

# **The draft Debt Recovery (Mental Health Moratorium) (Scotland) Regulations**

**Consultation**

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## **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](#).' The Mental Health Moratorium represents a chance to help improve the lives of those who are struggling with debt and serious mental health issues.

The Scottish Government has benefitted from expert advice provided by the [Mental Health Moratorium Working Group](#) on how a Mental Health Moratorium could work, and from the hands-on experience of those engaged in delivering the similar scheme already available in England and Wales. I would like to thank the members of that working group and other stakeholders who have engaged, and continue to engage, throughout the process of developing the Mental Health Moratorium.

Draft regulations for the Mental Health Moratorium, [The draft Debt Recovery \(Mental Health Moratorium\) \(Scotland\) Regulations](#), were provided to the Economy and Fair Work Committee prior to stage 3 of the [Bankruptcy and Diligence \(Scotland\) Bill](#).

They provided an opportunity to see the policy direction of the Mental Health Moratorium. There has been continual engagement with stakeholders throughout the development of the draft Regulations. We have listened to previous concerns, such as on the eligibility criteria, and have addressed those concerns within the draft Regulations.

This consultation provides an opportunity to receive feedback on the latest draft of the Regulations and the detailed implementation of the Mental Health Moratorium.

We look forward to receiving your views on this consultation. Your views will support the development of the finalised version of the Regulations and I thank you for taking the time to contribute.

**Ivan McKee MSP**

**Minister for Public Finance**

## Introduction

The Bankruptcy and Diligence (Scotland) Bill completed its progress through the Scottish Parliament on 6 June 2024. Section 1 of the Bill requires Scottish Ministers to create a moratorium on debt recovery action by creditors against individuals who have a mental illness. This is an enabling power which lays out the framework for the moratorium with the detail of the process to be provided in secondary legislation.

A 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](#).

A draft of the required secondary legislation has now been produced, [The draft Debt Recovery \(Mental Health Moratorium\) \(Scotland\) Regulations](#). This is based on the expert Mental Health Moratorium working group's report of recommendations, feedback from the [Mental Health Moratorium public consultation](#), and the various debates during scrutiny of the Bankruptcy and Diligence (Scotland) Bill.

The basis of this consultation has been formed from the draft Regulations (although please note that some minor changes have been made to the Regulations since they were shared with the Scottish Parliament). Feedback received during this consultation will enable us to finalise and commence the Mental Health Moratorium Regulations subject to the will of Parliament.

## Responding to this consultation

We are inviting responses to this consultation by 17 March 2025.

Please respond by using the Scottish Government's consultation hub, Citizens Space at the following link – [The draft Debt Recovery \(Mental Health Moratorium\) \(Scotland\) Regulations](#). 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 17 March 2025.

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

In this consultation -

- "the 2003 Act" means the Mental Health (Care and Treatment) Act 2003;
- "the 1995 Act" means the Criminal Procedure (Scotland) Act 1995;
- "the 2016 Act" means the Bankruptcy (Scotland) Act 2016;
- "the 2002 Act" means the Debt Arrangement and Attachment (Scotland) Act 2002;
- "the 1987 Act" means the Debtors (Scotland) Act 1987;
- "the draft Regulations" means the draft Debt Recovery (Mental Health Moratorium) (Scotland) Regulations

### **Mental Health Moratorium: eligibility**

The Mental Health Moratorium Working Group recommended using existing mental health legislation as the most appropriate parameter for setting the eligibility criteria in a Mental Health Moratorium. The Scottish Government agrees with that principle. Using well established legislation, listed under 'The Mental Health Criteria' heading below, provides greater clarity for those individuals who may be eligible for the Mental Health Moratorium. The intention is to create clarity for mental health professionals, the debt advice community, creditors and the Accountant in Bankruptcy (AiB) as the scheme administrator.

Regulation 4 of the draft Regulations proposes that in order for an individual to be eligible for a Mental Health Moratorium they must:

- (i) be habitually resident in Scotland;
- (ii) not be subject to a statutory debt solution (other than the standard moratorium); and
- (iii) meet both the mental health criteria and the debt criteria.

