

## **Debt Recovery (Mental Health Moratorium) (Scotland) Regulations – draft: consultation**

### **SOCIAL WORK SCOTLAND RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION**

**11 March 2025**

#### **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. This document contains details about the Debt Recovery (Mental Health Moratorium) (Scotland) Regulations (draft) consultation and the response from Social Work Scotland members to the questions posed.

#### **SUMMARY**

Social Work Scotland and our members are generally in agreement with the scope and purpose of the draft regulations. We have provided a viewpoint for all 20 questions and provided additional comments where appropriate.

The proposals are proportionate and appear to align with options that would be described as least restrictive. We would like to have more clarity around the specific role of the Mental Health Officer (MHO) to understand how this might impact on workloads in an environment which is experiencing increasing reductions in resourcing.

We highlight the need to consider the family structure in any actions, particularly engaging with the Scottish Governments commitment to end child poverty<sup>1</sup> and ensure that any actions which impact on housing need to seek the views of the child/children as per UNCRC Incorporation (Scotland) Act 2024<sup>2</sup>.

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2017/6/contents>

<sup>2</sup> <https://www.gov.scot/publications/statutory-guidance-part-2-uncrc-incorporation-scotland-act-2024/pages/3/>

## CONSULTATION BACKGROUND

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.

## 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:

**Social Work Scotland and our members agree that mental health practitioners are best positioned to establish mental health conditions and initiate the moratorium.**

**We would encourage further consideration of the initiation. Clarification around how someone is deemed to meet the mental health criteria and the professional input to this process would be helpful. Efforts should also be made to reduce the labour intensiveness of the process as there needs to be an awareness of existing time demands on professionals, including Mental Health Officers (MHOs), at present.**

**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:

**Social Work Scotland and our members agree with this as it appears to be person centred and less intrusive/disruptive than involving a money advisor at a stage where the client may not be able to cooperate fully.**

**Given the onus on money advisors to become involved at a later stage, Social Work Scotland and our members would welcome clarification on the timescales for this involvement, and the resourcing of money advisors to be able to meet potential demand.**

## 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:

**Social Work Scotland and our members agree with the proposal and appreciate that the purpose of the moratorium is to give someone space to deal with existing debts. If a statutory debt solution is in existence, then debt issues are already being addressed.**

### **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:

**Social Work Scotland and our members agree with the proposal and welcome the fact that a moratorium would not be automatically cancelled if ongoing liabilities were not addressed. Considering factors contributing to this situation seems to be a fair and balanced approach.**

**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:

**Social Work Scotland and our members agree with this proposal as the requirement, timescale for review, and timescale for recovery are all clear.**

**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:

**Social Work Scotland and our members recognise that the Mental Health Moratorium working Group are unclear about role of the MHO and we are unable to give an opinion on this point until further clarification is provided.**

### **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:

**The use of the register is clear and our members are in agreement with this proposal.**

- **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:

**The use of the register is clear and our members are in agreement with this proposal.**

**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:

**Social Work Scotland and our members agree with these protections and believe they are proportional and clear.**

## **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 though 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:

**Social Work Scotland and our members would suggest that a two-pronged approach would be of maximum benefit – to provide general guidance to**

tenants and landlords, and to include mental health professionals, but to have procedures where debtors with rent arrears can be identified.

We would also draw attention to circumstances where children are involved and highlight the duties on local authorities to rehouse, and the requirement to seek the views of the child/children on matters impacting them as per UNCRC Incorporation (Scotland) Act 2024<sup>3</sup>. This is also relevant in relation to the Moratorium itself and other debt aspects.

### **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

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<sup>3</sup> <https://www.gov.scot/publications/statutory-guidance-part-2-uncrc-incorporation-scotland-act-2024/pages/3/>



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:

**These time scales are clear and proportional.**

### **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:

**Social Work Scotland and our members agree that every effort should be made to pay existing liabilities, and not to obtain further credit, yet we do recognise that every situation is unique and that by imposing restrictions in statute, this may inadvertently be punitive towards individuals who may need to obtain credit because of their unique circumstances.**

**We would recommend that a similar approach is taken to the one adopted for the Bankruptcy (Scotland) Act 2016 of having no obligation.**

**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 assignation 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 assignation, the creditor must:

- notify the creditor by assignation of the moratorium, and
- provide contact details of the creditor by assignation 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:

**Social Work Scotland agree with this proposal and believe that this encourages clear lines of communication.**

**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 assignation 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:

**Social Work Scotland agree that if there is a knowing attempt to deviate from obligations, then consequences could be incurred.**

## **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:

**Social Work Scotland and our members believe that the right to request a review should be factored into this process.**

### **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:

**Social Work Scotland and our members believe that the right to request a review should be factored into this process.**

**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:

**Social Work Scotland and our members believe that this is a balanced and fair approach.**

### **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:

**No additional comments.**

**Neil Gibson**

**Adult Social Work Policy and Practice Lead**

**Social Work Scotland**

**11 March 2025**