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Dear Claire,

THE DEBT RECOVERY (MENTAL HEALTH MORATORIUM) (SCOTLAND) REGULATIONS 2024

I am pleased to be able to share a draft of the above regulations with the Committee as my predecessor, Tom Arthur, promised to do in his response to the Committee's report, and as stated during his Committee appearances.

The draft does not represent the final policy proposal. There is an opportunity for the Committee to feed in any immediate thoughts now, and there will then be a full public consultation which will in turn lead to refined regulations which will, in their turn, be subject to the Committee's scrutiny. But this draft does reflect extensive work undertaken to engage with stakeholders from all relevant sectors, building on the responses to the earlier consultation which itself was largely based on the mental health moratorium working group's report. As raised during the Stage 2 debate, the possibility of having a super-affirmative procedure may also assist with this level of engagement and scrutiny. I am considering bringing forward an amendment at Stage 3 of the Bill to build in such a procedure.

These draft regulations embody some significant changes to previous proposals in areas where the Committee showed special interest. The most important of these are detailed below:

- i) The eligibility criteria. We have listened to all those, including the Committee, who asked us to look at how we could make the moratorium available to more people without introducing either uncertainty or undermining the moratorium's special character. The draft regulations extend eligibility beyond those undergoing compulsory treatment to those voluntarily undergoing equivalent treatment either as a hospital inpatient or in the community under the case of an intensive home treatment team (or equivalent). Exactly how we set that out in the regulations may need further work, but the policy intent should be clear;

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- ii) The Register. I now suggest that we do adopt an approach similar to that in England and Wales, with the register only searchable by the individual, their adviser, relevant mental health professional, and known creditors. This change does require an alternative approach to protecting potential new creditors, so that the regulations also place an obligation on those in a moratorium not to seek new credit of more than £2000. Both these elements will need to be explored further in the consultation, and be a focus of early review, to ensure that restrictions are no more than is necessary to prevent potential abuse.

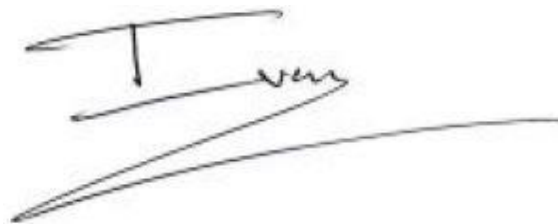
You will note that the expanded eligibility criteria will create a number of questions about how, for those undergoing voluntary treatment, we mark the point at which the individual's moratorium moves into the "recovery period". This is one area where we will need significant further input from practitioners in order to deliver a process that is not unnecessarily bureaucratic, and the current Regulation 11 represents only our early thinking.

I know the Committee will also be interested in the protections offered by the moratorium, and Mr Arthur had promised to let you know what response he received from UK Ministers on issues including pre-payment meters. Mr Arthur had yet to hear back in substance but I hope to have progress here before the public consultation.

Another outstanding issue of policy development – although it has limited impact on the regulations – is the extent to which delivery of the new moratorium should be limited to specialist money or debt advice organisations as opposed to being open to all qualified money advisers. I intend to take that forward through discussion with the main advice bodies once the regulations are out for consultation. You will see that the current regulations – simply as a placeholder – say that money advisers for the purpose of the new moratorium are those so approved by Accountant in Bankruptcy.

I would of course be happy to discuss any element of this with you further at this stage if that would help

Yours sincerely,



IVAN MCKEE

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

[2024] No.

INSOLVENCY

BANKRUPTCY

DEBT

**The Debt Recovery (Mental Health Moratorium) (Scotland)
Regulations 2024**

<i>Made</i>	- - - -	***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1(1) of the Bankruptcy and Diligence (Scotland) Act 2024(a) and all other powers enabling them to do so.

In accordance with section 1(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Debt Recovery (Mental Health Moratorium) (Scotland) Regulations 2024 and come into force on [INSERT DATE].

Interpretation

2. In these Regulations—

“AiB” has the meaning given in section 228 of the 2016 Act,

“money adviser” means a person approved by AiB who meets the conditions set out in section 4(2) of the 2016 Act,

[“community psychiatric nurse” means [],]

“creditor by assignation” means any person who, by assignation or operation of law, before or after the date of the application for a mental health moratorium has assumed or has the right to exercise the rights and duties of the creditor (or to whom the right to claim the whole or any part of a debt has passed),

(a) TBC.