## The Mental Health Criteria

In order to meet the mental health criteria the individual must be subject to one of the following –

- a short-term detention certificate granted under section 44(1) of the 2003 Act,
- a compulsory treatment order made under section 64(4)(a) of the 2003 Act,
- an interim compulsory treatment order made under section 65(2) of the 2003 Act,
- a transfer for treatment direction made under section 136(2) of the 2003 Act,
- an assessment order made under section 52D(2) of the 1995 Act,
- a treatment order made under section 52M(2) of the 1995 Act,
- an interim compulsion order made under section 53(2) of the 1995 Act,
- a compulsion order made under section 57A(2) of the 1995 Act,
- a hospital direction under section 59A(2) of the 1995 Act, or
- an equivalent crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental illness of a serious nature (the individual may be receiving such treatment voluntarily or otherwise).

After consulting with key stakeholders, the eligibility criteria has been widened from what was originally proposed to include those receiving treatment voluntarily and within a community setting (see the final bullet point above). This will include those who are an inpatient in hospital as well as those receiving treatment from a specialist mental health service such as an Intensive Home Treatment Team insofar as the treatment they are receiving is equivalent to the other specified treatments above. It is considered that mental health professionals with the expert knowledge are best positioned to establish the individual's mental health condition and initiate the moratorium application.

There remains a view among some stakeholders that the eligibility criteria should be widened further with eligibility being established by the completion of a [Debt and Mental Health Evidence Form](#). It is difficult to see how this would work in practice. Using this form would significantly broaden the potential mental health conditions / treatments which are eligible for the Mental Health Moratorium and the Government



considers that would leave the position too uncertain and potentially open-ended. There would be no clear definition for who satisfies the eligibility criteria. Including further unspecified mental health conditions / treatments would significantly increase the potential number of Mental Health Moratorium applications which could impact on the credibility of the scheme as well as any positive engagement from creditors.

Given the protections the Mental Health Moratorium is intended to provide, the Government considers widening the eligibility criteria in this way would be inappropriate, especially with the standard moratorium still being available to all other individuals.

**Question 1.** Do you agree with the proposed mental health eligibility criteria as listed above?

- Agree
- Disagree
- Neither agree nor disagree

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

### **The debt criteria**

As part of the eligibility criteria, it had been suggested that the money adviser should provide a statement confirming the individual is unable to pay their debts as they fall due. However, the Scottish Government does not believe the money adviser could make such a statement without spending some time with the individual to understand their finances and make an assessment. This may not be appropriate whilst the individual is undergoing mental health crisis care.

The Scottish Government believes it would be more appropriate for the mental health professional to provide a simple statement confirming debt problems are impacting negatively on the patient's mental health condition. Together with a

commitment from a money adviser to provide support in due course, it is believed this would be a better approach for the eligibility criteria and application process.

Therefore, an individual meets the debt criteria if the mental health professional has confirmed that the individual:

- a) has a problem or perceived problem with debt which -
  - is contributing to or has contributed to the individual's mental illness,
  - is likely to be contributing to or to have contributed to the individual's mental illness,
  - is causing or is likely to cause the individual's mental illness to deteriorate, or
  - appears to be hindering the individual's recovery from mental illness, and.
  
- b) is unable (or it would be counterproductive in terms of the individual's recovery) to deal with their debt as a consequence of that individual's mental illness.

**Question 2.** Do you agree with the proposed debt eligibility criteria as listed above?

- Agree
  
- Disagree
  
- Neither agree nor disagree

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

## Other eligibility factors

An individual who is subject to a statutory debt solution would not be eligible to apply for a Mental Health Moratorium. This would exclude the following:-

- an individual who has been made bankrupt (also known as ‘sequestration’), and has not been discharged from that bankruptcy in accordance with the Bankruptcy (Scotland) Act 2016 (the 2016 Act),
- an individual who is party to a protected trust deed under Part 14 of the 2016 Act,
- an individual who is party to a debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002.

The ultimate aim of a moratorium is to give someone space to deal with their debts, it does not make those debts disappear. Therefore, a person who is already in a debt solution is not in the same situation as someone who needs a moratorium.

In the similar scheme in England and Wales, the mental health crisis moratorium, an individual is ineligible if they are:

- subject to a debt relief order,
- subject to an interim order or individual voluntary arrangement,
- subject to a breathing space moratorium or a mental health crisis moratorium, or
- an undischarged bankrupt.

We are not proposing the same. Our policy intention is that an individual in a standard moratorium will be eligible to apply for a Mental Health Moratorium (in such circumstances where the Mental Health Moratorium is granted, the standard moratorium will end). However, we do believe that an individual in a statutory debt solution should not have the opportunity to apply for a Mental Health Moratorium.

