**Mental Health Moratorium**

**The Report of the Summary of Responses to the 2023 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.’ An enabling power to establish such a moratorium is included in the Bankruptcy and Diligence (Scotland) Act 2024.

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

This consultation was developed from those various sources of information with a focus on key areas of the Mental Health Moratorium to be considered further. This report summarises the responses to that consultation.

I would like to thank everyone that took the time to respond. The feedback provided greatly assisted the Scottish Government in developing proposals for Mental Health Moratorium which is balanced and beneficial to all parties concerned.

**Ivan McKee**

**Minister for Public Finance**

# Background

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

The Economy and Fair Work Committee lead on the scrutiny of the Bankruptcy and Diligence (Scotland) Bill and issued a call for evidence which closed on 21 July 2023. Responses to the call for evidence can be viewed on the Scottish Parliament website.

On 13 November 2023 the Scottish Government published a consultation which was formed from the Mental Health Moratorium Working Group’s report of recommendations, the responses to the Economy and Fair Work Committee’s calls for evidence, and other stakeholder engagement which was undertaken.

The feedback received to this consultation will enable us to finalise the process for a Mental Health Moratorium and develop the necessary regulations, subject to the will of Parliament.

Since this consultation was carried out, a draft set of regulations has been published and the results of this first consultation should assist stakeholders in responding to a second consultation in which the Scottish Government is seeking views on the specific proposals set out in the current consultation.

# Evaluation

A total of 50 responses were received by AiB at the close of the consultation. A list of the organisations who responded (and who gave their permission for the details to be disclosed) can be found in Annex A of this document. We have included comments from respondents throughout the report, however where a respondent did not want their details disclosed these have not been attributed to any organisation or individual.

## Methodology

Throughout the document we have provided tables to illustrate the responses to the questions asked in the consultation. Where a question required simply an “agree,” “disagree” or “neither agree nor disagree” answer, we have shown the number of responses in each category.

The responses to all questions have been further broken down into responses from organisations and from individuals.

# Consultation Response Results

## Theme 1 – eligibility criteria

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 24 | 14 |
| Disagree | 19 | 8 |
| Neither agree nor disagree | 6 | 5 |
| Not answered | 1 | 1 |
| Total | 50 | 28 |

The Scottish Government proposed that the criteria for the MHM should be narrow. Specifically, it proposed that to be eligible for a Mental Health Moratorium, an individual must be receiving compulsory treatment, under one of a list of specific statutory provisions. It accepted that this meant eligibility would initially be very limited.

98% of respondents to the consultation answered this particular question. 49% of those respondents agreed with this proposal. 38.8% disagreed with this proposal and 12.2% neither agreed nor disagreed.

Among those who agreed with proposed eligibility criteria, comments noted that it provides certainty, targets those worst affected, seemed reasonable at the outset, minimises the risk to local authority finance, provides a basis for expanding the scheme in the future to some people who would initially be excluded, and agreed that there should be no debt criteria for the moratorium. Some respondents who agreed with a narrow criteria emphasised that government should look to expand the criteria as early as possible, and others said that this meant good awareness of the moratorium would be essential.

One respondent described their personal experience with unaffordable debt due to mental health problems.

“As a new policy, it seems sensible to limit the eligibility to those most in need. Those eligible would be already receiving mental health treatment and so these measures would act as a further protective buffer for them. Once the scheme is successfully running, the eligibility criteria should be reviewed to see what gaps exist and therefore who else would benefit from the moratorium.” **Evangelical Alliance Scotland**

Among those who disagreed with the proposed criteria, comments noted that it would exclude people who cooperated with their treatment, that people who needed and would benefit from a moratorium would be excluded, that some people who might be excluded because they were on a waiting list for treatment, that people should be able to access the moratorium on the basis of the Debt and Mental Health Evidence Form, and some concerns were expressed about the need to balance the criteria with the scope of the protection offered (for example, the criteria could be wider as long as a moratorium does not prevent eviction). One individual response was strongly of the view that the proposal would allow people to avoid paying debts by pretending to suffer mental illness.

“This is far too narrow. Most people struggling with mental health are doing so on a basis that does not necessarily require detainment, as this can have a detrimental impact on work and educational prospects. this adds an additional level of stress as there is a need for help however people may be unable or reluctant to access help because of this.” **Anonymous**

Comments from those who neither agreed nor disagreed included questioning the assumption that a mental health professional would be aware that a patient had a debt problem, that people should be excluded if they receive treatment on a voluntary basis, and that the moratorium should only be available for people who have the capacity to consent to treatment.

**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.

Alternatives suggestions varied, with no clear agreement as to what that alternative would be.

