

# **Scottish Government Consultation**

## **Mental Health Moratorium**

**November 2023**

# Contents

Ministerial foreword .....	2
Introduction .....	3
Responding to this consultation .....	5
Handling your response .....	5
Comments and complaints .....	6
Scottish Government consultation process.....	6
Consultation .....	7
Eligibility criteria .....	7
The application process.....	11
Period of protection.....	19
Obligations on the creditor and the individual .....	21
The delivery mechanism – using the Debt Arrangement Scheme .....	33
Interaction with a standard moratorium.....	35
Additional questions.....	36
Annex A.....	38
Summary of treatments .....	38
Interpretation of debt.....	39
Definition of a debt adviser .....	40
Respondent Information Form.....	41

## Ministerial foreword



The idea of a moratorium providing special protection to those with serious mental health conditions achieved broad support in the [‘Bankruptcy and debt advice review: consultation.’](#) An enabling power to establish such a moratorium is included in the [Bankruptcy and Diligence \(Scotland\) Bill](#). The Economy and Fair Work Committee issued a call for evidence as part of their stage one scrutiny of the Bill. The responses show strong support for the principle of such protection, if understandably raising questions over the details.

The Scottish Government has also benefitted from expert advice provided by the [Mental Health Moratorium Working Group](#) on the key issues of detail, and from the hands-on experience of those engaged in delivering the similar scheme already available in England and Wales.

This then is a rather different form of consultation. It sets out a way forward on the detailed implementation of the scheme from the starting point that a scheme itself is accepted as the right approach.

We look forward to receiving your views on this consultation and I thank you for taking the time to contribute.

**Tom Arthur MSP**

**Minister for Community Wealth and Public Finance**

## Introduction

The Scottish Government committed to a policy review of Scotland's statutory debt solutions (moratorium protection, bankruptcy, Protected Trust Deeds and the Debt Arrangement Scheme) with the aim of further enhancing and improving our system.

The first stage of the policy review dealt with the priorities to be taken forward to help address the immediate impact of the COVID-19 pandemic. The second stage of the review was undertaken by stakeholder-led working groups which drew on a wide range of expertise and knowledge from representatives of all sectors involved in the debt landscape. The introduction of a Mental Health Moratorium in Scotland was recommended by the stage 2 working group.

They recognised the benefits in establishing a specific tool which ensures people struggling with mental health and finances have access to breathing space and respite. Among the reasons that have been given for creating a specific Mental Health Moratorium are that people who are in crisis care generally cannot access more conventional forms of money advice. Also, the length of someone's mental health crisis can vary, therefore, the moratorium should align to that. The prospect of the moratorium stopping during a person's mental health crisis and not providing additional protections (such as preventing the creditor from contacting the individual) could create a risk of worsening the individual's mental and financial health issues.

The consultation '[Scotland's statutory debt solutions and diligence – policy review response](#)' sets out the Scottish Government's response to the second stage of the review. One of the included proposals was to engage with key stakeholders when designing the detailed process for the Mental Health Moratorium. This proposal received overwhelming support from respondents, as reported in the [Statutory debt solutions and diligence - policy review consultation: summary of responses](#).

As a result, the Mental Health Moratorium Working Group was formed to look at possible ways the Mental Health Moratorium could work in practice. The membership includes mental health professionals, representatives from the debt advice community and the creditor sector. A series of meetings and in-depth

discussions resulted in the publication of the [Mental Health Moratorium Working Group - report of recommendations](#).

On 27 April 2023, the Bankruptcy and Diligence (Scotland) Bill was introduced to Parliament. This included the introduction of a power enabling Scottish Ministers to introduce a Mental Health Moratorium. Secondary legislation which will support this Bill will contain the detail of the process for a Mental Health Moratorium.

The Economy and Fair Work Committee is leading on the scrutiny of the Bankruptcy and Diligence (Scotland) Bill and issued a call for evidence which closed on 21 July 2023. Responses to the call for evidence have been received and can be viewed on the [Scottish Parliament website](#).

The basis of this consultation has been formed from the Mental Health Moratorium Working Group's report of recommendations, the responses to the Economy and Fair Work Committee's calls for evidence, and other stakeholder engagement which has been undertaken.

The feedback received during this consultation will enable us to finalise the process for a Mental Health Moratorium and develop the necessary regulations subject of course to the will of Parliament and the enabling power being passed.

## Responding to this consultation

We are inviting responses to this consultation by 22 January 2024.

Please respond by using the Scottish Government's consultation hub, Citizens Space at the following link – [Mental Health Moratorium Consultation](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 22 January 2024.

If you are unable to respond using our consultation hub, please complete and return the [Respondent Information Form](#) included in this document to:

Policy Development  
Accountant in Bankruptcy  
1 Pennyburn Road  
Kilwinning  
KA13 6SA  
Email: [policy@aib.gov.uk](mailto:policy@aib.gov.uk)

## Handling your response

If you respond using the consultation hub, you will be directed to the 'About You' page before submitting your response. Please indicate how you wish your response to be handled and whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our [privacy policy](#).

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be published on [Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to [policy@aib.gov.uk](mailto:policy@aib.gov.uk).