“DAS register” means the Debt Arrangement Scheme Register maintained under regulation 18 of the 2011 Regulations,

“debt criteria” is to be construed in accordance with regulation 4(3),

“individual” means the person in relation to whom an application for a mental health moratorium is made,

“legal representative” means any guardian or power of attorney of the individual appointed or entitled to act for an adult during an adult’s incapacity, if the legal representation is recognised by the law of Scotland,

“mental health criteria” is to be construed in accordance with regulation 4(2),

“mental health officer” has the meaning given by section 329 of the 2003 Act,

“mental health professional” means a mental health officer, responsible medical officer, [community psychiatric nurse], or mental health professional of equivalent standing and professional qualification,]

“moratorium debt” has the meaning given in regulation 3,

“moratorium period” means the period from the start to the end of the mental health moratorium in accordance with regulation 9,

“the recovery period” means the period of 6 months within the moratorium period referred to in regulation 9(1)(b)(i),

“register” means the mental health moratorium register mentioned in regulation 7,

“responsible medical officer” means the approved medical practitioner appointed under section 230(1) of the 2003 Act,

“standard moratorium” means a moratorium on diligence which applies in relation to a person who gives notice under section 195(1) of the 2016 Act,

“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland,

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(a),

“the 1987 Act” means Debtors (Scotland) Act 1987(b),

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(c),

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(d),

“the 2011 Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(e),

“the 2016 Act” means the Bankruptcy (Scotland) Act 2016(f),

“the 1986 Act” means the Insolvency Act 1986(g).

Moratorium debt

3.—(1) A “moratorium debt” is any qualifying debt—

- (a) that was incurred by an individual in relation to whom a mental health moratorium is in place, and
- (b) that was owed by that individual at the point at which the application for the moratorium was submitted in accordance with regulation 5.

(2) A “qualifying debt” means any sum due by the individual—

- (a) constituted by—

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- (a) 1995 c.46.
 - (b) 1987 c.18.
 - (c) 2002 c.17.
 - (d) 2003 (asp 13).
 - (e) SSI 2011/141.
 - (f) 2016 (asp 21).
 - (g) 1986 c.45.

- (i) decree or document of debt,
 - (ii) judicial or contractual interest,
 - (iii) charges or penalties due under a contract on any default in respect, or breach of, that contract,
 - (iv) lease or tenancy agreement,
 - (v) enactment,
 - (b) 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,
 - (c) recoverable from the individual as enforcement expenses.
- (3) In these Regulations, “qualifying debt” excludes any sum due by the individual to the extent it is secured by a standard security, other than where that sum is included under paragraph (2)(b).

Mental health moratorium: eligibility

- 4.—(1) A mental health moratorium may apply to an individual who—
- (a) is habitually resident in Scotland;
 - (b) is not subject to a statutory debt solution (other than the standard moratorium), and
 - (c) meets the mental health criteria and the debt criteria.
- (2) An individual meets the mental health criteria if a mental health professional has confirmed that—
- (a) they are subject to—
 - (i) a short-term detention certificate granted under section 44(1) of the 2003 Act,
 - (ii) a compulsory treatment order made under section 64(4)(a) of the 2003 Act,
 - (iii) an interim compulsory treatment order made under section 65(2) of the 2003 Act,
 - (iv) a transfer for treatment direction made under section 136(2) of the 2003 Act,
 - (v) an assessment order made under section 52D(2) of the 1995 Act,
 - (vi) a treatment order made under section 52M(2) of the 1995 Act,
 - (vii) an interim compulsion order made under section 53(2) of the 1995 Act,
 - (viii) a compulsion order made under section 57A(2) of the 1995 Act,
 - (ix) a hospital direction under section 59A(2) of the 1995 Act, or
 - (b) they are voluntarily or otherwise receiving an equivalent crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental illness of a serious nature.
- (3) An individual meets the debt criteria if a mental health professional has confirmed that the individual—
- (a) has a problem or perceived problem with debt which—
 - (i) is contributing to or has contributed to the individual’s mental illness,
 - (ii) is likely to be contributing to or to have contributed to the individual’s mental illness,
 - (iii) is causing or is likely to cause the individual’s mental illness to deteriorate, or
 - (iv) appears to be hindering the individual’s recovery from mental illness, and
 - (b) is unable (or it would be counterproductive in terms of the individual’s recovery) to deal with their debt as a consequence of that individual’s mental illness.
- (4) In this regulation—
- (a) an individual is subject to a statutory debt solution if—
 - (i) the individual has been sequestered, and has not been discharged from that sequestration in accordance with the 2016 Act,

- (ii) the individual is a party to a protected trust deed under Part 14 of the 2016 Act,
 - (iii) the individual is a party to a debt payment programme in accordance with section 2 of the 2002 Act,
- (b) “specialist mental health service” means a [mental health service provided by an intensive home treatment team or any other equivalent specialist mental health crisis service.]