“In addition to those receiving treatment with an element of compulsion, Money and Mental Health believes the eligibility criteria should be expanded to individuals who are experiencing a mental health crisis but receiving care and treatment on a voluntary basis. This would provide parity with the eligibility criteria for Mental Health Crisis Breathing Space (MHCBS) in England and Wales, where anyone who is receiving crisis treatment - be that via a crisis house, crisis home treatment team, community mental health team or in hospital either compulsorily (under the Mental Health Act) or voluntarily.” **The Money and Mental Health Policy Institute**

“We would welcome ongoing engagement with mental health professionals to ensure the list of criteria for legislative moratorium remains current.” **Dumfries and Galloway Council**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 45 | 26 |
| Disagree | 2 | 0 |
| Neither agree nor disagree | 1 | 0 |
| Not answered | 2 | 2 |
| Total | 50 | 28 |

Of the respondents who answered the question 93.8% agreed with this proposal. 4.2% of respondents disagreed with the proposal and 2% neither agreed or disagreed. 4% of the total respondents to the consultation did not answer this particular question. Of the 2 responses that disagreed, in one case the respondent’s comments indicate that they were, in fact, opposed to a minimum debt threshold, the other respondent who disagreed was concerned about the risk of avoiding liability for small debts.

“We agree that there should be no minimum debt level to be eligible for the moratorium. The stress and difficulty that debt causes people is not necessarily directly correlated to the amount of debt they are in. Instead, it is a complex interplay of societal factors, personal beliefs, expectations, and financial means, all of which can fluctuate over a lifetime.” **Scottish Action for Mental Health (SAMH) & See Me**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 36 | 20 |
| Disagree | 7 | 3 |
| Neither agree nor disagree | 4 | 3 |
| Not answered | 3 | 2 |
| Total | 50 | 28 |

Of the respondents who answered this question – 76.6% agreed with the proposal presented. 14.9% of respondents disagreed with the proposal and 8.5% neither agreed or disagreed. 4% of the total respondents to the consultation did not answer this particular question.

“We agree that it should not be required to establish an individual’s financial position at the application stage of the process. This may not be possible to do where someone is undergoing mental health crisis care. Any such requirements would delay applications and serve little purpose. It is vital that the initial application process should be as straight forward as possible and getting all the financial information may take some time.” **Anonymous**

In the respondents’ comments, those who disagreed thought that a moratorium should not be available where it was not needed, and this could be contrary to the interest of both creditor and debtor, some respondents who agreed made similar caveats in their responses.

### Summary

All proposals under theme 1 were generally well received. Respondents considered the Mental Health Moratorium to be a positive idea although it was highlighted by some respondents that consideration should be given to the entry criteria and what steps can be taken to potentially widen it.

Question 2 was agreed by 93.8% of respondents with predominantly positive comments in relation to this proposal.

Question 3 was also agreed by over 76% of respondents. This proposal means that there would be no need to look in detail at the applicant’s financial circumstance, to confirm the level of their debts or that they are unable to pay their debts. Comments noted that it may provide added stress to an individual at the time of a mental health crisis to establish their financial position.

## Theme 2 – the application process

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 44 | 24 |
| Disagree | 4 | 2 |
| Don’t Know | 1 | 1 |
| Not answered | 1 | 1 |
| Total | 50 | 28 |

Of the respondents who answered this question, 89.8% agreed. 8.2% disagreed with the proposal and 2% answered don’t know. 2% of the total respondents to the consultation did not answer this particular question.

“We believe the proposed role of the Mental Health Professional is appropriate at the application stage, where this role requires the Mental Health Professional to confirm that the individual is eligible for a Mental Health Moratorium as indicated by a clear criteria i.e. that they are subject to compulsory treatment. Where eligibility widens we would recommend the development of clear criteria together with safeguards to support appropriate decision making.” **Anonymous**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 25 | 8 |
| Disagree | 4 | 2 |
| Don’t Know | 16 | 13 |
| Not answered | 5 | 5 |
| Total | 50 | 28 |

The proposed process is that a mental health professional will confirm that individual meets mental health criteria for the Mental Health Moratorium, and that debt problems are impacting negatively on the client’s mental health.

Of the respondents who answered this question, 55.6% agreed. 8.9% of respondents disagreed with the proposal and 35.5% answered don’t know. 10% of the total respondents to the consultation did not answer this particular question. A large proportion of the “don’t know” responses reflected a view that this question is best answered by the professionals themselves.

Among those who agreed with the proposal included the following comment:

“We would agree that at 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.” **Anonymous**

Among those who had concerns about the proposed role of the Mental Heath Professional included the following comment:

“Our members have concerns about the practicality of the proposed MH Professional role at the application stage, expressing worries that it may be too restrictive. They highlight the importance of including GPs and Senior Nurse Practitioners in this professional role. Additionally, there are apprehensions about the practicality of the role, particularly in rural areas, raising valid points that warrant consideration. There have also been concerns about the fact that, like the free debt advice sector, the mental health sector is also pushed to capacity and it may be hard to facilitate further duties.” **Money Advice Scotland**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Yes | 36 | 18 |
| No | 9 | 7 |
| Don’t know | 4 | 2 |
| Not answered | 1 | 1 |
| Total | 50 | 28 |

The proposed role of the debt adviser is to explain the moratorium, confirm that the applicant (or their representative) wants to go ahead, and at a later date to provide debt advice.

Of the respondents who answered this question, 73.4% agreed with this proposal. 18.4% disagreed with the proposal and 8.2% answered don’t know. 2% of the total respondents to the consultation did not answer this particular question.