The mental health crisis moratorium in England and Wales works in accordance the [Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020](#).

**Question 3.** Do you agree that an individual subject to a statutory debt solution should not be eligible for a Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Moratorium debts**

Moratorium debt is defined in Regulation 3 and essentially refers to the debts which will be protected from debt recovery action when an individual is subject to a Mental Health Moratorium. There are 2 aspects to this: (i) when the debt was incurred; (ii) what qualifies as a debt.

In terms of when the debt was incurred, the draft Regulations propose that only a debt that was owed by an individual at the point at which the application for the moratorium was submitted will qualify as a 'moratorium debt' to be included for protection under a Mental Health Moratorium. This means that debts which are incurred after the moratorium application is submitted will not be protected by the moratorium.

While we acknowledge that some individuals may struggle to maintain their ongoing liabilities due to their serious mental health issues, we believe all individuals in a Mental Health Moratorium should be encouraged to continue to meet their obligations. We understand that mental health professionals supporting the individual may as part of their responsibilities outwith the Mental Health Moratorium assist them with meeting their obligations when necessary and possible to do so.

The intention is to establish a fair balance between the respective interests involved. For example, some creditors may already have debts subject to the protections provided, such as freezing interest and charges. It may be deemed unfair for those creditors to also be subject to the same restrictions for debts incurred, and continuing to accumulate, subsequent to the granting of the Mental Health Moratorium (i.e. in relation to ongoing liabilities). In addition, given that the Mental Health Moratorium '[register](#)' will not be publicly available (as referenced later in the notification and registration section of the document), other creditors will be unable to access information relevant to their potential lending. Some protection is therefore needed for those creditors who are unaware that the individual is in a moratorium when they lend to the individual.

For this reason, we believe as part of the moratorium agreement the individual should continue to pay their ongoing liabilities during their moratorium. If the individual does not pay their ongoing liabilities the moratorium would not be automatically cancelled but the circumstances would be considered. AiB would be required to take into account any representations by the individual, the mental health professional, the money advisers and relevant creditors.

In terms of what qualifies as a debt, the draft regulations make clear that any sum due by the individual may be included in a Mental Health Moratorium subject to the specific exclusion of a debt which is secured by a standard security. The detail is still under consideration and comments are welcome as to whether any further exclusions should apply.

**Question 4.** Do you agree with the proposed definition of moratorium debt which would qualify to be protected in a Mental Health Moratorium (see regulation 3 in particular)?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Mental Health Moratorium: review of eligibility criteria**

The intention is that there will be two stages to a Mental Health Moratorium; the mental health treatment period (i.e. the period when the individual is undergoing mental health treatment which meets the mental health eligibility criteria) and the recovery period. Those mental health professionals (or a nominated alternative) who have initiated the Mental Health Moratorium process for an individual are required to notify AiB without delay when they become aware that an individual is no longer in the mental health treatment period and has progressed to the recovery period. In such circumstances AiB must notify the money adviser and relevant creditors of the anticipated end date for the moratorium.

In addition, AiB is required to review the status of a Mental Health Moratorium at 6-month intervals. If the individual has not moved to the recovery period within the first 6 months of the moratorium, AiB must request confirmation from the mental health professional that the individual continues to meet the mental health eligibility criteria for the moratorium (i.e. they have not entered the recovery period).

If the individual no longer meets the mental health criteria and has moved into the recovery period, AiB must notify all relevant parties of the anticipated end date for the moratorium.

The recovery period is the second part of the Mental Health Moratorium period when the individual is able to focus on their debt problems. It is intended to last for 6 months and will commence once the individual is no longer undergoing a specified mental health treatment.

**Question 5.** Do you agree with the proposed requirement for AiB to confirm the mental health eligibility criteria is continuing to be met?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Mental Health Moratorium: application process**

Subject to the consent of the individual or their legal representative, the mental health professional will initiate the application process by confirming the individual is subject to one of the specified mental health treatments under the eligibility criteria as well as confirming they meet the debt criteria.

The mental health professional will also provide their own details and the details of the individual, the individual's nominated representative or, where appropriate, their legal representative to the money adviser. The intention is that this will be done electronically. The mental health professional will not be required to provide a paper form or additional documentary support, such as the Debt and Mental Health Evidence Form, making the process more streamlined and efficient (albeit there is scope for AiB to ask for further supporting evidence upon receipt of an application).

