

## Mental Health Moratorium Consultation

### SOCIAL WORK SCOTLAND RESPONSE

**Closes: 22 January 2024**

#### INTRODUCTION

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to comment on the consultation to inform the development and implementation of a mental health moratorium.

The reflections within this response are drawn from consultation with our membership which covers senior leaders, including Chief Social Work Officers, service and team manager from across the country in both local authorities and third sector involved in delivery of services to children and adults.

#### CONSULTATION QUESTIONS

**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:

As an organisation, Social Work Scotland agrees with the suggestion that the eligibility criteria for entering a mental health moratorium should comprise of the mental health requirement (using existing mental health legislation as the most

appropriate parameter for setting the eligibility criteria in a Mental Health Moratorium). We also agree with the Scottish Government's proposal that eligibility would be limited to individuals with a habitual residence in Scotland, and who are not currently in another statutory debt solution.

We are pleased to note that the Scottish Government accepts 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

Finally, we are pleased to see that the importance and benefit of the expertise, assessment and support offered by Mental Health Officers is acknowledged in this section.

**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:

N/A

**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:

Social Work Scotland agrees with the Scottish Government's proposal that a Mental Health Professional can provide a statement to confirm that debt problems are impacting negatively on the client's mental health as it is our position that this will enable a person-centred approach to providing the level of protection proposed by the moratorium. We are pleased to note that the importance of relationship-based practice, whilst not stated explicitly, is implied in statements such as

*"It (SG) 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."*

**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:

It is our position that a statement from a mental health professional, as noted above, alongside the criteria as detailed in the consultation, should be sufficient for the purposes of implementing a moratorium.

**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:

As noted previously, it is our position that person centred, relationship-based practice should always be the goal of any intervention by a social worker (including those who have undertaken the additional qualification of mental health officer) this is the basis of our agreement with the proposed role of the Mental Health Professional at the application stage.

We welcome the future proofing offered by the widening of job titles in this section beyond Mental Health Officer, Responsible Medical Officer, or Community Psychiatric Nurse, to include a "Mental Health Professional of equivalent standing and professional qualification" in this section. We assume that this would include social workers who are not Mental Health Officers and would welcome this being clarified in the accompanying guidance.

**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:

We would agree that 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 at a point of mental health crisis. We also agree that 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.

We welcome the stated aim of the policy being both to deliver this and to stop the individual's financial position getting worse before it can be addressed.

**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:

**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:

From a mental health professional perspective, it is our position that either option is viable. A point of consideration might be the time expense of having to keep the AiB (Accountant in Bankruptcy) website up to date with respect to the availability of debt advisors willing to provide the Moratorium related service, however this would be for AiB to consider.

**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:

**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:

Limiting the availability of a Mental Health Moratorium to individuals with the capacity to consent (either themselves or via a legal representative such as Power of Attorney or Guardianship), will ensure that protection is built into the system in respect of individuals Human Rights<sup>1</sup> (Article 8 - right to respect for private and family life, Article 14 – Protection from discrimination, and Protocol 1 - Protection of Property)

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

**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:

N/A

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

Please provide them in the box below:

N/A

**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:

Social Work Scotland endorses the recommendation from the Moratorium Working group that 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.



**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:

**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:

N/A

**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:

N/A

**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:

N/A

**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:

Social Work Scotland endorses the position of the Mental Health Moratorium Working Group that the following two additions should be made to those contained within a standard moratorium;

- 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.

Whilst the Scottish Government's position that protections are already in place in respect of evictions, providing this additional and specific protection for people who are in the midst of a mental health crisis is potentially more timeous, and certainly reflective of their specific circumstances.

**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:

N/A

**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:

It is important that balance and fairness are maintained within a system and that this should apply equally to creditors and debtors.

**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:

**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:

Social Work Scotland agrees that 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. We do not however, endorse the proposal that the individual's identity should be made known to potential future creditors via a public register as we do not anticipate that this can be done in a way that does not unduly stigmatise the individual. As noted in the consultation, this information is already available to potential creditors via a credit file.

**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:

**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:

Both the Scottish Government's position that there is no requirement to implement a restriction on individuals' access to credit, and the position of the Mental Health Moratorium Working Group that this is necessary are well considered. Without further dialogue on the benefits and drawback of both, it is not possible to answer this question definitively.

**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:

As with Q 19, this is an area that would require further discussion and thought before answering definitively.

**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:

The fact that the infrastructure for option 1 is already in place is grounds for this being the chosen option.

**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:

**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:

**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