“There are areas of bankruptcy and diligence legislation that mental health professionals will not know, but that are important for such a debtor to clearly understand. Having a money advisor or Insolvency Practitioner as part of the process ensures the debtor receives appropriate advice.” **Nicholas Smith**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Yes | 30 | 14 |
| No | 8 | 5 |
| Don’t know | 9 | 6 |
| Not answered | 3 | 3 |
| Total | 50 | 28 |

Of the respondents who answered this question, 63.8% agreed. 17% disagreed with the proposal and 19.2% answered don’t know. 6% of the total respondents to the consultation did not answer this particular question.

“Most local authority Money Advice services, and other services already have close working relationships with Social Work and the NHS and often projects funded by them. This means existing referral networks already exist for the Money Advisers to become involved at the very early stages.” **Alan McIntosh**

Some respondents to both Question 5 and 5a noted concerns about the capacity of debt advisers, and how the process would work if some applicants did not have a representative, are not able to consent or are receiving treatment in hospital or prison.

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| AiB act as link | 16 | 10 |
| Debt advice organisation or third party commissioned | 24 | 10 |
| Neither option | 3 | 2 |
| Not answered | 7 | 6 |
| Total | 50 | 28 |

Of the respondents who answered this question, 37.2% believe AiB should act as the link and 55.8% believe that a debt advice organisation or third party should be commissioned. 7% did not think either option was suitable. 14% of the total respondents to the consultation did not answer this particular question.

“Option A widens the net and allows greater access to the scheme which CAS believe is the best approach. The wider the access, the more people knowing, understanding and learning about the Mental Health Moratorium and in turn able to gain access to it.” **Citizens Advice Scotland**

“Our members have expressed that their preference would be through a debt advice organisation. They have expressed that a debt adviser or agency with an existing relationship with the client in a mental health crisis would facilitate a smoother connection.” **Money Advice Scotland**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Yes | 38 | 21 |
| No | 5 | 3 |
| Don’t know | 6 | 3 |
| Not answered | 1 | 1 |
| Total | 50 | 28 |

Of the respondents who answered this question, 77.6% agreed. 10.2% disagreed with the proposal and 12.2% answered don’t know. 2% of the total respondents to the consultation did not answer this particular question. Some of those in favour of specialist advice and support emphasised the need for awareness of mental health to ensure applicants’ rights are protected, and the need for additional resources to provide this.

“Given that the criteria are presented as being strict and the moratorium ends after an arbitrary period of time, debt advisers may be expected to provide advice to individuals who still suffer from serious mental health conditions. As such, additional training would seem beneficial.” **Anonymous**

“We imagine that considerable skill and expertise will be needed in order to deliver appropriate advice in this context. Specialist support would appear to be a useful part of ensuring this is the case.” **Association of Clinical Psychologists**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 30 | 12 |
| Disagree | 9 | 9 |
| Neither agree nor disagree | 9 | 6 |
| Not answered | 2 | 1 |
| Total | 50 | 28 |

Of the respondents who answered this question, 62.4% agreed. 18.8% disagreed with the proposal and 18.8% neither agreed nor disagreed. 4% of the total respondents to the consultation did not answer this particular question. Some of those who agreed commented that the need for consent protects individual rights.

“We strongly support the inclusion of consent in the Mental Health Moratorium, emphasising the importance of preserving the autonomy of individuals with mental health issues. We agree with the Mental Health Moratorium Working Group that forcing individuals into the system would be inappropriate, especially considering that they may already be coerced into their Treatment Order. Respecting an individual's right to choose whether to enter the Mental Health Moratorium is of paramount importance.” **Money Advice Scotland**

Some who disagreed commented that the mental health professional should be able to apply on their behalf, and one thought this should include family members.

“RCGP Scotland would consider this is a human right rather than mental health issue. While the College understands the recommendation, we have concerns that some people may not have access to help where they do not have capacity and no other arrangement is in place, such as guardianship or power of attorney. We would recommend that consideration of this aspect be part of any future review of the moratorium.” **Royal College of General Practitioners – Scotland**

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 lack the capacity to consent.

The following suggestions were received:

“Application to the Courts for the power to act”. **Alan McIntosh**

“The options appear to be that either the individual is automatically entitled to a mental health moratorium, or perhaps the Office of the Public Guardian, or similar, could be brought into play, to act on their behalf.” **Insolvency Practitioners Association**

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

The following comments were received:

“It appears to be a good structure with the best interests of the individual in mind.” **Evangelical Alliance Scotland**

“Our Money Matters Advice Service have expressed concern that the current proposed eligibility criteria and levels of protections will mean that take up of the Mental Health Moratorium will be very low.” **South Lanarkshire Council**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 31 | 18 |
| Disagree | 12 | 6 |
| Neither agree nor disagree | 6 | 3 |
| Not answered | 1 | 1 |
| Total | 50 | 28 |

The Mental Health Moratorium Working Group recommend the duration of a Mental Health Moratorium should be the period for which the individual has a compulsory aspect to their mental health treatment, followed by a further period (called the ‘recovery period’) during which the individual should focus more on their financial position

Of the respondents who answered this question, 63.3% agreed. 24.5% disagreed with the proposal and 12.2% neither agreed nor disagreed. 2% of the total respondents to the consultation did not answer this particular question. Comments from respondents included concerns that a moratorium is potentially indefinite and this leaves debt problems unresolved, concerns about indefinite protection from eviction and suggestions that the recovery period may vary depending on individual circumstances.