The draft regulations include the requirement for the individual, or their legal representative, to consent to the Mental Health Moratorium application. This approach was recommended by the Mental Health Moratorium Working Group as they believed an individual who may be subject to compulsory treatment should not also be made to endure further compulsion over their financial affairs.

In a previous consultation on the Mental Health Moratorium, the question was asked as to whether this was the correct approach for the application process to which 63% of respondents agreed. Therefore, it remains the position within the draft regulations.

There remains a view among some stakeholders that an individual who does not have capacity to agree to a Mental Health Moratorium or have a legal representative should nevertheless have the opportunity to enter the scheme. If the individual is unable to agree to the application, another party would be required to agree on their behalf. Some stakeholders have suggested this could be the mental health professional or another representative, such as the Office of the Public Guardian. As has previously been stated the Mental Health Moratorium working group (including mental health professionals) are not convinced by this argument due to the compulsory aspect of some of the individual's treatment. However, the details are still to be finalised.

There could be complications and potential unintended consequences with allowing other parties to agree to a Mental Health Moratorium application on behalf of an individual who has serious mental health issues.

On receipt of the application the money adviser must check all information is present, including the signed agreement by the individual or their legal representative consenting to the application.

On receipt of the first part of the application from the mental health professional, the money adviser then must complete their details with a signed statement confirming they will provide debt advice to the individual at the most suitable time in the process, i.e. during the recovery period.

To support the application process, the Scottish Government will provide guidance notes for mental health professionals and money advisers.



**Question 6.** Do you agree with the proposed application process?

Agree

Disagree

Neither agree nor disagree

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

### **Notification and registration of Mental Health Moratorium**

To ensure that the Mental Health Moratorium can work as efficiently as possible it will be necessary for AiB to document and maintain a formal record of all Mental Health Moratorium cases. This record is often referred to as ‘the register’. This will not be a public register and will only be accessible to specified persons. It will be a central record of matters relating to particular mental health moratoria used, for example, to notify the individual’s creditors or relevant professionals that the moratorium has been granted and any subsequent updates.

Where AiB receives an application for a Mental Health Moratorium and is satisfied that the mental health criteria and the debt criteria are met, AiB must, without delay:

- enter in the register the name of the individual to whom the Mental Health Moratorium relates, and the date on which the moratorium started.
- send a notification of the start date of the Mental Health Moratorium to—
  - the individual or, where appropriate, their legal representative,
  - the individual’s nominated point of contact (if different),
  - the mental health professional who signed the application,
  - the money adviser who signed the application, and
  - every creditor of the individual or enforcement agent instructed by such creditor known to AiB (which may be obtained by AiB undertaking a credit check on the individual)

The Mental Health Moratorium register will be maintained by AiB and will not be publicly available. AiB must ensure that only the following persons are entitled to information on the register which concerns, or is relevant to, an individual—

- the individual or, where appropriate, their legal representative
- the mental health professional
- the money adviser, and
- relevant creditors.

A creditor is not entitled to information which is on the register or is otherwise held by AiB about—

- any other creditor of the individual,
- any debt owed by the individual to any other creditor, or
- the individual's usual place of residence where, in the opinion of AiB, sharing such information with a creditor would likely jeopardise the safety or welfare of that individual.

Where possible AiB intend to communicate with creditors electronically. This would include notifying the creditors of the moratorium being granted and any subsequent updates. Notifications would only be issued electronically where the recipient has agreed to receive communications in such a format.

**Question 7.** Do you agree with the proposed process for the notification of the Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

**Question 8.** Do you agree with the proposed process for the registration of the Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

## **Effect of a Mental Health Moratorium**

### **Protections included in the current draft regulations**

A Mental Health Moratorium will provide protections against the recovery of moratorium debts incurred prior to the moratorium application for the period of the moratorium. During the moratorium period, a creditor must not:—

- take any enforcement action (listed below) in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise)
- require the individual to pay interest that accrues on a moratorium debt during a moratorium period
- require an individual pays fees, penalties or charges in relation to a moratorium debt that accrued during a moratorium period, or
- instruct an agent to take any of the actions specified above

The enforcement action that a creditor must not take is as follows:—

- contacting a debtor for the purpose of enforcement of a moratorium debt,
- serving a charge for payment in respect of any moratorium debt owed by the individual
- commencing or executing any diligence\* to enforce payment of any moratorium debt owed by the individual
- petitioning for bankruptcy of the individual’s estate based upon a moratorium debt.

