

Response to:



**The draft Debt Recovery
(Mental Health Moratorium)
(Scotland) Regulations**

Sent via email to: policy@aib.gov.uk

14 March 2025

Introduction

1. UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms of all sizes, we act to enhance competitiveness, support customers and facilitate innovation.
2. We welcome the opportunity to respond to the Mental Health Moratorium (MHM) draft regulations in Scotland, and are grateful for the prior engagement in this important policy aspect with the office of the Accountant in Bankruptcy (AiB).

Executive Summary

3. Members agree with the principal of providing support to individuals experiencing mental health problems by providing a statutory period of time that the customer is free from collections and recovery activity on their secured arrears and unsecured debts.
4. As we have previously highlighted in our consultation response in January 2024, regulated Financial Service already provide support for all vulnerable customers and recognise that the legislation would particularly extend the protections for individuals if they are to cover non-financial debts such as energy, utility and council tax debts.
5. The legislation implemented in England and Wales (Debt Respite Scheme (Breathing space moratorium and mental health crisis moratorium) (Regulations 2020) should be used as the template to deliver similarly strong protections for individuals in Scotland. These could be delivered at pace without creating unnecessary delays or generating a disproportionate cost for creditors to implement.
6. Our key concerns relating to the proposed legislation are:
 - a. Entry into a mental health moratorium must be assessed by a money adviser not only for confirmation of the medical eligibility criteria, but also that the moratorium is necessary based upon a knowledge of the individuals' financial circumstances and the moratorium is in the individuals' best interests.
 - b. An additional 6-month moratorium as a recovery period, without any requirement for the individual to be engaging a debt adviser to resolve their underlying financial issues is not appropriate. We continue to advocate that there should be a shorter statutory period, which could be extended as long as the individual is progressing towards completing the debt advice with the money adviser.
 - c. There must be clarity that contact with customers directly, including where required under the Consumer Credit Act 1974 or Part 9A of FSMA, is permitted. Otherwise it would place lenders in breach of legislative and regulatory requirements.
 - d. Further clarity around definitions within legislation is required, including a proportionate and balanced approach for creditors that are to be covered by the

- legislation, including which lending is considered as secured, (which extends beyond property secured mortgages).
- e. Further clarity around any potential scope of business lending debts is required and the associated boundaries or definition of qualifying business debts.
 - f. The role of the Money Advisor during the recovery period is not set out in the draft regulations. This role is critical to ensure that the individual receives debt advice and is supported with addressing any outstanding debt issues.
7. A full understanding of the operational procedures and policy will be required by lenders to assess the costs and proportionality of potential system and process changes. We continue to advocate alignment with the legislation implemented in England & Wales to minimise disruption and bring operational efficiency.
 8. Implementation timelines should be consulted upon only once the final policy and operational implications are known, although we reiterate that financial services already support vulnerable customers (including appropriate support for any customer with any form of mental health condition) and have a regulatory obligation to do so.
 9. We remain supportive of the policy principle and welcome ongoing engagement on the operational detail and implications of the revised draft legislation as that develops to avoid disproportionate costs and complexity for financial services firms to implement.

Responses to Questions

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

[Agree](#) / [Disagree](#) / [Neither agree nor disagree](#)

10. Agree.
11. We agree that the eligibility criteria for a MHM should be widened to include those receiving equivalent crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service. This recognises that support for the individual may be undertaken in the community as well as in a medical facility.
12. We agree with the Government position that the Debt and Mental Health Evidence Form should not be the basis on which a statutory MHM would be assessed, which would result in eligibility criteria extended across a wider range of mental health conditions.