“While we note that the proposed approach to the period of protection would introduce a differentiation in approach against the standard moratorium for those subject to compulsory mental health treatments from those who either have mental health issues but don’t require compulsory treatment or those who have no mental health concerns, we believe the differentiation in approach is justified and proportionate. However, having a moratorium in place indefinitely for someone subject to indefinite compulsory mental health treatment does not seem to be an appropriate solution for those cases. There is a case for considering whether a mechanism should be introduced to access a debt solution in these circumstances rather than continuing temporary relief in a permanent timescale.” **Institute of Chartered Accountants Scotland**

### Summary

The majority of respondents agreed with each of the proposals under theme 2, with most questions receiving over 50% agreement. Respondents were content with the bulk of the process as proposed.

Question 6 had the most varied responses. This asked respondents to consider who would connect the Mental Health Professional to the debt adviser of which the majority chose a debt advice organisation or third party be commissioned. Of 43 responses, 16 (37%) were in favour of AiB as the link between the mental health professional and the debt adviser, although 4 of these caveated their response in their comments and saw some advantages to a third party link. 24 respondents (56%) were in favour of a debt advice organisation or other third party, one of which emphasised the option to use existing advice services, while 3 (7%) were not in favour of either option (one suggesting this should be taken on by local authorities, and the other two supporting a combination of the two options).

## Theme 3 – obligations on the creditor and the individual

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 32 | 17 |
| Disagree | 5 | 3 |
| Neither agree nor disagree | 11 | 7 |
| Not answered | 2 | 1 |
| Total | 50 | 28 |

The proposal for a Mental Health Moratorium is that it should only apply to debts due at the date the moratorium commences (defined as “qualifying debts”), and it should specifically exclude ongoing liabilities and business debts (where the business is a distinct legal entity).

Of the respondents who answered this question, 66.7% agreed with the proposed approach to qualifying debts, whilst 10.4% disagreed and 22.9% neither agreed nor disagreed. 4% of the total respondents to the consultation did not answer this question.

“We support the proposed approach to qualifying debts. We firmly assert that the Mental Health Moratorium's policy aim, centred on providing individuals with the ‘time, space, and compassion’ to prioritise mental health recovery, should encompass all debts owed by the individual. We believe that excluding certain debts contradicts the core objective of the Moratorium.” **Money Advice Scotland**

Other respondents felt that ongoing liabilities should be included because these can mount up while the person is not in a position to deal with them, and whether this includes rent a person could end up homeless. There was also concern about the impact on secured debt and bank accounts where there is an overdraft. It was also suggested that further consideration is needed for joint and several liability in relation to housing costs.

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?

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 41 | 24 |
| Disagree | 6 | 2 |
| Neither agree nor disagree | 1 | 0 |
| Not answered | 2 | 2 |
| Total | 50 | 28 |

Of the respondents who answered this question, 85.4% agreed whilst 12.5% disagreed and 2.1% neither agreed nor disagreed. 4% of the total respondents to the consultation did not answer this question. Some respondents who disagreed said that it is unfair to the interest of creditors if they cannot charge interest on debts. Some respondents who agreed felt that it could be difficult to prevent creditors from charging interest.

“As one of the policy goals is to prevent the individual’s financial position from getting worse before they are able to take advice and deal with their debts, and given the potential long-term nature of a MHM, it is important that interest and charges are frozen. We would however note that this prejudices the position of creditors, particularly where there is a lengthy MHM initial period. The views of creditors are important in this aspect but recognising that a balance may require to be struck between the rights of the debtor and the creditor consideration may wish to be given to the freeze on interest and charges either being capped or only taking effect after a set period. Such an approach would largely achieve the policy objective of ensuring the debtors financial position does not get worse while they are not in a position to obtain advice or deal with their problem debt while also ensuring that creditors rights to recompense for unpaid debt are acknowledged and provided for.” **The** **Institute of Chartered Accountants Scotland**

“Creditors should not be prejudiced. If the mental health moratorium is being put in place without any minimum debt level or assessment of the individual’s financial position, we think the corollary of that is interest and charges should continue to be charged”. **Insolvency Practitioners Association**

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.

The following views were received on this topic:

“Freezing of interest is unduly harsh to creditors. Inflation would diminish the value of the debt, I believe notified creditors should be allowed to apply interest in line with the rate of statutory interest, or the rate of inflation, whichever is greater.” **Nicholas Smith**

“Whilst we are sympathetic to any losses that creditors may experience, this should not be at the expense of those suffering from mental ill health.” **NHS 24**

“While we acknowledge our limitations on commenting on potential costs to creditors for freezing interest and charges, it is paramount to underscore that prioritising mental well-being should take precedence over potential financial impacts for creditors. Compassion for individuals grappling with mental health issues should guide any decisions made regarding the implementation of the mental health moratorium.” **Money Advice Scotland**

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.