In addition, where a relevant arrestment has been granted, it will not be competent to release funds to the creditor under section 73J(2) of the Debtor (Scotland) Act 1987.

\* The law of diligence provides legal procedures by which a court order is enforced for the benefit of creditors. In short, diligence is the term used to describe debt enforcement processes.

**Question 9.** Do you agree with the proposed Mental Health Moratorium protections included in the current draft regulations?

- Agree
- Disagree
- Neither agree nor disagree

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

**Protections not included in the current draft regulations**

There are two types of protection not currently included in the draft regulations which have been proposed during passage of [the Bankruptcy and Diligence \(Scotland\) Act 2024](#) – protection against eviction and protection from utility supply disconnection / pre-payment installation.

## **Protection against eviction**

It is right that we give consideration to whether additional protection from eviction is required and proportionate, and whether it should be included in the draft regulations. Scotland already has some of the strongest legal protections from eviction in the UK. This includes pre-action requirements for social sector tenants and pre-action protocols for private rented sector tenants which require landlords and tenants to do all that they can to manage rent arrears to prevent eviction action.

Where legal action does become necessary, there is an existing legal requirement that the Tribunal and the Court consider the 'reasonableness' of granting an eviction order or decree in all rent arrears cases. There are no mandatory grounds which can be used to evict a tenant for rent arrears in Scotland and the Tribunal and Court have discretion in terms of reaching a decision to grant an order or decree . This means that all of the circumstances of a case can be taken into account, including any mitigating factors due to a tenant's health when reaching a decision on whether to grant an eviction. This could include whether a mental health moratorium is in place.

The discretion provided under the current legal framework for the Tribunal and the Court mean they are best placed, taking all facts of the case into account, to reach a balanced decision on whether it is reasonable to grant an order or decree for eviction where a mental health moratorium is in place.

In addition, [the Housing \(Scotland\) Bill 2024](#) (currently in Parliament), if passed, would further strengthen eviction protections in both the private and social rented sectors by placing a duty on both the Court and Tribunal to consider whether there should be a delay to the enforcement of most evictions, including rent arrears cases, based on the circumstances of the case.

The Bill sets out specific factors that may be considered by the Court or Tribunal and these include whether the ending of a tenancy might have a detrimental effect on the health of the tenant or a member of the tenant's household, or cause the individual to experience financial hardship. These measures also give the Court and Tribunal discretion on the length of the delay in the enforcement of an eviction order or decree depending on the circumstances of the individual case.

The Bill also includes measures which put a stronger emphasis on the prevention of homelessness based on better coordination across systems and earlier provision of holistic support. Relevant bodies, including Health Boards and Special Health Boards, will be required to 'ask and act' to prevent homelessness. Local authorities will also be required to take reasonable steps up to 6 months (rather than the current 2 months) before homelessness occurs, to support households threatened with homelessness. The support provided will vary dependant on household need and may include, for example, advocacy support, income maximisation and debt advice.

The new duties build on the existing protections for people who are homeless, including in cases of statutory homelessness, and will help to ensure that where a relevant body identifies a person at risk of homelessness and experiencing a mental health issue, including those with a mental health moratorium, that action is taken to support the individual.

In view of the strong protections against eviction and homelessness for individuals (including those in a mental health moratorium) in Scotland, we do not think it would be proportionate, when balancing the rights of both tenants and landlords, to introduce further restrictions on eviction in the draft mental health moratorium regulations.

However, we want to ensure that the Mental Health Moratorium and evictions protections set out above, work effectively together in practice. For example, we recognise that further work is required so that when a Mental Health Moratorium is put in place, other appropriate organisations (such as the Scottish Courts and Tribunal Service where eviction action has already been raised) are notified timeously of this significant change in a tenant's circumstances.

We also recognise that the Court or Tribunal when considering whether there should be a delay to the enforcement of an eviction based on the circumstances of the case, may require some additional information from a mental health professional to help inform their decision.

There are a number of different options for how these important linkages could be achieved. For example, through guidance for tenants, landlords and mental health professionals or through establishing protocols and procedures where a debtor with rent arrears is identified.

**Question 10.** What are your views on how best to link the Mental Health Moratorium administrative processes and evictions procedures to ensure these work effectively together in practice?

