

# **Bankruptcy and Diligence (Scotland) Bill**

**Fairer Scotland Duty Impact Assessment**

**April 2023**

**Title of Policy:** Bankruptcy and Diligence (Scotland) Bill

**Lead Minister:** Tom Arthur, Minister for Community Wealth and Public Finance

**Lead Official:** Richard Dennis

**Directorate, Division and team:** Accountant in Bankruptcy

### **Summary of aims and expected outcomes of strategy, proposal, programme or policy**

1. The Bankruptcy and Diligence (Scotland) Bill (the “Bill”) will bring forward stakeholder-led recommendations to introduce improvements to current insolvency solutions and debt recovery processes. Its aim is to help and improve the lives of people who are struggling with debt, which may be exacerbated by mental health issues, bringing increased protection for those who need it. More efficient recovery processes will assist businesses and local authorities to collect debts from those who can pay.
2. The Bill will contain provisions that broadly fall into three categories:
  - Enabling powers that provide the platform for the introduction of regulations to introduce a mental health moratorium - a new form of moratorium protection for a specific group of debtors, being those who are experiencing serious difficulties with their mental health as well as having problem debt
  - Minor or technical amendments to existing bankruptcy legislation that would serve to correct errors and remove ambiguity by providing clarity on the operation of bankruptcy processes as set out in the legislation
  - Diligence measures that modernise existing debt recovery mechanisms and allow for more streamlined and improved processes
3. Full details of the provisions included in the Bill can be found in the policy memorandum.

## Background

4. The Scottish Government committed to a policy review of both formal debt recovery mechanisms (known as diligence) and the statutory debt solutions (moratorium protection, bankruptcy, Protected Trust Deeds and the Debt Arrangement Scheme) with the aim of further enhancing and improving our system.

5. Three stakeholder-led working groups considered a range of areas within the current debt solutions and the diligence working group considered each of the diligence measures. The groups published reports outlining their recommendations for improvements.

6. The Scottish Government response, in the format of a consultation, [Scotland's statutory debt solutions and diligence: policy review response](#), set out a number of proposals.

7. In general, responses to the consultation showed strong support for the Scottish Government proposals – the [summary of responses report](#) was published on 26 January 2023. The Bill includes those stakeholder recommendations which require primary legislation, while additional recommendations will be implemented through secondary legislation.

## Summary of evidence

8. The Scottish Government have assessed each of the provisions in the Bill to determine if there is any significant impact on socio-economic disadvantage.

### Mental health moratorium provision

9. Stakeholders and those with practical experience in both the money advice and mental health sectors have stated that there is a strong link between problem debt and poor mental health, and that poor mental health can both cause, and be caused by, problem debt. [The Royal College of Psychiatrists](#) reports that one in two

adults with debts has a mental health problem and one in four people with a mental health problem is also in debt.

10. Experience in the money advice sector shows that individuals with mental health problems often do not seek early help with debt issues, which may be attributed to a stigma surrounding mental health. It is also generally acknowledged that the threat of creditor action, or pressure from creditors, can exacerbate existing mental health issues.

11. The provision for the mental health moratorium is an enabling power only so will have no immediate impact on socio-economic disadvantage. The regulations that are laid to bring the mental health moratorium into force will be fully assessed to determine the socio-economic impact which we expect will be positive, if limited to a specific group of vulnerable individuals.

### **Remaining provisions**

12. The Scottish Government have concluded that the bankruptcy minor or technical amendments and the diligence provisions have no significant impact on socio-economic disadvantage.

### **Stakeholder engagement**

13. The Scottish Government established three short term working groups as part of the wider review of statutory debt solutions to examine the current solutions and make recommendations for improvements. The groups drew on a wide range of expertise and knowledge and included representatives from the money advice sector, creditor organisations, insolvency professionals, their representative bodies and lawyers.

14. Working group 1 were asked to consider whether a mental health moratorium should be introduced in Scotland. The group reviewed similar provisions that have been introduced in England and Wales and heard from various representatives from StepChange Debt Charity and the UK Insolvency Service who have experience of

using the system. Following discussion the group overwhelmingly agreed that this should be taken forward but further discussions with mental health professionals was needed on how the scheme would work in Scotland.

15. The Minister for Community Wealth and Public Finance sought views from stakeholders at his quarterly statutory debt solutions working group. They agreed that the provision should be taken forward and that a dedicated cross sector working group should be established to consider further.

16. Between 15 February 2022 and 31 March 2022, the Social Justice and Social Security Committee conducted an inquiry into low income and problem debt. They looked at a number of issues, including the link between debt and mental health and heard evidence from people experiencing debt and poverty as well as debt and money advice specialists, third sector organisations and local authorities. The Committee published their findings in the [Robbing Peter to pay Paul: Low income and the debt trap | Scottish Parliament](#) in which they urge the Scottish Government to progress quickly and implement the mental health moratorium.

17. The Scottish Government published the consultation [Scotland's statutory debt solutions and diligence: policy review response](#) in August 2022 which ran for 8 weeks. Within this they proposed to design detailed proposals for the introduction of a specific mental health process as part of the statutory moratorium – in collaboration with mental health and debt specialists. Of the 93% of respondents who answered this question, 84% agreed with the proposal.

## **Summary of assessment and improvement**

18. The Bill introduces an enabling power allowing the Scottish Ministers to introduce secondary legislation to implement a mental health moratorium to provide 'breathing space' for those people who are experiencing serious difficulties with their mental health as well as problem debt. The full detail of the mental health moratorium process will be set out in regulations made following the passage of the Bill and these regulations will be subject to a Fairer Scotland Duty impact assessment.

## **Mental health moratorium working group**

19. A mental health moratorium working group made up of mental health professionals and key stakeholders has been established to consider the practical aspects of the process that will be introduced through secondary legislation. The first meeting of the working group took place on 28 February 2023.

20. The group will consider the following areas and make recommendations:

- Entry criteria (definition of mental health crisis and mental health professionals support) and process
- Period of the moratorium
- Moratorium protections
- Administrative work (inc. possible review to confirm the mental health moratorium should continue)
- Exit criteria

## **Sign off**

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