The following views were received on this topic:

“Creditors have a duty to contact the clients - this contact should go through the debt adviser. The debt adviser would have a duty to save this on file. Advice would proceed when the client is no longer under any compulsory treatment; and the debt adviser would share this information with client. It is vital that debt advisers have appropriate case management systems in place to record contact from the creditors.” **Anonymous**

“I support limiting creditors from contacting the individual during the Mental Health Moratorium period. I believe that it is not only practical but more than reasonable.” **Benn Rapson**

“While recognising the necessity for creditors to fulfil legal obligations during the Mental Health Moratorium, we emphasise the importance of preserving the policy aim—providing Time, Space, and Compassion for individuals to concentrate on their mental health recovery. Avoiding unnecessary communication from creditors is crucial in fostering this supportive environment. It's essential to highlight the emotional distress caused by constant creditor contact, as expressed by our members.” **Money Advice Scotland**

“There are perhaps legitimate cases in which creditors might need to make contact with the debtor, e.g. interim diligence or preserving a claim for prescription purposes. Provision could, of course, be made for the suspension of periods of prescription for the duration of the moratorium, as exists for e.g. debt payment programmes (see Debt Arrangement and Attachment (Scotland) Act 2002, s. 4(4)).” **Members of the Centre for Scots Law at the University of Aberdeen**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 29 | 15 |
| Disagree | 8 | 4 |
| Neither agree nor disagree | 9 | 5 |
| Not answered | 4 | 4 |
| Total | 50 | 28 |

The proposed approach is that protection should mirror the standard moratorium under part 15 of the Bankruptcy (Scotland) Act 2016. These provisions prevent action to enforce any debt while a person is in a moratorium, with exceptions for some actions that were in progress when the moratorium began.

Of the respondents who answered this question, 63% agreed with the proposed approach to the protections against diligence, whilst 17.4% disagreed and 19.6% neither agreed nor disagreed. 8% of the total respondents to the consultation did not answer this question. Respondents were divided in their comments - some were strongly in favour of including additional protection against eviction and also possibly against joint debt, as well as protections against prepayment meters. Deductions from benefits and wages or for the payments of fines were also suggested. Other respondents were concerned about the impact on landlords from an absolute bar to eviction, and did not think it fair if a person with joint liability was protected.

“The Council would take the view that in relation to Joint and Several debts, which would apply in many cases in relation to council tax and rent arrears the other party who does not have a Mental Health Moratorium should not be protected from diligence but should seek their own advice. It may be that they could use another debt solution, such as a Statutory Moratorium.” **South Lanarkshire Council**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 36 | 18 |
| Disagree | 6 | 4 |
| Neither agree nor disagree | 5 | 3 |
| Not answered | 3 | 3 |
| Total | 50 | 28 |

Of the respondents who answered this question, 76.6% agreed whilst 12.8% disagreed and 10.6% neither agreed nor disagreed. 6% of the total respondents to the consultation did not answer this question. Among those who agreed, there was a view that professional reputation and FCA rules would ensure creditor behaviour, and that there should be guidance for creditors on their responsibilities. Others felt that the consequences for creditors are too vague or should be stricter, and two respondents suggested that there should be a fine if a warning was ignored.

“It would make sense for the consequences of the mental health moratorium to align with those of the standard moratorium. The moratorium should not be retroactive.” **Members of the Centre for Scots Law at the University of Aberdeen**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 31 | 16 |
| Disagree | 12 | 6 |
| Neither agree nor disagree | 3 | 2 |
| Not answered | 4 | 4 |
| Total | 50 | 28 |

The consultation sought views on the proposal that a creditor would not have a right to challenge a Mental Health Moratorium when it was first set up.

Of the respondents who answered this question, 67.4% agreed. 26.1% of respondents disagreed with the proposal and 6.5% neither agreed or disagreed. 8% of the total respondents to the consultation did not answer this question. Some respondents thought that because eligibility is based on medical evidence relating to compulsory treatment, and that creditors would not have access to this evidence, the moratorium should not be open to challenge or cancellation. Others thought that cancellation of a moratorium would be appropriate if ongoing liabilities were not met, if there is unfair prejudice to the interests of a creditor, or in cases of fraud.

“We take the view that creditors should be able to challenge a mental health moratorium if, say, evidence comes to light that the eligibility criteria have not been met. A blanket exclusion on challenges is inappropriate. If, as we recommend, there should be a right of challenge, some consideration has to be given to whether challenges could relate both to the propriety of granting the moratorium in the first place (e.g. it might be established that the moratorium was granted on the basis of incomplete or inaccurate information) and, even where it was appropriate to grant the moratorium in the first instance, to a change in circumstances warranting its cancellation/termination. Given the proposed relatively clear criteria and the difficulties of a creditor obtaining relevant evidence/information to mount a challenge, the likelihood of this should be low, but it is nevertheless desirable for such a mechanism to exist.” **Members of the Centre for Scots Law at the University of Aberdeen**

“We believe it would be highly inappropriate for a creditor to be able to challenge the granting of an MHM, given the criteria as outlined.” **Association of Clinical Psychologists**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Yes | 14 | 7 |
| No | 28 | 14 |
| Don’t Know | 4 | 3 |
| Not answered | 4 | 4 |
| Total | 50 | 28 |

Of the respondents who answered this question, 30.4% agreed whilst 60.9% disagreed and 8.7% neither agreed nor disagreed. 8% of the total respondents to the consultation did not answer this question.