Please provide your views in the box below:

### **Protection from utility supply disconnection / pre-payment installation**

The draft regulations do not currently include protection against the installation of pre-payment meters or the disconnection of gas and electricity but we are exploring how provision such as this could be implemented in relation to the Mental Health Moratorium in Scotland. This touches on reserved / devolved considerations and therefore we are continuing to engage with UK counterparts to seek the best route for introducing this type of protection.

While the details are still to be finalised, the Scottish Government's policy intention is to have similar protections in this area to the Mental Health Crisis Moratorium in England and Wales. This will mean that creditors who are subject to a Mental Health Moratorium would be prohibited from:-

- taking steps to install a pre-payment meter to take payments in respect of a moratorium debt, or to use a pre-payment meter already installed to take such payments (unless a debtor has provided their consent for the installation of the pre-payment meter before the moratorium started);
- taking steps to disconnect a debtors' premises from a supply of gas or electricity unless the debtor had taken the supply of gas or electricity illegally.

**Question 11.** Do you agree that protection against the installation of pre-payment meters and disconnection of gas or electricity supply should be one of the protections available under the Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Period of a Mental Health Moratorium**

The duration of a Mental Health Moratorium will be the period for which the individual focusses on their mental health treatment, and then a further period during which the individual will be able to focus on their debt problems, the recovery period.

The moratorium period begins on the day following the entry being made in the Mental Health Moratorium register. It will end 6 months after the day on which the individual no longer meets the mental health criteria (i.e. they are no longer subject to one of the specified treatments under regulation 4). However, the moratorium will end earlier than this if one of the following were to happen:

- the award of bankruptcy of the individual's estate,
- a trust deed by the individual has been granted,
- the approval of a debt payment programme for the individual in accordance with section 2 of the 2002 Act,
- cancellation of the Mental Health Moratorium
- the Mental Health Moratorium ends because of the death of the individual.



**Question 12.** Do you agree with the proposed framework for the Mental Health Moratorium period?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Mental Health Moratorium: individual's obligations**

Given the restrictions placed on creditors during the moratorium period, together with the fact that the Register will not be publicly available, it is deemed appropriate for the individual to also be subject to certain limited obligations during the moratorium.

The draft regulations include a provision setting out obligations on an individual who is in a Mental Health Moratorium. These obligations are:—

- to pay a ongoing liability when due for payment,
- not to apply for or obtain credit (given either to the individual alone, or jointly to the individual and another person) beyond an amount of £2,000.

The draft regulations specify that a Mental Health Moratorium may be cancelled by AiB if an individual fails to meet these obligations without reasonable cause.

This proposal is intended to address a recommendation from the Mental Health Moratorium working group on the need to protect future creditors and are similar to the obligations on a person who enters bankruptcy. Currently, for example in bankruptcy, an individual must not obtain credit of £2000 or more (either alone or jointly with another person) unless they inform the person from whom the credit will be obtained about their bankruptcy status. Some members of the group considered it

appropriate to have an equivalent obligation on an individual in a Mental Health Moratorium.

The alternative view is that there should be no obligation against obtaining additional credit where an individual enters a Mental Health Moratorium, for the following reasons –

- there will be situations where the individual will need credit, and this could be adversely affected by the proposed obligation. In some cases additional credit, such as a remortgage, might be appropriate to deal with current debt problems.
- excessive spending can be a compulsion for some people and part of their mental health condition. It may therefore be unfair to put them in the position of their Mental Health Moratorium being cancelled for something outwith their control.
- a standard moratorium under part 15 of the Bankruptcy (Scotland) Act 2016 does not impose any such obligation on a person who is in that moratorium.
- the current proposal restricts the protection of a Mental Health Moratorium so that it only includes debts which existed at the point of submitting the Mental Health Moratorium application. Therefore, a Mental Health Moratorium would not affect future creditors. As a result, an obligation on an individual in a Mental Health Moratorium is not needed to protect future creditors.

Clearly all of these considerations need to be balanced against the interests of creditors.

**Question 13.** Should an individual in a Mental Health Moratorium be subject to the following proposed obligations? (Please tick all applicable options)

- An obligation to pay a continuing liability
- An obligation to not obtain additional credit
- Some other obligation (please specify in the comment box below)
- No obligation at all

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

## **Creditor obligations**

### **Search for debt**

A creditor who receives a notification of the start of a moratorium must as soon as reasonably practicable undertake a search of their records to identify:

- debt owed by the individual that the moratorium relates to, and
- any creditor by assignment\*.