## **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online at [Citizen Space](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

# Consultation

## Eligibility criteria

1. The Mental Health Moratorium Working Group has suggested there should be two aspects to the eligibility criteria for entering a Mental Health Moratorium - the mental health requirement and the debt level requirement. In addition, and for certainty, the Scottish Government proposes that eligibility would be limited to individuals with a habitual residence in Scotland, and who are not currently in another statutory debt solution (other than the standard moratorium).
2. Representatives from all stakeholder sectors have raised concerns about the potential consequences of the mental health requirement being too open with a high level of protection, such as freezing the interest and charges of the individual's debts (see [Annex A – interpretation of debt](#) for more detail). This could have an undue impact on creditors. As a result, defining the eligibility criteria for entry into a Mental Health Moratorium is a fine balance.

## Mental health criteria

3. The Mental Health Moratorium Working Group recommends using existing mental health legislation as the most appropriate parameter for setting the eligibility criteria in a Mental Health Moratorium.
4. The Scottish Government is minded to accept the Mental Health Moratorium Working Group's advice on the principles of eligibility criteria. That is, to be eligible for a Mental Health Moratorium, an individual must be receiving treatment, with an element of compulsion, under one of the following provisions from the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (the "2003 Act") and the [Criminal Procedure \(Scotland\) Act 1995](#) (the "1995 Act"), or similar:
  - Part 6 of the 2003 Act – Short-term detention
  - Part 7 of the 2003 Act – an interim Compulsory Treatment Order and a Compulsory Treatment Order



- Section 136 of the 2003 Act – Transfer of prisoners for treatment for mental disorder
- Section 52D of the 1995 Act – Assessment Order
- Section 52M of the 1995 Act – Treatment Order
- Section 53 of the 1995 Act – Interim Compulsion Order
- Section 57A of the 1995 Act – Compulsion Order
- Section 59A of the 1995 Act – Hospital direction

5. For more detail on each of the provisions listed above, see [Annex A – summary of treatments](#).

6. The Scottish Government accepts that this means eligibility will at least initially be very limited. This has several advantages. It allows the scheme to start small, and ensure it is on a sound footing before considering whether it might then be expanded. There is also a very clear line between those who are and are not eligible. This brings clarity for mental health professionals, the debt advice community, creditors and the Accountant in Bankruptcy (AiB) as scheme administrator.

7. Another advantage of the narrow eligibility criteria suggested by the Mental Health Moratorium Working Group is that every individual falling within these criteria will have a support team of mental health professionals around them. It is likely to be the Mental Health Officer who first becomes aware that the individual's financial circumstances are either a contributory factor to the individual's poor mental health or is hindering their recovery.

**Question 1.** Do you agree with the proposed initial mental health eligibility criteria?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

**Question 1a.** If you believe the proposed mental health criteria are too narrow, please suggest an alternative that could be measured fairly and easily implemented.

Please comment in the box below:

### **Debt criteria**

8. To ensure the Mental Health Moratorium application process is efficient and streamlined, the Mental Health Moratorium Working Group believe a minimum debt level should not be set in order for an individual to be eligible for a Mental Health Moratorium. The Scottish Government intend to accept this recommendation.

9. As they considered it would be most appropriate for a debt adviser to submit the Mental Health Moratorium application, the Mental Health Moratorium Working Group have recommended it is necessary for the adviser to confirm ‘the applicant is unable, or is unlikely to be able, to repay some or all of their debt as it falls due.’ The Mental Health Moratorium Working Group considered that a statement like this, signed by the adviser on the application, should be sufficient to meet the debt criteria for the individual’s eligibility.

10. The Scottish Government do not intend to accept this recommendation in full. It believes that the risk of abuse is small given the tight mental health eligibility criteria set out above. It also considers that the debt adviser could not put themselves in a position to make such a statement without at least some time with the individual, seeking to understand their finances and make an assessment. This

may not be appropriate whilst the individual is undergoing mental health crisis care and has limited time or ability to focus on their debt issues.

11. At this stage, the Scottish Government is minded to propose a simple statement from the Mental Health Professional to confirm that debt problems are impacting negatively on the client's mental health, together with a commitment from a debt adviser to provide support in due course, would be a better approach. See [Annex A for the definition of a debt adviser](#).

**Question 2.** Do you agree that no minimum debt level should be set for the eligibility criteria?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

**Question 3.** Do you agree that there is no need to establish the individual's financial position at the application stage?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

## **The application process**

12. To certify eligibility, applications will need to be accompanied by a signed statement from a Mental Health Professional. The Scottish Government is minded to accept the Mental Health Moratorium Working Group's advice on which Mental Health Professional would be competent to sign the form. As recommended, the form could be signed by a Mental Health Officer, Responsible Medical Officer or Community Psychiatric Nurse. In addition, to future proof this list of job titles as far as possible, the form could be signed by a Mental Health Professional of equivalent standing and professional qualification.

13. The application form would be submitted electronically and automatically sent to an approved debt adviser. It would contain no more than sufficient information to identify the following:

- the individual on whose behalf an application is being made
- the individual signing the form
- a tick box to show which eligibility criteria is met

14. It is not reasonable to expect the Mental Health Professional to be able to assess, or the individual to be able to provide, a full financial picture of their income and expenditure. And though it is possible an individual may already have had contact with a debt adviser, it is unlikely that they will be able to focus on dealing with their debts during treatment for a mental health crisis. Experience from the scheme in England and Wales is that debt counselling can only really begin once the individual has started to recover.