“There may be instances where this is appropriate so the right should be there with caveats (not contacting individual directly until agreed etc.).” **Anonymous**

“Eligibility for the moratorium is a medical matter. The people who know when a person with a mental health problem is able to handle their finances are the people themselves and the health and mental health professionals who are supporting them. It should be their decision on whether a moratorium is ended based on progress in recovery, rather than that of creditors who may have limited insight and understanding of such a complex process.” **Scottish Action for Mental Health (SAMH) & See Me**

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

The following views were received:

“Where the person has taken on other debt outwith the agreement.” **Anonymous**

“If there was evidence to support that the client's circumstances had changed / improved during the time of the agreed Moratorium and this had not been disclosed to the creditor.” **Anonymous**

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

The following was received:

“We suggest that in the proposed process, the AiB would be the appropriate person to undertake a review of the challenge or cancellation request. There would also need to be a right to appeal the AiB review decision to the court.” **Anonymous**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 29 | 16 |
| Disagree | 13 | 5 |
| Neither agree nor disagree | 4 | 3 |
| Not answered | 4 | 4 |
| Total | 50 | 28 |

The consultation proposed that there should be only two obligations on individuals in a Mental Health Moratorium: (1) a right for creditors to take interim diligence, and (2) a public register.

Of the respondents who answered this question, 63% agreed whilst 28.3% disagreed and 8.7% neither agreed nor disagreed. 8% of the total respondents to the consultation did not answer this question.

“We generally agree, except perhaps in cases of deliberate fraud or abuse, where penalties may be appropriate. However, we note that this would be unlikely in the case of a Mental Health Moratorium.” **Law Society of Scotland**

Comments from respondents who disagreed were particularly concerned about the proposed public register, on the grounds that it was unfair, could lead to stigma and discrimination and would discourage applicants. Some of those who agreed with the proposal were opposed to any additional obligations, in particular that a ban on credit or disposing of assets could be unreasonable, and prevent a way out of debt.

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 11 | 3 |
| Disagree | 29 | 15 |
| Neither agree nor disagree | 4 | 4 |
| Not answered | 6 | 6 |
| Total | 50 | 28 |

Of the respondents who answered this question, 25% agreed whilst 65.9% disagreed. 9.1% neither agreed not disagreed. 12% of the total respondents to the consultation did not answer this question.

Comments from respondents who disagreed were concerned about people with poor mental health being penalised for failing to adhere to the Mental Health Moratorium rules and felt it was contradictory to the purpose of the Mental Health Moratorium.

“The link between debt and mental health is intrinsic and well-established where debt is often the cause and consequence of poor mental health. As such, there may be instances where obligations are breached, not due to malicious forethought or wish to abuse the system but simply because their mental illness has caused them to breach. Penalising individuals in these circumstances would go against the policy aim of the Mental Health Moratorium and the proposed criteria being ground in mental health sector ensures no one can abuse the system.” **Citizens Advice Scotland**

“Where the MHM obligations are not met, there should be an ability for the MHM to be cancelled. This action is likely to be appropriate where malicious intent to avoid creditors is being taken by the individual.” **UK Finance Limited**

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

These views included:

“Prolonged listing on the ROI, similar to BRU/BRO. This would protect potential future creditors.” **Nicholas Smith**

“The same approach as for other moratorium and/or bankruptcy transgressions should be adopted. As an alternative, or as a further penalty in certain circumstances, additional protections in the MHM could also be removed, such as the freezing of interest and charges (if introduced).” **Members of the Centre for Scots Law at the University of Aberdeen**

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 24 | 12 |
| Disagree | 10 | 5 |
| Neither agree nor disagree | 10 | 5 |
| Not answered | 6 | 6 |
| Total | 50 | 28 |

Of the respondents who answered this question, 54.6% agreed there is insufficient justification to place restrictions on the individual’s access to credit, whilst 22.7% disagreed. 22.7% or respondents neither agreed nor disagreed. 12% of the total respondents to the consultation did not answer this question. Of those who agreed, comments stated that credit could be important to the individual for personal circumstances, credit providers should be doing appropriate checks prior to giving credit, the standard moratorium has no such restriction and individuals are able to self-restrict access to further credit if they consider it necessary to their recovery.

“The creditor should be completing appropriate affordability checks etc prior to any credit and this should be sufficient to flag any concerns where defaults etc exist to review any application further.” **Anonymous**

Of the respondents who disagreed, one was strongly against individuals accessing credit stating it would be irresponsible to allow them to do so.

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Yes | 8 | 3 |
| No | 26 | 15 |
| Don’t know | 10 | 6 |
| Not answered | 6 | 4 |
| Total | 50 | 28 |

Of the respondents who answered this question, 18.2% agreed that other obligations should be placed on an individual in a Mental Health Moratorium, whilst 59.1% disagreed. 22.7% of respondents didn’t know whether other obligations should placed on the individual. 12% of the total respondents to the consultation did not answer this question. Respondents who answered ‘No’ gave some of the following reasons – they consider the approach should be as ‘light touch’ as possible, individuals in a Mental Health Moratorium should service their ongoing liabilities but have no extra obligations due to their mental health and this could potentially exacerbate the issues.

