

Debt Recovery (Mental Health Moratorium) (Scotland) Regulations - draft: consultationResponse
from Propertymark
March 2025

Background

1. Propertymark is the UK's leading professional body of property agents, with over 18,000 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.¹

Overview

2. The Bankruptcy and Diligence (Scotland) Bill² contains powers which would allow Scottish Ministers to create a Mental Health Moratorium. This is aimed to protect people with serious mental health issues from debt recovery action. The Scottish Government are seeking views on the proposed process for a Mental Health Moratorium.

Questions

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

3. Propertymark agrees with the proposed initial mental health eligibility criteria. We understand that mental health conditions can be on a spectrum to include mild to severe symptoms. For those mental health conditions that have severe symptoms, we recognise that the impact can have a very disabling impact on individuals and their families on a day-to-day basis. Accordingly, these individuals may require support. The eligibility criteria should be reserved to support individuals who are impacted by severe mental health conditions with the current criteria encapsulating these requirements. While we are supportive and sympathetic, we feel that the criteria are robust, and we disagree with some stakeholders that the Scottish Government has engaged with who think that the criteria should be widened to include a broader range of people living with mental health conditions with eligibility being established by the completion of a debt and mental health

¹ <https://www.propertymark.co.uk/>

² [Bankruptcy and Diligence \(Scotland\) Bill | Scottish Parliament](#)

evidence form.³ This could make the criteria definition too broad, make the support open to abuse and put more pressure on medical practitioners to make referrals.

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

4. Propertymark partially agrees with the proposed debt eligibility criteria. Given that the mental health eligibility criteria ensures that those with the most severe mental health complications have support, it is very likely that the individual will have had the support and have engaged with a medical practitioner including general practitioners who could make the proposed assessment based on the impact debt was having on their condition.
5. However, Propertymark also think that restrictions to the mental health moratorium should be on similar grounds to the UK Government’s Breathing Space Scheme in England and Wales, which restricts the support to individuals who are subject to a debt relief order, subject to an interim order or individual voluntary arrangement, subject to a breathing space moratorium or a mental health crisis moratorium, or an undischarged bankruptcy.⁴ We think for those individuals subject to these conditions already have sufficient support.

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

6. Propertymark agrees that an individual subject to a statutory debt solution should not be eligible for a Mental Health Moratorium. Those individuals subject to a statutory debt solution will have support in discharging or liquidating their debts and it is likely that their debts will have the same impact on their mental health.

Question 4. Do you agree with the proposed definition of moratorium debt which would qualify to be protected in a Mental Health Moratorium

7. Propertymark agrees that only a debt that was owed by an individual at the point at which the application for the moratorium was submitted will qualify as a ‘moratorium debt’ to be included for protection under a Mental Health Moratorium. Fundamentally, those subject to support should still be encouraged to meet their ongoing liabilities.

³ [Debt and Mental Health Evidence Form | Money Advice Trust](#)

⁴ <https://www.gov.uk/options-for-dealing-with-your-debts/breathing-space>

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

8. Propertymark agrees that the AiB Accountant in Bankruptcy is the most appropriate body to assess if the eligibility criteria is continuing to be met and to notify creditors when the individual is in the recovery phase. However, we recommend that all relevant health practitioners are given support and guidance on their responsibilities in notifying the AiB when referring individuals onto the moratorium.

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

9. While outside of the normal remit of Propertymark, we agree that central to the application to benefit from support from the moratorium should be consent from the individual. We also recognise that in some cases, especially where the individual is impacted with very severe mental health conditions, they may not have the capacity to consent. In these cases, we agree that an appropriate legal representative or medical practitioner should act on their behalf. We also agree that on receipt of the application the money adviser must check all information is present, including the signed agreement by the individual or their legal representative consenting to the application, and the money adviser then must complete their details with a signed statement confirming they will provide debt advice to the individual at the most suitable time in the process. Furthermore, We are reassured to learn that the Scottish Government will provide guidance notes for mental health professionals and money advisers.

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

10. Propertymark agrees with the proposed process for the notification of the Mental Health Moratorium. We think that the AiB is in the strongest position to communicate with creditors and validating the eligibility of individuals.

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

11. Propertymark agrees with the proposed process for the registration of the Mental Health Moratorium. We think that for the Mental Health Moratorium to function as efficiently as possible, the AiB is in the best position to document and maintain a formal record of all Mental Health Moratorium cases and to ensure that individuals are eligible for support. While for obvious reasons and due to the sensitivity of the data held by AiB, we agree that this database should not be public facing. However, we recommend that in order to achieve transparency, the AiB should publish service level statistics on the number of individuals taking out the moratorium and any other relevant information.

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

12. Propertymark agrees with the proposed Mental Health Moratorium protections provided these protections are reserved for those individuals that have severe mental health conditions as outlined in question 1 and that this protection ends at the recovery stage.

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?

13. Propertymark agrees that given the already strong protections for tenants against eviction, it would not be appropriate to introduce further restrictions on eviction in the draft mental health moratorium. While it might be fair and compassionate to offer individuals with the most severe cases of mental health conditions a moratorium on evictions, this would need to be carefully considered, and we strongly recommend that should the Scottish Government change their policy direction in this regard to include further eviction protection via the Mental Health Moratorium, then they should engage with all relevant stakeholders including Propertymark.
14. While we acknowledge why some stakeholders may see why an eviction moratorium would be desirable, the consultation document concedes that Scotland already has some of the strongest protections for tenants against eviction in the UK including pre-action protocols for both social and private landlords as well as a requirement of the First Tier Tribunal to consider reasonableness for eviction with all its eviction grounds being mandatory. Furthermore, the proposed Housing

(Scotland) Bill,⁵ if passed, will offer additional protections to tenants by placing a duty on both the Court and Tribunal to consider whether there should be a delay to the enforcement of most evictions, including rent arrears cases, based on the circumstances of the case. These protections may include whether eviction could have a detrimental impact on the health of a tenant.

15. If there is an effort to ensure that the Mental Health Moratorium and current evictions protections work effectively together, for example, ensuring that the Scottish Courts and Tribunal Services are aware when a moratorium is in place during a possession hearing, we strongly recommend that the courts including judges are issued with advice when considering such information is appropriate during hearings. Possession cases can be complex and multifaceted. It might be the case that the possession hearing is unrelated to the terms of a Mental Health Moratorium including in cases with regards to anti-social behaviour. Accordingly, we think whether a moratorium is in place should only be considered in possession cases involving debt and rent arrears.
16. We would be supportive of guidance for tenants, landlords and mental health professionals and establishing protocols and procedures where a debtor with rent arrears is identified. We would be very happy to continue to engage with the Scottish Government on raising awareness and improving guidance for property agents and landlords.

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?

17. We would welcome any efforts from the Scottish Government to engage with the UK Government to consider further protection against the installation of pre-payment meters or the disconnection of gas and electricity. The continued cost of living crisis, not to mention the increase in energy costs from the cessation of the Energy Price Cap⁶ is likely to cause further hardship for vulnerable groups including those with severe mental health problems. Poorly heated homes can significantly contribute towards mental health complications accordingly we support further discussion in this regard.

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

⁵ [Housing \(Scotland\) Bill | Scottish Parliament Website](#)

⁶ [Energy price cap | Ofgem](#)

18. Propertymark generally agrees, but General Practitioners would be in the best position to assess if an individual was in the recovery phase and no longer require the protection. Consideration would have to be given to ensure that GPs are encouraged not to prolong protection for any longer than is required.

Question 13. Should an individual in a Mental Health Moratorium be subject to the following proposed obligations?

19. We think individuals subject to the Mental Health Moratorium should be obliged to pay any ongoing liability when due for payment and prohibited to not apply for or obtain credit (given either to the individual alone, or jointly to the individual and another person) beyond an amount of £2,000. These obligations would help the individual ease these debt problems and would reduce the period of time that they are under protection.

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

20. We agree with the proposed process for creditors search as it strikes the right balance between the AiB in their record keeping and the responsibilities of creditors. Creditors would be in the best position to position to provide this information especially any information relating to any creditors by assignation.

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

21. We agree with the proposed consequences for creditors.

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?

22. We disagree 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. Fundamentally we think that individuals should have a right to appeal in respect of a decision to either not grant or cancel a moratorium. However, we see little value in the review being made by the AiB when they have previously refused. Accordingly, the review could be a role for the First Tier Tribunal.

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?

23. We disagree with the proposed process for a creditor to request a review of AiB's decision to grant, or not cancel a Mental Health Moratorium. Similar approach to our response to question sixteen could be adopted.

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

24. We agree with the proposed cancellation process. We think there must be an element of individual control in the process. Accordingly, if an individual wants to cancel the moratorium they this should be permitted to happen. We also agree that if the AiB finds sufficient grounds to prove that the moratorium unfairly prejudices the creditor's interests, or they are aware of a material irregularity in relation to the application process, then the AiB should have the power to cancel the moratorium.

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

25. We agree with the proposed interaction between the Mental Health Moratorium and the standard moratorium.

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.

26. We would like to thank the Scottish Government for the opportunity to raise our views on this important consultation. We would be very happy to further support the Scottish Government by allowing access to our members in the form of a roundtable discussion, should the Scottish Government wish to further consult with property agents on this or any similar subject area.