15. At the application stage, it will not be clear what support the individual requires beyond an intervention to prevent escalation of their mental health issues associated with financial worries. The policy goal is both to deliver this and to stop the individual's financial position getting worse before it can be addressed.

**Question 4.** Do you think the proposed role of the Mental Health Professional at the application stage is appropriate?

- Yes
- No
- Don't know

Please add any further comments on this proposal in the box below:

**Question 4a.** Do you think the proposed role of the Mental Health Professional at the application stage is practical?

- Yes
- No
- Don't know

Please add any further comments on this proposal in the box below:

## The individual's agreement

16. The Mental Health Moratorium Working Group recommend that the individual, or someone with power of attorney or a guardianship acting on the individual's behalf, should be required to provide signed agreement to an application for a Mental Health Moratorium. The Scottish Government envisage that this would be provided by an approved debt adviser who would be required to confirm three things:

- that they have clearly explained the Mental Health Moratorium to the individual or their representative (power of attorney or guardianship),
- that the individual or their representative wish to proceed; and
- that they will provide debt advice to the individual at a suitable point in the process.

**Question 5.** Do you think the proposed role of the debt adviser at the application stage is appropriate?

- Yes
- No
- Don't know

Please add any further comments on this proposal in the box below:

**Question 5a.** Do you think the proposed role of the debt adviser at the application stage is practical?

- Yes
- No
- Don't know

Please add any further comments on this proposal in the box below:

### **Connecting the Mental Health Professional to the debt adviser**

17. The Scottish Government would welcome views on one of two possible options for connecting the Mental Health Professional to the debt adviser.

18. The policy goal here is to ensure that the individual is connected to a debt adviser who can provide advice in a channel, location, pace and time appropriate to the individual. Experience from the scheme in England and Wales suggests this will be a longer process than usual. Initial views from the debt advice sector indicate that most advisers want to be involved in this work when appropriate.

19. The two options to consider are either:

- AiB will act as “the link” between Mental Health Professionals and debt advisers who are willing to provide this service. This might be through no more than a contact list maintained on AiB’s website; or
- The AiB commissions one of the debt advice organisations or a third party to undertake this role and/or to provide specialist support to frontline debt advisers as required.

20. In either case, the Scottish Government would welcome views on whether specialist expertise is necessary for delivering advice to this client group. Given the small number of annual cases initially expected, the number of advisers able to develop and maintain such expertise is likely to be very limited.

21. Once the debt adviser has been contacted, they would hold some initial conversations with the individual or their representative. This would allow them to make the declaration of the three statements as outlined in [the individual's agreement section](#). The debt adviser would then make that declaration electronically to AiB via a webform along with the Mental Health Professional declaration. AiB would marry up the two forms to produce a completed application. In all circumstances where both forms have been submitted, a Mental Health Moratorium will be put in place from the end of the following working day.

**Question 6.** Connecting the Mental Health Professional to the debt adviser - which option would you choose?

- AiB acts as a link
- Debt advice organisation or third party commissioned
- Neither option

Please explain the reason for your answer in the box below:



**Question 7.** Do you believe that specialist debt advice and support is required for frontline debt advisers for their involvement with the Mental Health Moratorium process?

- Yes
- No
- Don't know

Please explain the reason for your answer in the box below:

**When the individual does not have capacity**

22. The Mental Health Moratorium Working Group considered carefully whether a Mental Health Moratorium should be available to an individual assessed as not having the capacity to consent to an application, and where no power of attorney or guardianship is in place.

23. The Mental Health Moratorium Working Group felt that an individual subject to compulsory treatment should not be made to endure further compulsion over their financial affairs. The Mental Health Moratorium Working Group therefore recommended that a Mental Health Moratorium should only be available to those with the capacity to consent (which could be through a legal representative) which would be determined by the Mental Health Professional.

24. In the interests of starting small and certain, the Scottish Government is minded to accept this recommendation, but would welcome your views.

**Question 8.** Do you agree that a Mental Health Moratorium application should only be consented to by the individual, a power of attorney or guardianship?

Agree

Disagree

Neither agree nor disagree

Please add any further comments on this proposal in the box below:

**Question 8a.** If you disagree, we would be grateful for your views on how a Mental Health Moratorium application is made available to those who do not have the capacity to consent.