“CAS agree that the proposal for individuals under a Mental Health Moratorium should meet their ongoing liabilities but do not agree that other obligations should be placed. Placing more obligations on any individual could create fear and stop them from applying for a Mental Health Moratorium. On the surface such proposals appear fair to all parties as not everyone under a Treatment Order (as outlined for eligibility) will be detained and many individuals will be living in their communities and therefore have ongoing liabilities to meet. It should be noted that in these cases, individuals should have a support network of Mental Health professionals and others to help manage their day to day finances. However, as demonstrated by some of our earlier case studies, this may not always be the case and creditors should have compassion and understanding that individuals under a Mental Health Moratorium, at least initially, may struggle when trying to manage their ongoing liabilities.” **Citizens Advice Scotland**

### Summary

There was strong support for a number of proposals within this section, including agreement to the proposed approach on the individual, agreement that a creditor may challenge a mental health moratorium and agreement that interest and charges should not be added to an individual’s debts during the moratorium period.

There were also some proposals that received some opposition. This included asking respondents if they believe there should be penalties for individuals who do not adhere to the mental health moratorium, should creditors be able to cancel the moratorium and if respondents believe any other obligations should be put on someone in the mental health moratorium. Some respondents felt individuals in this position should not have added pressure on them to consider penalties/obligations etc at a time of a mental health crisis.

## Theme 4 – the delivery mechanism – using the Debt Arrangement Scheme

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Option 1: Clone the IT system in place for DAS | 24 | 12 |
| Option 2: Enrol in a DAS DPP with no payments for 3 months | 8 | 2 |
| Neither option | 8 | 5 |
| Not answered | 10 | 9 |
| Total | 50 | 28 |

Of the respondents who answered this question, 60% chose option 1, 20% chose option 2 and 20% chose neither option. Those who voted for Option 1 commented that the current system works well for both creditors and debtors, the system is already available and therefore the less complicated option. They also stated that cloning the system would be a better option but respondents would expect the system to be a more simplistic version.

“We do not think it is appropriate to put people into a DAS - regardless if no payments are due. This removes client choice. A clone of the underlying IT system would be best.” **Anonymous**

Respondents who voted for Option 2 for an individual to go into a debt payment plan, only 2 comments were made with 1 respondent stating it may be difficult for people to pay any money back.

“Option 2 may be the more effective/streamlined as all parties would appear to be familiar with its operation. Choosing Option 2 would also enable alignment of the Debt Arrangement Scheme / DPP rules should a ‘no payments’ DPP be introduced. However, the system will have to clearly acknowledge that the person is actually in a Mental Health Moratorium rather than a Debt Arrangement Scheme, to avoid potential confusion and practical problems.” **Law Society of Scotland**

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.

The following views were received:

“Any system would need to be simple but robust so not to complicate further the process for all involved. It needs to be bespoke and separate from current statutory debt option systems.” **Citizens Advice Scotland**

“We believe that the chosen system should be tailored specifically for the Mental Health Moratorium (MHM) rather than integrating it into existing systems. We believe that any system used is simple and robust to prevent any complications for stakeholders involved. Striking this balance is crucial to ensure a smooth and effective process.” **Money Advice Scotland**

### Summary

All proposals under theme 4 received positive feedback from respondents with 60% opting for option 1. A number of these respondents were strongly opposed to option 2 as they did not consider it appropriate to enrol an individual into a debt payment plan when another statutory debt solution may be the better option.

Option 2 was selected by 20% of respondents, stating that this may be the preferred option as all parties are familiar with its operation.

The final 20% of respondents selected neither option and provided feedback on what they considered would be the best option to support the implementation of the Mental Health Moratorium.

## Theme 5 – interaction with a standard moratorium

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

| Response type | Total responses | Organisations only |
| --- | --- | --- |
| Agree | 32 | 16 |
| Disagree | 5 | 4 |
| Neither agree nor disagree | 7 | 4 |
| Not answered | 6 | 4 |
| Total | 50 | 28 |

Of the respondents who answered this question, 72.7% agreed whilst 11.4% disagreed. 12% of the total respondents to the consultation did not answer this question. 15.9% of the respondents neither agreed nor disagreed. Of those respondents who agreed, the main positive was that they considered there should be no limit to the number of applications an individual can make for a Mental Health Moratorium.

“The proposals to not limit the number of applications an individual can make for a Mental Health Moratorium is especially welcome for people who have severe and enduring mental health problems, such as schizophrenia, bipolar or a personality disorder, and for who episodic crises may be a recurring feature of their illness.” **The Money and Mental Health Policy Institute**

The main issue in disagreement from respondents is that there should be a 6 month period between the end of a Mental Health Moratorium and standard moratorium.

“I mostly agree however the hard and fast rule of 6 months could be flexible as mental health crises do not necessary adhere to 6 month intervals. This should be given a more holistic approach.” **Anonymous**

### Summary

The majority of respondents agreed with the proposed position on how the Mental Health Moratorium will interact with the standard moratorium. 72.7% agreed while 11.4% disagreed. Of those who disagreed, some of the issues highlighted included that potentially the standard moratorium may have more benefit to individuals and there is an argument both should be able to run concurrently. An issue of contention is whether there should be a 6 month period between the end of a Mental Health Moratorium and a standard moratorium.

## Theme 6 – additional questions

Question 23. To enable all those who might benefit from the Mental Health Moratorium, it will be important that all Mental Health Professionals and debt advisers are aware of, and understand, the scheme. Scottish Government will be considering how to achieve that separately, but initial views on how best to promote the scheme would be particularly welcome.