Mental health moratorium: application process

5.—(1) A money adviser may submit an application to AiB for a mental health moratorium in relation to an individual where—

- (a) that individual or, where appropriate, their legal representative has consented to the application being made, and
- (b) a mental health professional has confirmed to the money adviser in writing that the individual meets the mental health criteria and the debt criteria.

(2) The application must include the following information—

- (a) sufficient information to identify the individual,
- (b) whether the individual is already subject to a mental health moratorium under which the recovery period has started,
- (c) the name and contact details of the mental health professional who signs the application,
- (d) the name and contact details of the money adviser who signs the application,
- (e) the name and contact details of the individual’s nominated point of contact and, where appropriate, their legal representative (if different),
- (f) a signed statement from—
 - (i) the individual or, where appropriate, their legal representative confirming that they understand the effect of a mental health moratorium and consent to the application,
 - (ii) a mental health professional confirming that, to the best of their knowledge, the individual meets the mental health criteria and the debt criteria,
 - (iii) the debt adviser confirming that they—
 - (aa) have explained the effect of a mental health moratorium to the individual or, where appropriate, their legal representative, and
 - (bb) will provide debt advice to the individual [at a suitable point in the future].

(3) In addition to the information specified in paragraph (2), the application may include the following information where it is known by the person submitting the application and is relevant—

- (a) [the individual’s name, date of birth and usual residential address,]
- (b) the trading name or names and address of any business carried on by the individual,
- (c) details of the moratorium debts to which the individual is subject at the date of the application and the contact details of the creditors to whom each debt is owed,
- (d) details of any enforcement agent or other agent instructed by the creditor for the purpose of collection or enforcement of the debt including the agent’s contact details.

(4) AiB, upon receipt of an application for a mental health moratorium, may request supporting evidence from the relevant mental health professional who signed the application that the individual meets the mental health criteria and the debt criteria.

(5) Paragraph (6) applies if a money adviser becomes aware—

- (a) of any new information that could have been included in the original application; or
- (b) that any information provided to AiB by virtue of an application under paragraph (1) contains a mistake or inaccuracy.

(6) The money adviser must provide the updated information to AiB [as soon as reasonably practicable].

Notification and registration of mental health moratorium

6.—(1) Where AiB receives an application under regulation 5 and is satisfied that the mental health criteria and the debt criteria are met, AiB must, [without delay / by the end of the following working day]—

- (a) send a notification of the start date of the mental health moratorium to—
 - (i) the individual or, where appropriate, their legal representative,
 - (ii) the individual's nominated point of contact (if different),
 - (iii) the mental health professional who signed the application,
 - (iv) the money adviser who signed the application, and
 - (v) [every creditor of the individual or [enforcement agent instructed by such creditor] known to AiB [(which may be obtained by AiB undertaking a credit check on the individual)],
- (b) enter in the register mentioned in regulation 7—
 - (i) the name of the individual to whom the mental health moratorium relates, and
 - (ii) the date on which the moratorium started.

(2) The notifications referred to in paragraph (1)(a) must include general guidance about—

- (a) the effect of a mental health moratorium,
- (b) the mental health moratorium register,
- (c) the obligations on the individual who is subject to the moratorium in accordance with regulation 12 and the consequences for failing to comply with such obligations, and
- (d) the actions creditors must, may or may not take during the moratorium period in relation to the individual who is the subject of the moratorium and the consequences for creditors for taking or failing to take such action in accordance with regulation 14.

(3) Where AiB receives an application under regulation 5 and is not satisfied that the mental health criteria and the debt criteria are met, AiB must, [without delay / by the end of the following working day], send a notification of the decision that the criteria for a mental health moratorium have not been met to—

- (a) the individual or, where appropriate, their legal representative,
- (b) the individual's nominated point of contact (if different),
- (c) the mental health professional who signed the application, and
- (d) the money adviser who signed the application.

(4) A notification sent by virtue of paragraph (3) must include the reasons for AiB's decision.

Mental health moratorium: register

7.—(1) The register is the mental health moratorium register of matters relating to mental health moratoria which AiB must maintain in accordance with paragraph (2).

(2) AiB must ensure that only the following persons are entitled to information on the register which concerns or is relevant to an individual—

- (a) the individual or, where appropriate, their legal representative,
- (b) the mental health professional,
- (c) the debt adviser, and
- (d) relevant creditors.

(3) References to the mental health professional, the money adviser and relevant creditors in paragraph (2) are to those persons who have received notification in accordance with regulation 6(1)(a) or, where appropriate, a nominated alternative.

(4) Despite paragraph (2)(d), a creditor is not entitled to information which is on the register or is otherwise held by AiB about—

- (a) any other creditor of the individual,
- (b) any debt owed by the individual to any other creditor, or
- (c) the individual's usual place of residence where, in the opinion of AiB, sharing such information with a creditor would be likely to jeopardise the safety or welfare of that individual.