Please comment in the box below:

### **Notifying creditors**

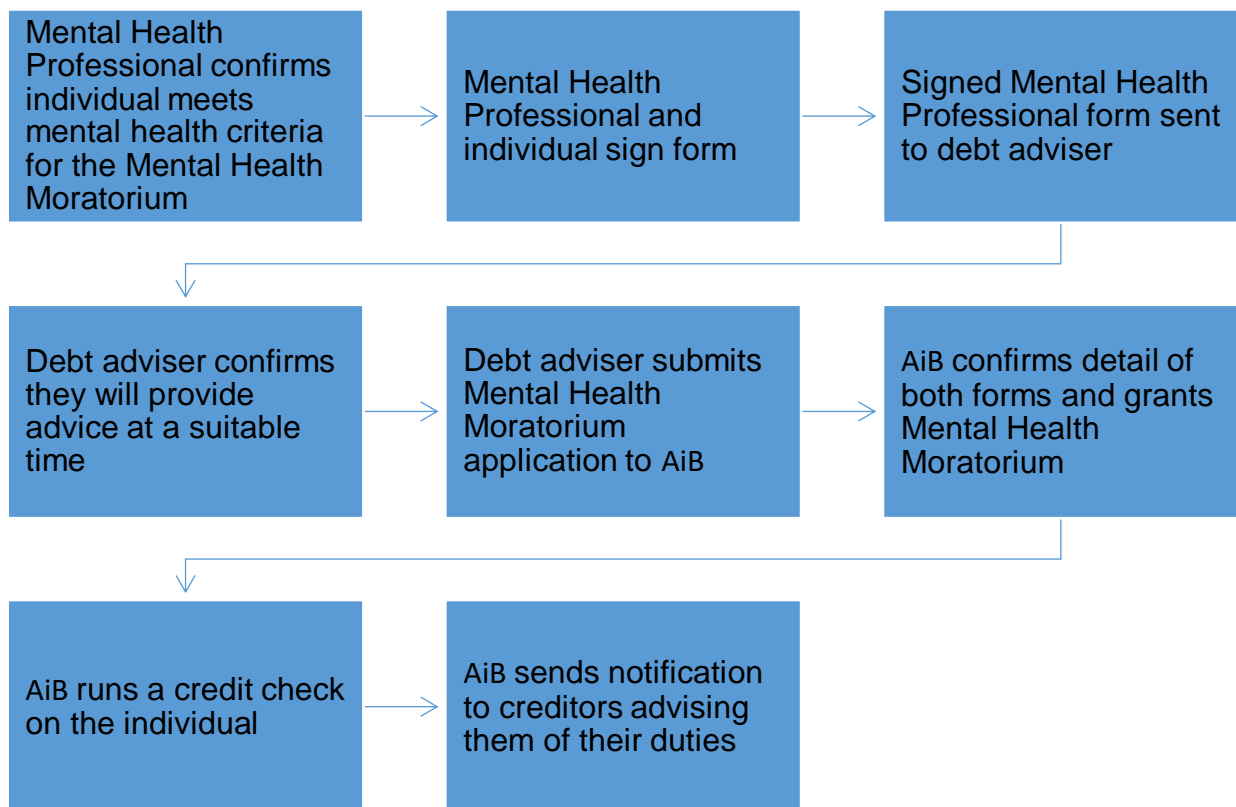
25. Delivering the aims of the Mental Health Moratorium requires a process of creditor notification. In this particular context, it does not seem appropriate to ask the individual to provide a full list of their creditors, account details, etc. There are also understandable concerns about making details of an individual's mental health too freely available.

26. The proposal is that AiB would run a credit check on the individual – as it currently does for those applying for some other statutory debt products. This would identify the bulk of private sector creditors but is unlikely to reveal details of debts

owed to the public sector such as HMRC, housing bodies or DWP. AiB will look to identify mechanisms for dealing directly with these creditors using the individual's address and other details.

27. AiB will then notify all identified creditors that the individual has been granted a Mental Health Moratorium, and of the duties they must follow in respect of the individual. See the section [‘Duties on creditors during a Mental Health Moratorium’](#) for more information.

### Flowchart of process



### The cost of an application

28. The Scottish Government does not believe it would be appropriate for any fees to be paid by the individual for either the work of the Mental Health Professional, the debt adviser or AiB.

**Question 9.** Do you have any other comments on the proposed application process?

Please provide them in the box below:

## **Period of protection**

29. The Mental Health Moratorium Working Group recommend the duration of a Mental Health Moratorium should be the period for which the individual has a compulsory aspect to their mental health treatment, followed by a further period (called the 'recovery period') during which the individual should focus more on their financial position. The Scottish Government is minded to accept this recommendation in full.

30. It is possible that (in a small number of cases) an individual could be subject to compulsory mental health treatment indefinitely and a Mental Health Moratorium could therefore also continue indefinitely. Whilst this represents a burden for those creditors affected (although it seems likely few creditors would take enforcement action against individuals in this position even without the Mental Health Moratorium), it is considered this is justified given the wider policy aims to protect individuals who are going through a serious mental health crisis.

31. The Scottish Government proposes that the recovery protection period should initially be set at six months. This will be reviewed in light of experience, to see if it should be reduced to the same length as the standard moratorium. Although the standard moratorium is currently set at six months, it may be reduced when the cost crisis is past. Given the earliest possible date when the Mental Health Moratorium will be available is April 2025, the standard moratorium length may already have been reduced by this point.

32. Although the Mental Health Moratorium Working Group recommended aligning the recovery period with the standard moratorium, the Scottish Government

proposes that six months would (at least initially) be more appropriate, for two reasons. First, experience from England and Wales is that the process of advising individuals in these circumstances takes significantly longer than other clients. Second, a standard moratorium will often start the day after an individual has agreed with a debt adviser that a moratorium is appropriate for them (so their debt advice journey has started). For clients in a Mental Health Moratorium, the six months recovery period will start the day their compulsory treatment ends. This means their debt advice journey may not start for a number of weeks, depending on debt adviser availability.