\*Someone has become a creditor by acquiring through assignment the right to be paid by the individual.

The creditor must provide details to AiB of any debt owed by the individual which is identified by this search.

Where a creditor search identifies a creditor by assignment, the creditor must:

- notify the creditor by assignment of the moratorium, and
- provide contact details of the creditor by assignment to AiB.

**Question 14.** Do you agree with the proposed process for a creditor's search?

- Agree
- Disagree
- Neither agree nor disagree

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

## Consequences

Any action taken by the creditor which is contrary to the protections provided by the Mental Health Moratorium shall be null and void.

Any creditor who knowingly takes action contrary to those protections provided for in regulation 8, will be responsible for any losses or expenses incurred by the individual as a result of such action.

Any creditor who fails to comply with their obligations, under regulation 13(2) or (3), to undertake a reasonable search of their records to identify a debt owed to the creditor by the individual, or provide details of that debt to AiB, as soon as reasonably practicable, will be liable for any losses caused to the individual or, the creditor by assignment as a result.

**Question 15.** Do you agree with the proposed consequences for creditors?

- Agree
- Disagree
- Neither agree nor disagree

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

## Review of AiB decision

### Individuals

Regulation 15 of the draft regulations states that an individual may request that AiB review their decision if their application has been refused due to not meeting the eligibility criteria or a moratorium has been cancelled due to it no longer meeting the criteria.

As a creditor has the right to request a review of the decision to accept a Mental Health Moratorium application, it is deemed appropriate to also allow the individual the opportunity to request a review on a decision which would affect them.

**Question 16.** Do you agree with the proposed process for an individual to request a review of AiB's decision to either not grant or to cancel a Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Creditors**

A creditor who has received notification of a moratorium may request that AiB reviews the moratorium to determine whether it should continue or be cancelled on one or both of the following grounds:

- the moratorium unfairly prejudices the interests of the creditor (for example because the individual has sufficient funds to discharge their debts as they fall due),
- there has been some material irregularity in relation to the application process (for example, the individual did not meet the mental health criteria or the debt criteria when the application was made).

**Question 17.** Do you agree with the proposed process for a creditor to request a review of AiB's decision to grant, or not cancel a Mental Health Moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Cancellation of a Mental Health Moratorium**

AiB must cancel a Mental Health Moratorium if the individual, or their legal representative, requests that AiB cancels the moratorium.

AiB must also cancel a Mental Health Moratorium if, following a review, AiB considers there is sufficient evidence:

- that the moratorium unfairly prejudices the creditor's interests, or
- of material irregularity in relation to the application process.

For example, it may be considered unfairly prejudicial to a creditor if the individual has sufficient funds to pay their creditors but simply refuses to do so. Given the potentially significant impact a Mental Health Moratorium could have on a creditor, this provision provides an important safeguard for creditors and ensures the Regulations achieve the right balance between the respective interests involved. Prior to any such cancellation, AiB must consult the individual insofar as it is possible to do so.

AiB is not required to cancel a Mental Health Moratorium if the individual's personal circumstances would make the cancellation unfair or unreasonable.

Any decision by AiB to cancel or not to cancel a Mental Health Moratorium may be appealed to the sheriff court.

**Question 18.** Do you agree with the proposed cancellation process?

- Agree
- Disagree
- Neither agree nor disagree

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

### **Interaction with the standard moratorium**

A person may not apply for a standard moratorium if they are already in a Mental Health Moratorium or within 6 months of exiting a Mental Health Moratorium.

The reason for setting this 6 month timescale is to align it with the current timescale for an individual in a standard moratorium. A standard moratorium last for 6 months and an individual may only apply for one in a 12 month period. In other words, after exiting a standard moratorium the individual is unable to apply for another standard moratorium for at least 6 months. Similarly, we do not believe it would be appropriate for an individual to exit the Mental Health Moratorium and immediately enter a standard moratorium. There is no barrier to the individual entering a new Mental Health Moratorium immediately if they meet the necessary criteria.

**Question 19.** Do you agree with the proposed interaction between the Mental Health Moratorium and the standard moratorium?

- Agree
- Disagree
- Neither agree nor disagree

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

**Additional question**

**Question 20.** 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:



## 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



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