

## Response ID ANON-KP9M-M1SY-B

Submitted to The draft Debt Recovery (Mental Health Moratorium) (Scotland) Regulations  
Submitted on 2025-03-14 11:34:26

### Ministerial Foreword

#### Mental Health Moratorium: eligibility

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

Agree

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

We agree that using existing mental health legislation is the most appropriate parameter for setting the eligibility criteria in a Mental Health Moratorium. However, our members have some concerns that, whilst these eligibility criteria ensure clarity in the most-part, there may be some cases where they result in the unintended consequences of unfairly excluding some individuals who are suffering from severe mental health conditions and would benefit from protection of the financial relief provided by the legislation, but who are not formally subject to the listed mental health legislation. For this reason, our members are pleased to see that the eligibility criteria have been extended to include individuals receiving treatment within communities settings or on a voluntary basis. However, some concerns remain that the eligibility criteria is overly crisis-focused and may overlook those with long-term, severe mental illness who would benefit from inclusion.

#### Mental Health Moratorium: eligibility (cont)

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

Disagree

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

Our members are extremely concerned by the proposal to place responsibility on a 'mental health professional' to assess the impact which debt issues are having on the mental health condition of a patient. Firstly, it must be clarified which mental health professional is being referred to. The implication is that this responsibility would fall upon psychiatrists, as the clinicians currently responsible for enactment of mental health and capacity legislation. There is major concern regarding this, as it could potentially be a time-consuming and burdensome task - during a time when psychiatry is already under unprecedented pressure. Psychiatrists are not financially trained, and it is inappropriate for this responsibility to be placed here. Whilst psychiatrists can diagnose, treat and support individuals through mental health conditions and mental illnesses - which may have financial implications, psychiatrists cannot delineate a percentage component of how much impact finances are having upon the condition of one's mental health.

The only way our members see it possible for psychiatrists to contribute to this process would be using existing frameworks and paperwork. For example, psychiatrists currently determine whether a patient should be subject to mental health legislation as outlined in the eligibility criteria, as well as diagnosing. The suggested approach from our members was a simple form confirming that a patient falls within the eligibility criteria (I.E is currently subject to legislation), rather than requiring a separate process of detailed assessment.

#### Mental Health Moratorium: eligibility (cont)

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

Not Answered

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

#### Moratorium debts

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

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

We believe that the definitions of moratorium debt and debts protected from recovery action are appropriate: ensuring that existing debts do not worsen whilst someone is within a period of treatment for poor mental health.

#### Mental Health Moratorium: review of eligibility criteria

5 Do you agree with the proposed requirement for Accountant in Bankruptcy (AiB) to confirm the mental health eligibility criteria is continuing to be met?

Neither agree nor disagree

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

We agree that a regular review process at 6 month intervals ensures that only individuals in need of protection by the legislation will be eligible. However, our members did have some concerns that this must be carefully balanced against ensuring that individuals do not have protections prematurely revoked. There is no 'one size fits all' approach to recovery, and setting a 6 month period to recovery is not appropriate in all cases.

We also have concerns regarding the clinical burden which may be placed upon psychiatrists by having to continually review: "AiB must request confirmation from the mental health professional that the individual continues to meet the mental health eligibility criteria for the moratorium". As highlighted above, it will not be clinically feasible for psychiatrists to add this onto their clinical workload, and this would have to fit into existing processes. For example, simply confirming that an individual was still subject to mental health or capacity legislation.

## Mental Health Moratorium: application process

6 Do you agree with the proposed application process?

Disagree

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

We have major concerns that the proposed process places excessive responsibility onto mental health professionals, which would not be feasible in clinical reality.

Scotland is facing a psychiatric workforce crisis. The workforce is not growing sufficiently to keep pace with the well-documented rising scale of demand for services. As such, our workforce is overwhelmed and stretched to its absolute limit. Clinicians are increasingly finding themselves having to work in untenable conditions. As a result of this, we are experiencing a critical loss of our substantive (permanent) psychiatric workforce, jeopardising the ability of our services to provide safe care and treatment to patients. There is a major shortfall in psychiatrists able to fill roles in Scotland, and vacancy rates for consultant psychiatry roles are as high as 46% in some parts of the country. These workforce gaps have led to the widespread recruitment of locum psychiatrists as a temporary solution. An average of 1 in 4 consultant psychiatry positions are estimated to be vacant or filled by a locum across Scotland.