33. As recommended by the Mental Health Moratorium Working Group, the start of the recovery period would be triggered by the Mental Health Officer's notification to AiB that the individual has completed the compulsory part of their treatment. AiB would then notify the debt adviser and all known creditors of the likely end date for the recovery period.

**Question 10.** Do you agree with the proposed period of protection?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

## Obligations on the creditor and the individual

### Qualifying debts

34. A Mental Health Moratorium would only provide protections for debts which were incurred prior to the Mental Health Moratorium application date. They would match the list of debts which can be included in the Debt Arrangement Scheme. See [Annex A – interpretation of debt](#) for more details.

35. It is worth pointing out that continuing liabilities, such as mortgage, rent payments and student loan repayments, would not be caught by the Mental Health Moratorium and should continue to be paid. Interest on overdue payments (arrears) due at the date of application would be frozen.

36. Business debts would be excluded where the business is a separate entity from the individual (that is, not for sole traders). The parallel scheme in England and Wales excludes a large number of debts, including court fines, child support maintenance, any obligation arising under Confiscation Orders, benefit overpayments and negligence claims.

37. The Scottish Government does not at this stage intend to make further exclusions, on the grounds that the Mental Health Moratorium merely postpones the right to collect these debts.

**Question 11.** Do you agree with the proposed approach to the qualifying debts?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

### **Duties on creditors during a Mental Health Moratorium / Effect of the Mental Health Moratorium**

38. The policy goals of the Mental Health Moratorium are:

- i) to provide the individual time to address their severe mental health issues without additional pressures from their financial problems; and
- ii) to prevent their financial position from getting worse before they are able to take advice and deal with their debts.

To achieve this, creditors:

- must not chase individuals for payment of qualifying debts
- must not take enforcement action for payment of qualifying debts
- must not increase debts owed by adding interest or charges, fees or penalties which have accrued on qualifying debts during the moratorium period

39. If a creditor wishes to contact the individual – for example, to meet their legal obligations under the Consumer Credit Act 1974 or the Financial Services and Markets Act 2000 – this should be done through the debt adviser or individual’s representative rather than to the individual themselves.

40. The actions listed above sets out the ideal, which would achieve the policy goal in full. It is worth however saying again that the number of individuals likely to benefit will be small. Imposing significant additional costs on creditors or AiB may not be proportionate if the majority of those benefits could be obtained in a more efficient manner. It is also a noteworthy departure from the standard moratorium – which

involves no pro-active notification of creditors and bites only when a creditor tries to take enforcement action.

41. The standard moratorium also has no impact on creditors' rights to continue to add interest and charges to the level of debt. This is appropriate as there is no "qualifying gateway" for the standard moratorium - it is available to all those who wish to access it. The Mental Health Moratorium is different, with strict entry criteria.

42. The Mental Health Moratorium Working Group felt strongly that to give an individual security that their debt situation would not get worse whilst they underwent treatment, interest and charges would require to be frozen. This would inevitably bring with it greater complexity for creditors. Their systems not only need to be able to "pause" automatic adjustments for interest and charges on debts existing at the point a Mental Health Moratorium is awarded (whilst new debts would attract interest and charges), but they also need certainty as to the exact period of the Mental Health Moratorium. We believe creditors would approach such cases with compassion but are not in a position to assess the likely costs such an approach would involve. We would particularly welcome feedback on this point.

43. Minimising costs to creditors and AiB could involve adapting an already working system, which potentially would not require further system development by either party. There is one scheme that delivers most of these benefits – the Debt Arrangement Scheme. This will be returned to later in the consultation.

44. The Scottish Government's intention is that creditors would be bound on the day following which electronic notification of the start of the Mental Health Moratorium is issued. Where creditors cannot receive notification electronically, written communication will include the date from which the creditor is bound (which may then be in the past). The current intention is to explore whether the existence of a moratorium can be notified via a public register (if possible to do so without stigmatising the individual).



45. If the debt has been passed or sold on, it is the duty of the existing creditor to notify the new creditor of the Mental Health Moratorium. They should also notify AiB that the debt has been passed/sold and provide them with details of the new creditor.

**Question 12.** Do you agree that interest and charges should not be added to the individual's debt during the full period of their Mental Health Moratorium, i.e. frozen?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

**Question 12a.** We would be grateful for your views on the possible costs to creditors by the freezing of interest and charges on debts during the Mental Health Moratorium period.

Please provide comments in the box below:

**Question 13.** We would be grateful for your views on the possible practicalities of limiting creditors from contacting the individual during the Mental Health Moratorium period.

Please provide comments in the box below:

### **Protections against diligence**

46. The Scottish Government is minded to provide that the protections against diligence would match those in a standard moratorium. Full details of those protections can be found on the [legislation.gov.uk website](https://legislation.gov.uk).

47. The Mental Health Moratorium Working Group propose two potential additions to this list:

- i) that it should not be possible to evict an individual who has been granted a Mental Health Moratorium during the period of their moratorium; and
- ii) that where joint and severally liable debts are included in a Mental Health Moratorium, the diligence protections should extend to all those jointly and severally liable for those debts.