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

[Agree](#) / [Disagree](#) / [Neither agree nor disagree](#)

13. Disagree.

14. Before an application is made for the protections of a MHM, there should be an assessment that not only is the individual eligible, but also that they have a need for the open-ended protections provided by the moratorium.
15. Whilst it is acknowledged that a detailed assessment of an individual's financial position will not always be possible, we do not agree that a simple statement from a mental health professional confirming that the individual has "a problem or perceived problem with debt which is contributing to or is likely to contribute to the individual's mental illness" is sufficient.
 - a. This criterion does not necessarily link the need and appropriateness for the statutory MHM protections to their financial standing.
 - b. Further the interpretation of what is a problem or perceived problem is a subjective decision.
16. The statement from a Mental Health Professional (MHP) should, together with other information such as information from the individual, their representative, and the individuals' credit file, be used by a money adviser in making a necessary assessment that a MHM would be appropriate for the individual and in their best interests.
17. The purpose of the MHM should be to support good customer outcomes. Entering an individual into a MHM where the protections are not required, could lead to unintended consequences. At the end of the MHM, those unintended consequences would need to be addressed by the debt adviser and could lead to consumer harm. Examples of where the mental health moratorium might not be appropriate would include:
 - a. Where the individual (or joint borrower for joint debts) has sufficient means or income to make repayments to debts as they fall due.
 - b. The individual could enter a debt solution (e.g. Sequestration or minimal asset process) that would address the problem debt issue now and not delay matters. The use of a standard moratorium might be appropriate and sufficient for a debt adviser to assess an appropriate debt solution for the individual to enter into, and the entry into an open-ended MHM {where the consultation is unclear on the ability or criteria for ending the moratorium} might result in the right outcome for the individual being delayed indefinitely.
18. We would therefore recommend that the entry into a MHM includes a requirement of a money adviser to assess that there is an appropriate need for an MHM and it is in the best interests of the individual in addition to the declaration of the MHP of the individuals health diagnosis.
19. We recognise that it is not reasonable for an MHP to have full financial picture of the individual, and there could be a view that anyone with severe mental health issues would be worried about "debt" irrespective of whether the debt payments can be maintained up to date. A money adviser should be allowed under legislation to be able to access the individuals credit file which, together with the MHP

statement, would provide the basis as to why entry into the MHM is appropriate and necessary, e.g. providing supporting evidence that the individual is unable or unlikely to meet their financial commitments as they fall due.

20. Individuals at risk of financial difficulty are likely to have problems in meeting both credit obligations (such as loans, credit cards and overdrafts) as well as non-credit obligations (such as council tax and utility bills). In order for an individual to be advised on their holistic debt position which includes an element of credit obligations, they would need to seek advice from an FCA regulated debt advisor. We therefore recommend that access to protections should only be triggered by an FCA regulated money advisor who has assessed, confirmed and communicated eligibility.

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

21. Agree.

22. Where an individual is already subject to a statutory debt solution, their circumstances should where possible be made aware to the Trustee, Insolvency Practitioner or Supervisor, so that any appropriate actions can be taken.

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

23. Neither agree nor disagree.

24. Article 3 (2) (b) defines a qualifying debt as “secured by a standard security, to the extent that the sum is arrears of a periodic payment due to be paid under a loan agreement so secured”.

25. We recognise the intent of this article is to limit the protections to the sum of arrears and not the full outstanding balance, and we agree with that intent.

26. We consider however that the full range of secured debt and secured lending products are not adequately covered in the draft legislation. A broader definition of secured should be introduced that would also for example include:

- a. A hire purchase agreement / PCP motor finance
- b. Assets that have a value at least equal to the value of the debt
- c. A letter of credit
- d. A guarantee

27. We consider it is inappropriate that only lending secured by residential property should have the limitation of the protections only extending to the arrears. Other

types of secured lending should also have an equivalent approach, whereby the customer must maintain their ongoing payments, and only the arrears at the commencement of the MHM are covered by the moratorium. We do not consider it would be equitable for example under a motor finance agreement, that the borrower is protected from any contact around non-payment of the ongoing agreement, where the underlying assets would be depreciating (and potentially the asset would become uninsured and untaxed).

