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**Mental Health Moratorium Consultation**

# Respondent Information Form

**Please note** this form **must** be completed and returned with your response. To find out how we handle your personal data, please see our [privacy policy](http://www.gov.scot/privacy/).

Are you responding as an individual or an organisation?

[x]  Individual

[ ]  Organisation

Full name or organisation’s name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

**Information for organisation:**

The option 'Publish response only (without name)’ is available for individual respondents only. If this option is selected, the organisation name will still be published. If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

[x]  Publish response with name

[ ]  Publish response only (without name)

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

[x]  Yes

[ ]  No

# Consultation Questions

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree with the widening of the criteria (regarding treatments etc) to include those voluntarily receiving treatment and within a community setting, to support consistency of eligibility for those in need. There is value in using a narrow, clearly defined field of eligibility for legal certainty, which is achieved by reference to legislative provisions concerning particular treatments etc. We acknowledge that the last entry focused on equivalents creates some uncertainty, but is perhaps unavoidable given the policy preference. The wider approach also more closely aligns the position in Scotland with the position in England and Wales (Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (SI 2020/1311), reg 28), albeit that there continue to be differences. We do not support a further widening of the criteria at this stage, as it would generate too much uncertainty, and the standard moratorium may be more suitable for relevant individuals.

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

[ ]  Agree

[ ]  Disagree

[x]  Neither agree nor disagree

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

We have mixed views. While we can understand the reasoning behind the adopted approach, there is a notable degree of complexity and individuals suffering mental health crises may be unlikely to have sought money advice. Some attention also needs to be given to whether mental health professionals are able to provide the confirmation specified and also the extent to which the focus is on mental illness caused by, or exacerbated by, debt problems and/or debt problems that are caused by, or exacerbated by, mental illness.

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree, but think that some amendments would be desirable. With reference to sequestration, eligibility for the mental health moratorium would depend on an individual being discharged from sequestration; however, the individual may have ongoing obligations, particularly under a DCO, and it may be more appropriate for eligibility to depend upon all such ongoing obligations under the statutory solution having been fulfilled. At the least, further consideration needs to be given to what the correct approach should be where there are ongoing obligations such as a DCO and how the provisions should be tied together. In addition, consideration should be given to whether all relevant statutory debt solutions have been captured. For example, other solutions include the granting of a non-protected trust deed for creditors, or any other order or arrangement elsewhere in the world that is analogous to the types of statutory debt solutions listed (for relevant wording, see e.g. Bankruptcy (Scotland) Act 2016, s 17(2) and (8) and Moveable Transactions (Scotland) Act 2023, ss 4(6)(a) and 50(3)(a)).

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

[x]  Neither agree nor disagree

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

We understand the approach here but have some concerns about an individual’s ability to maintain their ongoing liabilities, and how such liabilities may be administered and enforced within the context of the moratorium.

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree. However, we are uncertain as to the consequences if AiB or the other parties involved fail to provide the relevant notifications on time. Would other parties have any legal remedies in such circumstances? If so, what would these be?

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

[ ]  Agree

[ ]  Disagree

[x]  Neither agree nor disagree

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

We think there is some merit in the proposed approach. However, we continue to have some concerns regarding individuals who do not have capacity and also do not have a legal representative. While there are legal mechanisms for such a representative to be appointed, this may take some time, and may leave such an individual exposed to enforcement action in the meantime.

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

[ ]  Agree

[ ]  Disagree

[x]  Neither agree nor disagree

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

We have mixed views about this. While we understand the privacy and stigmatisation concerns about such a sensitive issue, how will non-notified creditors and potential new creditors become aware of the individual’s situation? This is important given their apparent inability to enforce, despite not being aware of the moratorium. A “public” register could have been limited to searches by those with legitimate interests. Instead, perhaps consideration could be given to a mechanism by which a non-notified creditor or potential creditor may seek relevant information from the AiB.

Rather than creating a new mental health moratorium, it may have been preferable to adapt the existing moratorium to make it more flexible. This could have allowed for mental health crises to be addressed within the context of that moratorium, with extended periods of protection, and without necessarily disclosing mental health issues to non-notified creditors. However, we accept that such an approach is unlikely to be adopted at this stage.

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

[ ]  Agree

[ ]  Disagree

[x]  Neither agree nor disagree

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

See our previous answer.

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

[ ]  Agree

[ ]  Disagree

[x]  Neither agree nor disagree

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

We generally agree. However, further clarity is needed regarding the position for non-notified creditors who seek to enforce without awareness of the moratorium. They could take various enforcement steps and even realise the individual’s assets and use the proceeds to fulfil that party’s obligations, prior to becoming aware of the situation. We understand that the approach in relation to the standard moratorium has been adapted for the mental health moratorium, yet the standard moratorium gives greater opportunity for creditors to become aware or to be expected to be aware of the moratorium. We support the desire to protect individuals suffering mental health crises, which would justify rendering such enforcement ineffective (as per regs 8 and 14(1), albeit that they would not be liable for losses or expenses by the individual per reg 14(2)), but would the creditors mentioned above simply have to accept such losses? This further justifies them having the ability to obtain relevant information from the AiB regarding the moratorium. In addition, how would an arrestee, such as a bank holding the individual’s account, be aware of the moratorium before they release funds to the arresting creditor?

**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:

Tribunals should have the ability to ascertain whether a tenant is subject to a mental health moratorium when determining whether to allow an eviction.

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?

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree with this. However, we are uncertain as to how this will operate in relation to ongoing liabilities (including the ability of relevant creditors to take enforcement action).

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

[ ]  Agree

[ ]  Disagree

[x]  Neither agree nor disagree

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

The recovery period is to be set at six months, rather than aligned directly with the standard moratorium period, which happens to be six months at present. We think it should be aligned with the standard moratorium period for consistency, so that if e.g. the standard period were to be reduced to three months, the recovery period for the mental health moratorium should also be three months.

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

[x]  An obligation to pay a continuing liability

[x]  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:

As already mentioned, there is some uncertainty regarding enforcement for continuing liability obligations.

Regarding additional credit, perhaps an individual seeking to obtain more than a specified amount should be required to disclose the existence of the moratorium to the prospective creditor and/or obtain permission from AiB or a court. Otherwise, we consider that the limit should be set lower than the proposed £2,000.

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We broadly agree. However, more information is needed regarding the process.

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree, subject to the points made above.

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?

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree.

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?

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

This seems reasonable in the circumstances. We note that while parties can appeal to the sheriff (whose decision is final) under reg 17(9) against any decision of AiB to cancel the moratorium, it is not clear if there is any appeal process where a decision is made to not cancel the moratorium (albeit that judicial review may be available).

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We broadly agree but see our answer to the previous question and we think more clarity is required as to whether the appeal to the sheriff court is on a point of law only.

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

[x]  Agree

[ ]  Disagree

[ ]  Neither agree nor disagree

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

We agree. However, see our answer to question 12, regarding aligning the recovery period with the standard moratorium period, rather than it being six months, irrespective of the duration of the standard moratorium period in future.

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:

We repeat our earlier comments regarding the advantages that may have been obtained from amending the standard moratorium to make it more flexible, rather than introducing a separate and complicated mental health moratorium. However, given the approach adopted, we understand that an alternative is vanishingly unlikely at this stage. We are therefore willing to broadly support what is proposed and to try to assist in making it work as well as possible. We would also suggest that the regulations contain a built in provision for review after a suitable period.