48. The Scottish Government has considerable sympathy for the intent of the first of these in light of our general policy that eviction for rent arrears should be a last resort. However, it is not persuaded that this approach is appropriate given the potential consequences for small-scale landlords and creditors in particular. There are wider strong eviction protections already in place in Scotland for tenants in rent arrears such as:

- [pre-action protocols for private rented sector tenants](#)
- [pre-action requirements for social rented sector tenants](#)

- the statutory requirement for the Tribunal and the Court to consider the reasonableness of granting an eviction order/decreed in all arrears cases

49. In addition, other eviction protections for social and private sector tenants, where the circumstances warrant this, are currently being considered as part of future rented sector reform following our [‘New Deal for Tenants consultation’](#).

50. At this stage, the Scottish Government is also not persuaded that the second of the additional protections is appropriate. If other holders of a joint and several liable debt are unable to meet the payments, they can access the range of options open to those in financial difficulties.

**Question 14.** Do you agree with the proposed approach to the protections against diligence?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

### **Consequences for creditors not adhering to the Mental Health Moratorium**

51. The Mental Health Moratorium Working Group recommend that the notification issued to creditors, subsequent to the granting of the Mental Health Moratorium, should include reference to the obligations of the creditor as stipulated in legislation. Guidance should also be published on the Mental Health Moratorium which states:

'If the individual or anyone else believes that a creditor is not applying the protections, the debt adviser can be notified directly. They will take action to remind the creditor of their obligations during a Mental Health Moratorium and, where appropriate, may inform AiB or other relevant authorities or regulatory bodies about the creditor's conduct.'

52. The Scottish Government is minded to accept this recommendation in full, but will keep this under review. Creditor representatives have made clear that creditors will want to play their part in fully supporting customers in these circumstances. Key to this is a system for ensuring creditors are notified efficiently and effectively – and that the introduction of the Mental Health Moratorium is properly publicised when coming into force.

**Question 15.** Do you agree with the proposed position on creditor consequences for not adhering to a Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

### **Creditors' right to challenge a Mental Health Moratorium**

53. The Scottish Government is proposing not to include a right to challenge the granting of a Mental Health Moratorium when the scheme is first established. This is on the basis that the eligibility criteria, in terms of the mental health requirement, are narrow and may be sufficient to ensure adequate safeguards are in place to confirm the identity and appropriate level of the Mental Health Professional verifying that the necessary criteria have been met.

**Question 16.** Do you agree with the proposed position on the creditor's right to challenge the granting of a Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

**Question 16a.** Do you think creditors should be able to request the cancellation of an approved Mental Health Moratorium?

- Yes
- No
- Don't know

Please explain the reason for your answer in the box below:

**Question 16b.** If you answered yes to question 16a, in what circumstances could the creditor request a cancellation?

Please provide your comments in the box below:

**Question 16c.** Further to question 16b, we would be grateful for your views on how a cancellation process could work.

Please provide comments in the box below:

### **Obligations on the individual during a Mental Health Moratorium**

54. The proposal requires creditors to take significant steps to help support individuals undergoing a mental health crisis. It is only right that creditors should not be unduly disadvantaged by doing so. The individual should therefore be under obligations not to take actions that would reduce their ability to repay their creditors in the longer term, such as disposing of assets or incurring significant new borrowing. Such actions might be seen as more culpable during the recovery period of the moratorium when the individual is beginning to focus on addressing their debt.

55. The strict eligibility criteria however acts as a strong barrier to anyone seeking to manipulate the scheme for avoidance purposes. Therefore, the Scottish Government proposes not to establish specific obligations on individuals beyond:

- i) giving creditors the ability to take interim diligence to protect their position if they feel that is necessary; and
- ii) making the individual's identity known to potential future creditors via a public register if this can be done in a way that does not unduly stigmatise the individual.

56. The Scottish Government has considered the argument that a public register is not necessary, as the individual's credit file is likely to show defaults against any debts where payments have been paused. This could be considered sufficient warning for creditors. It is worth noting that non-payment as default has a specific meaning in Credit Reference Agency reporting. However, this argument applies across the whole range of statutory debt products, and the Scottish Government is

not currently persuaded that it is necessary or appropriate to take a different approach here.

57. There is no intention to put in place a regime – for example, similar to the bankruptcy restriction order process - that might result in penalties being applied to individuals considered to have acted against the rules of the Mental Health Moratorium.

**Question 17.** Do you agree with the proposed approach to the obligations on the individual?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

**Question 18.** Do you believe penalties should be applied to the individual for not following the rules of the Mental Health Moratorium?

- Yes
- No
- Don't know

Please add any further comments in the box below:

**Question 18a.** If you answered yes, we would be grateful for your views on what kind of penalty would be appropriate?

Please comment in the box below:

### **Accessing credit**

58. The Scottish Government has considered carefully the Mental Health Moratorium Working Group's recommendation that limits should be placed on an individual's ability to access additional credit during a Mental Health Moratorium. At this stage, the Scottish Government is not persuaded that this is necessary. There is no such limit in a standard moratorium and is concerned that a requirement on the individual to declare they are in a Mental Health Moratorium might be unduly stigmatising.