The following views were expressed in responses:

“Engage with experts and those on the front line such as Christians Against Poverty (CAP), and marketing campaigns in places such as job centres, mental health services, and the NHS.” **Evangelical Alliance Scotland**

“eLearning Session or Face to face education session a National Approach developed by SG. Add to undergraduate curriculum of all MH Professionals and learning programme for Debt Advisors.” **NHS 24**

“We consider that initially, the legal profession, Mental Health Officers/CPNs and the credit and debt advice sector could be brought together by the Minister/Government/AIB to be informed about the new ‘product’ and encourage further dialogue in their local areas. The inclusion of the members of both Statutory Debt Solutions/Mental Health working parties is essential to demonstrate stakeholder involvement.” **Law Society of Scotland**

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.

Additional comments included:

“Most GPs and their teams do not have access to regular properly protected learning time, so as with all new schemes, this will create a significant challenge in terms of how clinical teams in primary care will become familiar with new arrangements. Creation of educational resource and promoting awareness of this may help GPs to educate themselves and provide guidance to their teams regarding the moratorium.” **Royal College of General Practitioners – Scotland**

“The consultation helps to clarify the policy intent and operational approach to the MHM. Based upon our experience in the implementation of a scheme in England & Wales, it will be important that the detail of the draft legislation is consulted on with stakeholders in good time to avoid unintended consequences and complications that could be created through the wording. We would strongly recommend that any early version of the proposed legislation is shared to help develop the draft legislation which would then be for wider consultation.” **UK Finance Limited**

“We would like to emphasis our belief that a completed DMHEF (V4) should serve as substantive evidence for MHM eligibility, as this form works well to capture the impact of mental health challenges on debt management collaboratively. Our members have also expressed to us that they believe that more time should be spent on updating the legislation regarding the statutory moratorium. They believe that the standard moratorium needs to be updated to incorporate clients experiencing mental health issues. Moreover, expanding the legislation could encompass non-diligent recovery processes. We believe that aligning the MHM with the statutory moratorium legislation not only streamlines legal frameworks but also ensures a consistent and inclusive approach to debt protection across diverse scenarios.” **Money Advice Scotland**

### Summary

Many suggestions on how to implement the system and considerations to training those involved have been received. A small number of respondents stated they were unsure of the benefits of the Mental Health Moratorium, stating it will have low uptake and there was no significant difference between this and a standard moratorium. Predominately, respondents were positive and consider this to be something that will benefit those who need it.

## Next Steps

As noted in the individual summaries for each question in the [Consultation Response Results Section](#_Consultation_Response_Results) we have carefully considered all points made by stakeholders in their responses to the consultation on Scotland’s Mental Health Moratorium.

AiB is committed to ensuring that the Mental Health Moratorium process considers all feedback from respondents to ensure it is the most efficient and effective process for individuals in a time of need.

# Annex A: List of Organisations and individuals who responded to the consultation

As part of the consultation, all respondents were asked to indicate using the appropriate tick box whether they wished their full or partial details to be made available to the public. A mark of “Private individual” has been used to indicate respondents who either chose for their details to remain private or where no tick box was marked to indicate choice of disclosure.

In addition, where a response has been received from a representative of a group of members, their response has been categorised under the sector its members are associated i.e. Creditor, Insolvency Practitioner or Advice sector.

Below is a list of all respondents to the consultation who have given permission for their names to be known.

| **Number** | **Respondent Name** |
| --- | --- |
| 1 | Private Individual |
| 2 | Private Individual |
| 3 | Duncan Lucas |
| 4 | Private Individual |
| 5 | Private Individual |
| 6 | Private Individual |
| 7 | Private Individual |
| 8 | Private Individual |
| 9 | Nicholas Smith |
| 10 | Private Individual |
| 11 | Alan McIntosh |
| 12 | Private Individual |
| 13 | Private Individual |
| 14 | Private Individual |
| 15 | Private Individual |
| 16 | Private Individual |
| 17 | Private Individual |
| 18 | NHS 24 |
| 19 | Private Individual |
| 20 | Private Individual |
| 21 | Private Individual |
| 22 | Scottish Association of Landlords |
| 23 | The Money and Mental Health Policy Institute |
| 24 | Private Individual |
| 25 | Dumfries and Galloway Council |
| 26 | Private Individual |
| 27 | Scottish Action for Mental Health & See Me |
| 28 | Private Individual |
| 29 | Benn Rapson |
| 30 | Private Individual |
| 31 | Private Individual |
| 32 | Private Individual |
| 33 | North Lanarkshire Council |
| 34 | Private Individual |
| 35 | Evangelical Alliance Scotland |
| 36 | Private Individual |
| 37 | Private Individual |
| 38 | Private Individual |
| 39 | Money Advice Scotland |
| 40 | Social Work Scotland |
| 41 | Association of Clinical Psychologists |
| 42 | Royal College or General Practitioners - Scotland |
| 43 | Members of the Centre for Scots Law at the University of Aberdeen |
| 44 | ICAS |
| 45 | South Lanarkshire Council |
| 46 | Law Society of Scotland |
| 47 | Citizens Advice Scotland |
| 48 | UK Finance Limited |
| 49 | IPA |
| 50 | Private Individual |