POLICY NOTE

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND (PRACTICE AND PROCEDURE) (NO. 2) AMENDMENT RULES 2026
SSI 2026/35

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2026 ("the amending instrument") seeks to make amendments to the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005.

The Scottish Ministers make the amending instrument in exercise of the powers conferred by paragraph 10 of schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 44(2) and (3) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the 2024 Act").

Summary Box

The purpose of the amending instrument is to make rules relating to the raising and intimation of a United Nations Convention on the Right of the Child ('UNCRC') compatibility question arising in proceedings. Section 31(1) of the 2024 Act provides a definition of a compatibility question.[1] Section 34(1) of the 2024 Act provides that where a compatibility question arises in any proceedings before a court or tribunal, intimation must be given to the Lord Advocate, the Commissioner for Children and Young People in Scotland, and the Scottish Commission for Human Rights ("relevant authorities").

Policy Objectives

The policy intention is to make specific provision for the raising of compatibility questions by a party to proceedings, as well as intimation of that to the relevant authorities. In practice, the Mental Health Tribunal for Scotland is already able to provide for the raising and intimation of compatibility questions within their existing rules of procedure. However, Scottish Ministers believe that the more specific arrangement set out by the amending instrument could have a positive impact by helping to give practical effect to the rights of children and young people.

Provision is also made for 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.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

[1] Within a Scottish Tribunal context this is likely to be a question whether a public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1) of the 2024 Act. Section 7(1), the provision which allows a person to either bring proceedings or rely upon the UNCRC requirements in the course of proceedings, refers directly to section 6(1) when it sets out those options. Reading section 31(1)(b) alongside section 6(1) and section 7(1) means that someone can raise a compatibility question (where there is no intervener) unless the court or tribunal considers it to be frivolous or vexatious under section 31(3).

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This amending instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Scottish Ministers have consulted the President of the Mental Health Tribunal for Scotland and such other persons as they considered appropriate prior to making these Rules, including the relevant authorities. This consultation comprised of two phases, a consultation on indicative draft rules along with questions, followed by a consultation on the rules.

The amending instrument has been adjusted further to this engagement.

Impact Assessments

An impact assessment regarding Child Rights and Wellbeing (CRWIA) and the Scottish Government has concluded that the proposal will have a positive impact on children's rights.

Additionally, an impact assessment regarding Islands Community (ICIA) has been completed.

The Scottish Government believes the amending instrument is not likely to have an effect on an island community which would be significantly different from its effect on other communities (both mainland and other island communities).

Officials have carried out a DPIA in relation to the onward sharing of personal data with the relevant authorities and no significant risks have been identified. The amending instrument does not introduce any new data sharing provisions.

The published CRWIA can be found on legislation.gov.uk alongside the SSI and the ICIA can be found on the Scottish Government website.

Financial Effects

A Business and Regulatory Impact Assessment ("BRIA") has been completed for this instrument which highlighted no impact on businesses. The published BRIA can be found can be found on legislation.gov.uk alongside the SSI.

Scottish Government
Justice Directorate
January 2026