59. Most credit providers will have access both to the public register (if it is possible without stigmatising the individual), and to the individual's credit report, before making lending decisions. This should provide an adequate safeguard but will be kept under review.

**Question 19.** Do you agree there is insufficient justification to place restrictions on the individual's access to credit?

- Agree
- Disagree
- Neither agree nor disagree



Please add any further comments on this proposal in the box below:

### **Ongoing liabilities**

60. Nothing in the Mental Health Moratorium proposal removes the individual's responsibility for meeting their ongoing liabilities. The Mental Health Moratorium will only capture those debts that arise before the date of application.

61. It might be considered unreasonable to expect all individuals who qualify, particularly for the first period of the Mental Health Moratorium, to be fully on top of meeting ongoing liabilities. It is hard to see a way round this. Initial discussions with creditor representatives suggest many creditors will extend forbearance to individuals once they are made aware that the individual might not have the mental capacity to make relevant financial decisions. This may be sufficient to deal with concerns in this area. Again, an issue that will be kept under review.

**Question 20.** Do you believe other obligations should be placed on an individual in a Mental Health Moratorium?

- Yes
- No
- Don't know

Please explain the reason for your response in the box below:

## The delivery mechanism – using the Debt Arrangement Scheme

62. The Debt Arrangement Scheme (details of which can be found on the [Accountant in Bankruptcy website](#)) provides:

- electronic communication with debt advisers and creditors
- a public register of those on the scheme
- freezing of interest and charges whilst the Debt Payment Programme is maintained, with interest and charges written off on successful completion of the Debt Payment Programme
- limits on creditor communications with individuals during their Debt Payment Programme
- prevents enforcement action whilst the Debt Payment Programme is maintained

63. This is very much what the Mental Health Moratorium is looking to offer. Although the Mental Health Moratorium Working Group made no recommendations on the appropriate delivery route, the similarities here create two possible ways in which the scheme could be delivered on which the Scottish Government would welcome your views.

64. The first option is to effectively create a “clone” of the underlying IT system used for Debt Arrangement Scheme to administer a Mental Health Moratorium.

65. The second, more radical option would be that – on the award of a Mental Health Moratorium – AiB would automatically enrol the individual in a Debt Payment Programme under the Debt Arrangement Scheme, but with no payments due until three months after the individual’s compulsory treatment came to an end. This would effectively deliver the Mental Health Moratorium as a special kind of Debt Payment Programme within the Debt Arrangement Scheme.

66. Three months has been suggested as a way of effectively delivering the client full protection for the six month recovery period. This is because AiB will not start

action to revoke a Debt Payment Programme under Debt Arrangement Scheme until three payments have been missed. Although creditors could technically ask for revocation after one missed payment, this would not pass the fair and reasonable test.

67. This would leave the individual with the choice either to let the plan fail – the AiB might for example automatically revoke the Debt Payment Programme if no payment was made on the fourth month in which a payment was due – or to continue the plan as the most effective way of addressing their qualifying debts. The debt adviser would have the six month recovery period to ensure the details and coverage of the Debt Payment Programme was correct, and to work with the individual to propose a suitable monthly payment going forward.

68. The main advantages of this approach, beyond delivering most of the aims of the Mental Health Moratorium, are that the necessary systems for AiB, debt advisers and creditors are almost fully in place. The Debt Arrangement Scheme is well understood in both debt advice and creditor communities, and this would minimise the upfront cost. It could also be delivered more quickly than if we were establishing new processes from scratch.

69. The main drawback is that it might be seen as prejudging the individual's rights to make their own choice of how best to proceed. As has been said above, when an application for a Mental Health Moratorium is received, it may not be clear whether the individual needs statutory debt relief – but there will doubtless be individuals for whom expecting full repayment, even over time, is inappropriate.

70. There are also potential concerns about whether, if an alternative route is chosen, the fact that the Debt Payment Programme has “failed” might impact on the individual's mental health. In these circumstances, it would simply be wrong to talk of “failure” of a Debt Payment Programme, and this can be addressed by careful consideration of correspondence and guidance.

71. It is not considered this option would have any more significant impact on an individual's credit rating compared to any other approach to implementation. It is

default on payments due (whether in a moratorium or any other debt product) which will impact on an individual's credit score.

**Question 21.** Which of the following options would you choose as the delivery mechanism for the Mental Health Moratorium?

- Option 1 - Clone the underlying IT system in place for the Debt Arrangement Scheme to administer the Mental Health Moratorium
- Option 2 - Enrol the individual into a Debt Payment Programme under the Debt Arrangement Scheme with no payments due
- Neither option

Please provide the reason(s) for your response in the box below:

**Question 21a.** If you selected neither option, we would be grateful for your views on a workable alternative which would meet the Mental Health Moratorium requirements.

Please provide comments and reasoning in the box below:

### **Interaction with a standard moratorium**

72. Should a standard moratorium be in place when a Mental Health Moratorium is awarded, the standard moratorium will immediately come to an end. There will also need to be a period of at least six months between the end of a Mental Health Moratorium before the individual could apply for a standard moratorium. However,

there is no limit to the number of applications an individual can make for a Mental Health Moratorium, should their circumstances require it and provided they meet the eligibility criteria.

