April 2026.

Amendment of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005

2.—(1) The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005(**c**) are amended as follows.

(2) In rule 2 (interpretation)—

(a) before the definition of "the Act" insert—

""the 2024 Act" means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**d**);",

(b) after the definition of "Clerk" insert—

""compatibility question" has the meaning given by section 31(1) of the 2024 Act;",

(c) after the definition of "referee" insert—

""relevant authorities" means the Lord Advocate, the Commissioner for Children and Young People in Scotland or the Scottish Commission for Human Rights;".

(3) After rule 43 (interim or preliminary matters) insert—

(**a**) 2003 asp 13.
(**b**) 2024 asp 1.
(**c**) S.S.I. 2005/519, to which there are amendments not relevant to these Rules.
(**d**) 2024 asp 1.

"Compatibility question under the 2024 Act - raising, intimation and notice

43A.—(1) This rule applies to—

(a) raising a compatibility question in proceedings before the Tribunal,

(b) intimation of a compatibility question to the relevant authorities under section 34(1) of the 2024 Act,

(c) notice by a relevant authority of their intention to intervene in proceedings under section 34(2) of that Act.

(2) A compatibility question may be raised by a party or relevant person at any stage in the proceedings.

(3) Where a party or relevant person raises a compatibility question, they must, so far as the party or relevant person is able to do so, set out in sufficient detail—

(a) the facts and circumstances, and

(b) the contentions of law,

on the basis of which it is claimed that the compatibility question arises.

(4) On receiving notice of a compatibility question in accordance with paragraph (3), the Tribunal must—

(a) if it considers that it does not have sufficient detail about the basis on which the compatibility question arises to meet the overriding objective, direct the party or relevant person who gave the notice to set out the facts and circumstances and contentions of law on the basis of which it is claimed the compatibility question arises to the Tribunal within such period as it may determine,

(b) determine if it considers that the compatibility question is frivolous or vexatious with reference to section 31(3) of the 2024 Act,

(c) if satisfied as to the basis of the compatibility question, intimate under section 34(1) of the 2024 Act in writing to each relevant authority the matters specified in paragraph (5).

(5) The matters to be intimated to each relevant authority are—

(a) the fact that a compatibility question has arisen in proceedings before the Tribunal,

(b) the details of the matters raised in the proceedings,

(c) the details of the compatibility question that has arisen and, if known at the time of intimation, the position of each party to proceedings in respect of the compatibility question,

(d) that to take part in the proceedings as a party the relevant authority must—

(i) give notice to the Tribunal of their intention to do so within 14 days of receipt of the intimation made under this rule, or within such period as the Tribunal may specify, should it be satisfied there are exceptional circumstances which require the time period to be adjusted,

(ii) within 7 days after the date of such notice, or within such period as the Tribunal may specify, provide written submissions to the Tribunal in respect of the compatibility question in such form, and in accordance with such intimation requirements on other parties to proceedings (including any other relevant authorities), as the Tribunal may specify.

(6) The Tribunal must provide each relevant authority with all documents relevant to the consideration of the compatibility question.

(7) The Tribunal must, if those submissions under paragraph (5)(d)(ii) are provided, take steps to allow a relevant authority to take part as a party to proceedings so far as the proceedings relate to the compatibility question.

(8) The Tribunal may fix a hearing to consider a compatibility question as a separate hearing from any other hearing in the proceedings.

(9) The Tribunal may suspend the proceedings under rule 52 if it considers it necessary to do so while a compatibility question is being determined.

(10) Where a relevant authority does not take part as a party to proceedings at first instance, the relevant authority is not precluded from intervening in any subsequent appeal, so far as those proceedings relate to a compatibility question.

(11) Where a relevant authority does not take part as a party to proceedings and that relevant authority requests to be notified of the outcome of proceedings in respect of the compatibility question, including regarding any subsequent appeal which relates to the determination of the compatibility question, the Tribunal must notify the relevant authority of this as soon as practicable.".

(4) After rule 72 (decision of the Tribunal) insert—

"Reference of compatibility question to the Court of Session

72A.—(1) If the Tribunal refers any compatibility question which arises in proceedings before it to the Inner House of the Court of Session for determination, it must intimate this in writing to all parties and the relevant authorities.

(2) The intimation in writing to relevant authorities under paragraph (1) who have not previously joined proceedings as a party must include—

(a) the details of the matters raised in the proceedings,

(b) the details of the compatibility question that has arisen,

(c) if known at the time of intimation, the position of each party to proceedings in respect of the compatibility question.

(3) The Tribunal must provide each relevant authority under paragraph (1) which has not previously joined proceedings as a party with all documents relevant to the consideration of the compatibility question.

(4) Where a relevant authority does not take part as a party to proceedings at first instance, that relevant authority is not precluded from taking part as a party in any subsequent reference to the Inner House of the Court of Session.".

SIOBHIAN BROWN
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
27th January 2026

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2025 ("the rules of procedure") in consequence of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the 2024 Act").

Rule 2(3) inserts rule 43A into the rules of procedure. This sets out the procedure to be followed when a party raises a compatibility question as defined in section 31 of the 2024 Act. This includes how a compatibility question should be raised, intimated to the Lord Advocate, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights ("the relevant authorities") in accordance with section 34(1) of the 2024 Act, and how the relevant authorities may subsequently intervene in any proceedings that relate to a compatibility question in accordance with section 34(2) of the 2024 Act.

Rule 2(4) inserts rule 72A into the rules of procedure. This sets out the procedure to be followed when the Mental Health Tribunal for Scotland refers a compatibility question to the Inner House of the Court of Session for determination, in accordance with section 35(2) of the 2024 Act.

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