28. Any debt that has been incurred by means of any fraud or fraudulent breach of trust by the debtor should be excluded from the MHM protections.
29. Regulation 3 (5) is incomplete.
30. In the similar legislation for England & Wales (The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020) there were debts which were listed as not 'qualifying debt'. Some of these debts (such as a family proceedings or Child Support Act 1991) if included within the MHM could cause harm to the beneficiaries, but of little immediate consequence to the individual. We recommend that the legislation considers whether similar 'non-eligible debt' definitions should be adopted in the Scottish legislation.
31. Clarification as to how joint debts are to be treated, where one party has applied for a MHM, should be provided.
32. The legislation should also be clear as to whether the protections extend to debts incurred by an individual in a business capacity, such as sole trader business debts. Boundaries / thresholds which would be considered within scope of the MHM need to be defined and consulted upon. It is recommended that the definition in the England & Wales legislation is adopted (Article 5 96) (d)).
33. Greater clarity should therefore be provided on what is a moratorium debt, and what is a qualifying debt. We understand that all debts are in scope for the MHM, including council tax arrears, energy arrears and utility bill arrears. We agree that the individual is best protected where the protections are applied to a broad range of creditor types.

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

34. Agree.
35. Confirmation by the AiB every six months of the continued eligibility for the MHM protection is appropriate.

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

Agree / Disagree / Neither agree nor disagree

36. Agree.

37. We agree that the proposed application process is appropriate and that the individual consents to the application for the MHM.

38. We note that the Scottish Government will provide guidance notes for mental health professionals and money advisers on the process.

39. We recommend that the Scottish Government consider how an individual, where the eligibility has been provided / confirmed by a mental health professional, can have a money adviser make an assessment on behalf of the individual to enter the individual into the MHM. This would serve to broaden access to protections that the individual would need.

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

Agree / Disagree / Neither agree nor disagree

40. Agree.

41. We agree that the AiB will notify creditors of the commencement of an MHM.

42. We note the consultation states that where possible the AiB will communicate electronically to the creditors. This approach is supported however the legislation should clearly set out

- a. When the creditor is deemed to have been notified of the MHM
- b. When the protections commence (e.g. the business day following the deemed receipt of the notification)
- c. How notification is to be provided to creditors who cannot be contacted electronically, and when that notice is deemed to have been received.

43. The Regulation is silent on the medium used for electronic notification. The government should look to utilise existing mediums where possible to minimise disruption, costs and resource consumption for creditors. (e.g. Most creditors will be registered with the DAS portal and therefore it should not cause material impact operationally).

44. Regulation 19 advises of the communication to creditors when notice of the MHM recovery period has commenced and the protections are due to end. The notifications under 19(3) enables service through electronic and non-electronic means and is likely to result in the AiB needed to have multiple notification channels. The AiB should clarify this process for firms to be able to comment on, with the preference being that creditors are notified in the same way as for the commencement of the MHM (i.e. electronically where possible). This aligns with the way that money advisers are expected to communicate with the AiB, and provide efficiency and prompt implementation of the protections.

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

Agree / Disagree / Neither agree nor disagree

45. Agree.

46. The legislation should take into account the potential for ownership of debts to change during a MHM, and therefore a current creditor might not have received the original notification. (Article 7 (3)). The current creditor should be able to access the register for information related to their debt.

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

Agree / Disagree / Neither agree nor disagree

Customer Contact and enforcement

47. Disagree.

48. We recognise the intent of the legislation, and that the protections are intended to provide the individual with a period of time free from collections and enforcement activity.

49. The legislation should recognise that the best outcome for the customer might be for some contact to be made during the moratorium. It should also recognise that certain contact is required under separate legislation or regulation.

- a. Contact with customers directly, including where required under the Consumer Credit Act 1974 or Part 9A of FSMA must be permitted, otherwise it would place lenders in breach of legislative and regulatory requirements.
- b. The language of Regulation 8 (5) (b)(v) could lead to confusion as to whether certain actions of creditors may not be statutory led. The wording should provide a level of flexibility to allow creditors to take action that would be in the best interest of the customer and that requires communication. For example, service of notice of default or a termination notice for the closure of an account. The wording used in England and Wales BS regulation provides some degree of flexibility and we recommend the same is used for MHM, so that the creditor or agent is otherwise able to communicate with the individual under
 - i. The consumer Credit Act 1974
 - ii. or [other applicable laws of Scotland]

50. Lenders must be allowed to contact customers for purposes unrelated to a qualifying debt including

- a. To meet their existing obligations under CCA or FSMA (including requirements in the FCA handbook e.g. MCOBS, CONC, BCOBS or Consumer Duty) and the new obligations imposed during an MHM. For example:

- i. FCA MCOBS 7.5.1R requires the lender to provide the customer with a statement at least once a year and MCOBS 7.6 event driven information notifications. Further MCOB 13.4.1R mandates that lenders must advise consumers of mortgage payments short falls.
 - ii. CCA s77A requires statements to be provided on fixed sum agreements at least annually
 - b. Communicating with the individuals' money adviser or MHP regarding a moratorium debt or debt solution.
 - c. For purposes unrelated to the moratorium debt, including in relation to ongoing liabilities (e.g. secured loan arrears that have arisen after the commencement of the MHM.)
 - d. In response to a request from a customer or their agent.
 - e. In relation to any actions or legal proceedings in a court.
51. The regulations and / or any complementary guidance should be specific in confirming that individuals should continue to pay their debts as they fall due if they are able to. There should also be clarity that a lender processing a pre-existing customer payment instruction (such as a Standing Order, Direct Debit or payment authority) for the collection of payments as stipulated in the contractual agreement is not considered to be enforcement action on the debt (and thereby in contravention of regulation 8).

Interest and fees

52. We agree that individuals should not be required to pay interest and fees that accrue on a moratorium debt during the moratorium period.
53. It should be made clear that interest and fees accrued prior to the commencement of the moratorium, but payable during the moratorium, would not be prohibited.
54. Firms systems and processes might have interest and fees scheduled to be charged to the account, and it might not be possible to prevent these charges being applied to the individuals account when a MHM commences. In this scenario it should be recognised that the creditor would make adjustments to the customer's account as soon as possible, and by doing so is not in breach of the regulations.

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?

55. We recognise the strong protections for tenants in Scotland, and agree that further controls within the MHM are not necessary.
56. The confidentiality of the customers health condition needs to be a consideration in how the Court or Tribunal might be informed.
- a. If the individual is not in rent arrears, they will not have consented to their medical information being shared with creditors of non-qualifying debts

- b. Ideally a disclosure to the Landlord / Housing Association would illicit an empathetic response and a deferral of any eviction proceedings, and avoid the need for the court to be involved, but that cannot be guaranteed.
- c. The Court or Tribunal when considering an eviction should consider the health and impact on the individual. They could be granted powers to ask the AiB to search the MHM register to support their decision.

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

57. Agree.

58. Similar protections to those provided to England & Wales should be introduced.

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

Agree / Disagree / Neither agree nor disagree

59. Disagree.

60. An automatic unconditional and additional 6-month moratorium without any requirement for the customer to be engaging a debt adviser to resolve their underlying financial issues is not appropriate.

61. We continue to advocate that this should be a statutory period of up to 2 months after the mental health moratorium is deemed cancelled, which could be extended by the money adviser under notice to the AiB / creditors where the customer is progressing towards a debt solution and requires more time.

62. This will ensure that the money adviser and the individual are engaging and progressing towards an appropriate outcome for the customer.

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

63. Yes.

64. What constitutes an ongoing liability needs to be explicit in the legislation. We recommend that this is aligned to the definition in the Debt Respite Scheme in England & Wales (Article 2 – Interpretation).

An obligation to not obtain additional credit

65. Yes.

66. Where the individual does need new credit there should be clear transparency to the creditor / lender that the customer is within an MHM. There should not be a misconception for the individual that they are unrestricted in applying for new credit.
67. Whilst the individuals' credit file might evidence existing financial difficulty, this might not always be the case. Not all creditors would search the individuals credit file at a credit reference agency. Regulation 7 of the legislation does not allow new creditors to be able to search the MHM register.
68. The £2,000 limit is significant for someone who is struggling financially and where the debt has an impact on their mental illness and recovery. Although it is accepted that the limit is aligned to Scottish Bankruptcy, the personal circumstances and eligibility criteria for an MHM are different to Scottish Bankruptcy. Unlike Bankruptcy there is no public register of the MHM, and a high borrowing threshold could lead to poor outcomes in their financial objectives for such individuals. Although MHM is not a payment holiday, incurring additional unsecured debt that is outside of MHM would have an impact on the existing MHM debt and its repayment.
69. We therefore recommend an obligation on the individual not to obtain new credit that would exceed £500 (either solely or jointly) without specifically declaring that they are subject to the protections of the MHM.
70. If a customer does obtain credit over any statutory limit stated in the legislation, that credit cannot be considered as unenforceable merely by the fact that it exceeds the threshold in the MHM legislation.

Some other obligation (please specify in the comment box below) No obligation at all

71. During the recovery period, the individual must engage with their money adviser in a way that the money adviser considers appropriate, to enable them to progress the debt advice to find an appropriate solution.
72. The role and obligations of the money adviser during the recovery period should be clearly set out in the new Regulation. The intent of the recovery period is to involve a money adviser to provide debt advice and address any financial issues. The lack of engagement by either the money adviser or the individual will not deliver a good outcome for when the recovery period ends. Bringing obligations of the money advisers' within the scope of the regulation will serve to ensure that the individual has access to required support. The regulations should also consider the potential for the money adviser to be no longer practicing when the recovery period starts and how individuals are allocated a money adviser in these circumstances.
73. The draft Regulation should set out Money Advisors obligations in relation to debt advice and solutions. Bringing Money Advisor's obligations within the scope of Regulation will also mitigate any impact of advisors exiting practice during the MHM.

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

Agree / Disagree / Neither agree nor disagree

74. Agree.

75. However, it is unclear whether notification to a creditor brand would require the creditor to also search across other group brands / entities for additional debts.

76. Article 13 (1) (a) requires all debts to be notified to the AiB, not just qualifying debts. Is this the intention? (e.g. an up-to-date secured mortgage lending that is not a qualifying debt under the MHM is to be reported to the AiB?).

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

Agree / Disagree / Neither agree nor disagree

77. Agree

78. Where an individual is able to meet their debts as they fall due, they should do so. It is not in their best interest if the MHM is used to unnecessarily avoid making payments, only for these debts to need to be addressed at the end of the MHM

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

79. 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?

Agree / Disagree / Neither agree nor disagree

80. Disagree.

81. A creditor may wish to request a review of a particular debt as not being eligible (e.g. is a secured non-qualifying debt) or the MHM application in general.

82. The 14-day timescale from commencement of the MHM to be able to appeal against the moratorium is considered too short (and is not specific as to working days or calendar days). Not all notifications of the commencement of a moratorium will be sent electronically and elsewhere in the response we have questioned when the MHM is deemed to have commenced based upon a notification being sent by the AiB.

83. Whilst the protections of a MHM remain in place until cancelled, a longer period should be allowed to enable any creditor to collate a well-grounded and evidenced challenge to the moratorium. This should be a minimum of twenty working days / one calendar month.

84. The cancellation request is reviewed by the AiB who will also assess whether the cancellation of the MRM would be unfair or unreasonable (Regulation 17 (2)). Given the assessment of fairness and reasonableness is a subjective matter, there should be an ultimate option for the creditor to be able to submit their application of the grounds for the cancellation of a moratorium and supporting evidence to a Sheriff Court for a decision. This is particularly relevant for secured lending where, for example, the courts in Scotland have robust processes and additional protections (such as pre-action protocols) when considering a repossession of a property. There can be circumstances where the repossession of a property will deliver a better outcome for the customer, irrespective of whether the ongoing liability of the mortgage payment is being met. Therefore the avenue to appeal to a court for the cancellation of a moratorium and/or the court having the power to cancel a MHM must be available.

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

Agree / Disagree / Neither agree nor disagree

85. Agree.

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

Agree / Disagree / Neither agree nor disagree

86. Agree.

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:

87. We welcome the ongoing engagement on this important topic.

88. We still consider that a number of points within our previous consultation response (22 January 2024) are relevant and should be considered as the legislation is developed.

89. A full understanding of the operational procedures and policy will be required to assess the costs and proportionality of potential system and process changes. Implementation timelines should be consulted upon only once these are known, although we reiterate that financial services already support vulnerable customers and have a regulatory obligation to do so.

90. The specific wording of the legislation could have unintended consequences, and it is essential that sufficient time is allowed for lenders to review and comment on any revised draft legislation.

91. If you have any questions or comments in respect of this response, please do not hesitate to contact Ian Fiddeman (ian.fiddeman@ukfinance.org.uk).

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