**Question 22.** Do you agree with the proposed position on how the Mental Health Moratorium will interact with a standard moratorium?

- Agree
- Disagree
- Neither agree nor disagree

Please add any further comments on this proposal in the box below:

### **Additional questions**

73. To enable all those who might benefit from the Mental Health Moratorium, it will be important that all Mental Health Professionals and debt advisers are aware of, and understand, the scheme. The Scottish Government will be considering how to achieve that separately, but your input would be helpful.

**Question 23.** We would be grateful for your views on how best to promote the Mental Health Moratorium.

Please provide your views in the box below:

**Question 24.** We would be grateful for any further comments you have about the Mental Health Moratorium which has not been raised in this consultation.

Please provide comments in the box below:

**Question 24a.** Would you be happy for officials to contact you to discuss your response if we want to explore your comments in more detail?

Yes

No

The Scottish Government is grateful for the time and effort you have put into reading and replying to this consultation paper. The next stage, once all the replies have been analysed and assessed, will be the preparation of draft regulations.

### Summary of treatments

**Short-term detention** - A short-term detention certificate (STDC) is the preferred route when a person needs compulsory care and treatment in hospital. It can only take place if recommended by a psychiatrist and a Mental Health Officer. A STDC can last for up to 28 days. The detention certificate must be revoked if the relevant detention criteria are no longer met.

**Compulsory Treatment Order** – A Compulsory Treatment Order (CTO) will set out a number of conditions that the individual will need to comply with. These conditions will depend on whether the individual has to stay in hospital or are in the community. A CTO can last up to six months. It can be extended for a further six months and then for periods of twelve months at a time.

**Transfer of prisoners for treatment for mental disorder** - The Scottish Ministers may make a transfer for treatment direction in terms of section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 which allows for the transfer of a sentenced prisoner to hospital for medical treatment in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

**Assessment Order** – An Assessment Order is to allow the appropriate examination and assessment by an approved medical practitioner, of a person prior to trial or after conviction before sentencing. It authorises the removal to, and detention in, a specified hospital for up to 28 days and also the giving of medical treatment in certain circumstances.

**Treatment Order** – While awaiting their trial, the court can order the individual to stay in hospital for treatment. The Treatment Order lasts until the court make a decision to convict or acquit the individual. There are rules about when the trial must start. This depends on the seriousness of the offence the individual has been charged with.

**Compulsion Order** – A Compulsion Order is used when an offender commits an offence that is punishable by imprisonment, but is found to have a mental disorder. The court can decide not to send the offender to prison but that they must stay in hospital for mental health treatment.

**Hospital direction** - At sentencing a court may, in addition to imposing a custodial sentence, impose a hospital direction in terms of section 59A of the Criminal Procedure (Scotland) Act 1995 which allows the prisoner to be detained initially in hospital for medical treatment in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

### **Interpretation of debt**

The following is the definition of a qualifying debt in relation to a Mental Health Moratorium as referenced in Regulation 3 of the Debt Arrangement Scheme (Scotland) Regulations 2011:

- (1) In these Regulations, “debt” includes any sum due by a debtor—
- (a) constituted by—
    - (i) decree or document of debt;
    - (ii) judicial or contractual interest
    - (iii) charges or penalties due under a contract on any default in respect, or breach of, that contract;
    - (iv) lease or tenancy agreement;
    - (v) enactment;
  - (b) secured by a standard security, to the extent that the sum is arrears of a periodic payment due to be paid under a loan agreement so secured;
  - (c) recoverable from the debtor as enforcement expenses.

- (2) In these Regulations, “debt” excludes any sum due by a debtor—
- (a) to the extent it is secured by a standard security, other than where that sum is included under paragraph (1)(b);
  - (b) as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986;



(c) as a fee charged by a money adviser for the money adviser's services in the debt payment programme in respect of which the services are provided.

d) in respect of a student loan made—

(i) by virtue of regulations made under section 73(f) of the Education (Scotland) Act 1980;

(ii) under section 1 of the Education (Student Loans) Act 1990;

(iii) by virtue of regulations made under section 22 of the Teaching and Higher Education Act 1998; or (iv) by virtue of regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1987.

### **Definition of a debt adviser**

The following is the definition of a debt adviser in relation to a Mental Health Moratorium as referenced in Regulation 8 of the Debt Arrangement Scheme (Scotland) Regulations 2011:

(8) the person—

(a) is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act;

(b) is an individual who works for such an insolvency practitioner and has been given authority by that practitioner to act on the practitioner's behalf as a money adviser for the purposes of the debt arrangement scheme;

(c) works as a money adviser for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; or

(d) works as a money adviser for a citizens advice bureau which is a full member of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland;

(e) works as a money adviser for a local authority; or

(f) is approved by the Debt Arrangement Scheme Administrator under regulation 9.

## Mental Health Moratorium Consultation

### Respondent Information Form

**Please note** this form **must** be completed and returned with your response. To find out how we handle your personal data, please see our [privacy policy](#).

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email address

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

**Information for organisation:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published. If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



© Crown copyright 2023



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83521-590-6 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1381134 (11/23)

W W W . g o v . s c o t