Again, we reiterate that the process by which psychiatrists are involved in the legislative process must not require any additional clinical time, nor involve additional assessments that are not already carried out. The only thing psychiatrists should be involved in is confirming that criteria (I.E. a patient being subject to legislation) are being met.

## Notification and registration of Mental Health Moratorium

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

Neither agree nor disagree

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

We have some concerns about the register, and the holding of detailed mental health information about patients. We have concerns around GDPR implications and the potential unintended consequences of creditors having access to patient mental health information. It must be ensured that this information is strictly confidential and not shared after the fact. It should not be used in any circumstances to affect financial decisions on a mental health basis, only on a financial basis. For example, when somebody applies for a mortgage or loan etc, decisions could potentially be made on the basis of them having been in debt where appropriate, but not on the basis of them having received mental health treatment. This would infringe on equality legislation.

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

Neither agree nor disagree

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

See answer to Q7.

## Effect of a Mental Health Moratorium

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

Agree

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

We agree that the proposed protections will sufficiently prevent enforcement actions and accrual of further debt for patients receiving treatment for mental health conditions.

## Effect of a Mental Health Moratorium (cont)

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::

Our members feel that more clarity is required. Scotland already has extensive eviction protections in place through legislation and the moratorium should ensure that coordination is in place between protection from debt issues and eviction whilst receiving treatment and care for a mental health issue.

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

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

We agree that individuals protected by the moratorium should also be protected against the installation of pre-payment meters and disconnection from energy supply. Financial and mental health vulnerability should never lead to disconnection from essential services. This would only serve to exacerbate mental health issues. Our members were concerned by this.

### Period of a Mental Health Moratorium

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

Neither agree nor disagree

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

Whilst our members agreed with ensuring financial stability, they had concerns about the rigid timelines. Recovery can be longer than any arbitrary timeline, and varies between each patient.

### Mental Health Moratorium: individual's obligations

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

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

#### Creditor obligations

14 Do you agree with the proposed process for a creditor's search?

Neither agree nor disagree

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

Whilst we understand that a creditor's search may be necessary to ensure transparency and proper enactment of legislation, it is essential that clear guidelines and legislation are in place to ensure that creditors do not enact unnecessary disputes.

We also re-iterate that data and information regarding the details of someone's mental health condition or mental illness should not be shared unless entirely necessary.

#### Creditor obligations (cont)

15 Do you agree with the proposed consequences for creditors?

Agree

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

We agree that creditors who act out of line or fail to comply with the protections provided by the moratorium must be held to account.

### Review of Accountant in Bankruptcy decision

16 Do you agree with the proposed process for an individual to request a review of Accountant in Bankruptcy's decision to either not grant or to cancel a Mental Health Moratorium?

Agree

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

We agree that the right to request a review ensures fairness and transparency for patients. However, we seek clarification around appeal timelines and the role of mental health professionals in this process (for clinical capacity reasons as outlined above).

### Review of Accountant in Bankruptcy decision (cont)

17 Do you agree with the proposed process for a creditor to request a review of Accountant in Bankruptcy's decision to grant, or not cancel a Mental Health Moratorium?

Neither agree nor disagree

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

Whilst we understand that creditors should have the right to request a review, safeguards must be put in place to ensure that unjustified challenges to vulnerable people do not occur.

### Cancellation of a Mental Health Moratorium

18 Do you agree with the proposed cancellation process?

Neither agree nor disagree

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

Whilst we understand that criteria for cancellation are necessary, protections must be in place to ensure that individuals receiving treatment and support for mental health issues are not revoked before they have reached a point of stability for their mental health crisis or mental health treatment.

### Interaction with the standard moratorium

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

Not Answered

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

### Additional 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 reiterate our concerns around:

- The clinical burden that the proposed legislation pathways may place on mental health professionals, who are already under unprecedented pressure.
- The need for explicit protections for vulnerable individuals in data and information sharing, appeal processes etc.
- The consideration that recovery cannot stick to any arbitrary timescale.

### About you

What is your name?

Name:

Jane Gordon

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Royal College of Psychiatrists in Scotland (RCPsychiS)

Further information about your organisation's response

Please add any additional context:

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

Publish response with name

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:

jane.gordon@rcpsych.ac.uk

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

## Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: