

# Bankruptcy and Diligence (Scotland) Bill

## Mental Health Moratorium

### Briefing Note

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*Citizens Advice Scotland (CAS), our 59-member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Scotland's Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help and we change lives for the better.*

*During 2022-23, the Citizens Advice network provided advice and assistance to over 187,000 people. The network put almost £142 million back into people's pockets during this time, with every £1 invested in core advice funding returning £14 in gains for people. Our extensive footprint is important in helping us understand how issues impact locally and nationally across the country and the different impacts that policies can have in different areas.*

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## Background

Citizens Advice Scotland (CAS) welcome the Government's proposal of introducing a bespoke Mental Health Moratorium through powers contained in the Bankruptcy and Diligence (Scotland) Bill. CAS have worked closely with Scottish Government officials and the Accountant in Bankruptcy's Mental Health Moratorium Working Group to develop this moratorium.

CAS welcome the Government's focus on recovery, first allowing an individual with mental health and money issues to focus on their mental health journey, then an additional period of time to support dealing with their debts. It is a core piece of work and will protect people with serious mental health issues from the stresses of immediate debt recovery.

It is clear, given the current economic climate with the cost of living crisis and the well-established link between mental health and money worries, the Mental Health Moratorium is desperately needed now by debt advisers to support individuals struggling to cope with their mental health and money worries.

With the cost-of-living crisis pushing more people into debt beyond their control, and impacting on their mental health, it is imperative that the setting of the Mental Health Moratorium's eligibility criteria is done carefully so it reflects the processes and policies currently in practice.

## **Eligibility Criteria**

These requirements must be in regulations, not on the face of the Bill because:

- Eligibility criteria may change over time and only regulations have the flexibility to accommodate this.
- The Mental Health Landscape is going through a period of change following the Scottish Mental Health Law Review and the new Scottish Government. Mental Health and Wellbeing Strategy both of which are likely to have an impact on eligibility and necessitates the flexibility that regulations provide.
- The issue of primary vs secondary legislation for eligibility has had a lot of consideration from stakeholders and regulations are the preferred route.

## **Widening of Eligibility Criteria and the Debt and Mental Health Evidence Form (DMHEF)**

- CAS agree that the eligibility criteria needs to be widened, but in regulation not primary legislation.
- The Minister has committed to the Committee and to Parliament that further options for widening criteria will be explored and brought back during the passage of the Bill.
- CAS support the use of the Debt and Mental Health Evidence Form. This is already in use and by being a formal part of the Mental Health Moratorium eligibility process would:
  - Widen access to the Mental Health Moratorium through money advisers and mental health professionals making a joint assessment about eligibility depending on the individual's circumstance.
  - Offers simplicity, where both the Compulsory Treatment Orders (current proposed eligibility criteria) and the DMHEF end up at the same point – the Mental Health Moratorium
  - Reduces confusion among health professionals and creditors by using an already well-established and utilised form.
  - Can be used across all of Scotland without any risk of a postcode lottery.

## **Recovery Period**

- This Mental Health Moratorium is about Mental Health recovery first, debt recovery second
- This is one of the most compelling strengths of the Mental Health Moratorium as it focuses on mental health recovery BEFORE debt recovery, unlike England where the two elements are more rolled together
- The second part of the Mental Health Moratorium for debt recovery needs to be six months because:
  - It gives sufficient time to adjust back into a financial mindset and to get everything in order to sort out how the debt will be repaid.

- It is consistent with the current Statutory Moratorium period.
- Learnings from the English system show that most individuals need longer than 12 weeks, with many requiring as long as 6 months to deal with their finances post mental health crisis support. In England they are only afforded 30 days to deal with their debts post mental health crisis support
- By being designed in this way, the Mental Health Moratorium recognises the inextricable link between money and mental health as well as mental health and money.

## **Moratorium in England (Mental Health Crisis Breathing Space)**

The Mental Health Moratorium in Scotland is not the same as the one for England and Wales. This is due to the differences in the delivery of health in Scotland as well as learning from what hasn't worked in the English model:

- In England, NHS England has one Mental Health policy which applies to all; this is not the case in Scotland where there are different health boards and jurisdictions
- There are differences in health professionals and the roles they play between England and Scotland
- The Scottish Mental Health Moratorium focuses on Mental Health recovery BEFORE debt recovery, unlike England where the two elements of recovery are more rolled together.

## **Case Study**

An East of Scotland CAB reports case which demonstrates how the cost of living and low income can make client's situation extremely difficult day to day as well as exacerbate their mental health issues. Client was referred to CAB due to rent and council tax arrears. This followed after the client had to give up work due to both physical and mental health issues causing their debts to spiral. Client lives alone in council rented property and solely on benefit income following job loss. Client's poor mental health affected their ability to cope with day to day activities and struggled to deal with their finances. Client feels if they were able to get their mental health sorted, they would be able to move forward. Client is now receiving assistance with their mental health and now has a nurse supporting them. Client has applied for Adult Disability Payment and is currently awaiting a decision. With assistance from CAB, client is seeking to pursue MAP sequestration in order to get back on their feet and remove the deductions from benefits. Client feels this would assist their mental state as they would no longer be stressing about their debts.

### Money and Mental Health: Key Stats

- 1 in 2 people in problem debt also have a mental health problem and nearly one in five people with mental health problems are also in problem debt.
- Following the pandemic and cost of living crisis, it is estimated that as of September 2022, nearly 10 million people are over-indebted in the UK (Money Advice Trust, Impossible Choices)
- According to a survey conducted by the Money and Mental Health Policy Institute (November 2021) those with mental health issues were more likely to struggle with debts and priority bills.
- The Money and Mental Health Policy Institute also found that those with anxiety and depression have a median gross annual income of **£8400** less than those without a mental health condition.
- CAS research found that those with low incomes and in financial difficulty, 29% of found it difficult on their current income to manage their day to day lives. This is compared to just 14% in 2021
- 1 in 3 people with Mental Health issues who disclosed a Mental Health problem to a financial service or Local Authority, weren't offered any additional support. (The state we're in, MMHPI)
- In the Money and Mental Health Policy Institute's Cost of Living Report in December 2022 found 1 in 6 UK adults experienced suicidal thoughts due to the cost of living
- The Financial Conduct Authority's Financial Lives Survey in May 2023 found 1 in 2 UK adults (28.4m) were more anxious or stressed over their finances
- 59% of Scots have said the Cost of Living Crisis has had a negative impact on their mental health (See Me, Time to Talk Feb 2023)