(5) In addition to the information specified in regulation 6(1)(b)—

- (a) where known, AiB must enter in the register the trading name or names and address of any business carried on by the individual,
- (b) where AiB receives a notification from a mental health professional that the recovery period has started under regulation 10(1) or otherwise becomes aware of that fact (for example following a request under regulation 11), AiB must [without delay] enter in the register the date on which the recovery period started,
- (c) where a moratorium has ended, AiB must [without delay] enter in the register the date on which the moratorium ended.

(6) AiB must delete from the register all information concerning a mental health moratorium where [X months] have elapsed from the date on which the moratorium ended under these Regulations.

(7) Where, in the opinion of AiB, inclusion of particular information in the register would be likely to jeopardise the safety or welfare of any person, such information may be excluded from the register.

(8) An individual, or their legal representative, may make an application to AiB under this regulation for specified information to be excluded from the register on the basis that its inclusion in the register would be likely to jeopardise the safety or welfare of any person.

Effect of a mental health moratorium

8.—(1) A mental health moratorium has the effect specified in this regulation in relation to a moratorium debt during a moratorium period.

(2) Subject to paragraph (6), during a moratorium period, it is not competent for a creditor—

- (a) to take any enforcement action specified in paragraph (3) in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise),
- (b) to require the individual to pay interest that accrues on a moratorium debt during a moratorium period,
- (c) to require an individual to pay fees, penalties or charges in relation to a moratorium debt that accrue during a moratorium period, or
- (d) to instruct an agent to take any of the actions specified in sub-paragraphs (a) to (c).

(3) The enforcement action which it is not competent for a creditor to take is as follows—

- (a) contacting a debtor for the purpose of enforcement of a moratorium debt,
- (b) serving a charge for payment in respect of any moratorium debt owed by the individual,
- (c) commencing or executing any diligence to enforce payment of any moratorium debt owed by the individual,
- (d) founding on any moratorium debt owed by the individual in presenting, or concurring in the presentation of, a petition for sequestration of the individual's estate,
- (e) where an arrestment mentioned in section 73J(1) of the 1987 Act has been granted in respect of funds due to the person, releasing funds to the creditor under subsection (2) of that section,

(4) The moratorium period applying in relation to the individual must be disregarded for the purpose of determining the period mentioned in section 73J(3).

(5) Paragraph (3)(a) does not prevent a creditor during a moratorium period from contacting or engaging with—

- (a) an individual's money adviser regarding a moratorium debt or a debt solution in respect of that individual,
- (b) an individual—
 - (i) for purposes unrelated to a moratorium debt including in relation to ongoing liabilities,
 - (ii) at the individual's request regarding a moratorium debt or a debt solution,
 - (iii) in response to a query or complaint raised by the individual,
 - (iv) in relation to any action or legal proceedings in a court or tribunal permitted under paragraph (6) or (7).
 - (v) if the creditor is otherwise under a statutory duty to do so.

(6) Despite paragraph (3)(c), it is competent to—

- (a) auction an article which has been attached in accordance with the 2002 Act where—
 - (i) notice has been given to the individual under section 27(4) of that Act, or
 - (ii) the article has been removed, or notice of removal has been given, under section 53 of that Act,
- (b) implement a decree of furthcoming,
- (c) implement a decree or order for sale of a ship (or of a share of a ship) or cargo, or
- (d) execute—
 - (i) an earnings arrestment,
 - (ii) a current maintenance arrestment, or
 - (iii) a conjoined arrestment order,which came into effect before the day on which the moratorium period in relation to the individual began.

(7) If the individual is already subject to a moratorium on diligence under section 197(2) of the 2016 Act when a mental health crisis moratorium is awarded, the standard moratorium will end with immediate effect when the mental health moratorium starts in accordance with [regulation 9(1)(a)].

Period of a mental health moratorium

9.—(1) The moratorium period which applies in relation to an individual is the period which—begins

- (a) on the day following the day on which an entry is made by AiB in the mental health moratorium register in accordance with regulation 6(1)(b) (notification and registration of mental health moratorium), and
- (b) ends on—
 - (i) the day which is 6 months after the day on which the individual stopped meeting the mental health criteria,
 - (ii) such earlier day as is mentioned in paragraph (2), or
 - (iii) if paragraphs (3), (5) or (7) applies, such later day as is determined in accordance with paragraphs (4),(6) or (8).

(2) The earlier day is the day on which, in relation to the individual who is subject to the mental health moratorium—

- (a) an entry is made in the register of insolvencies recording the award of sequestration of the individual's estate,

- (b) an entry is made in the register of insolvencies recording that a trust deed granted by the individual has been granted,
 - (c) an entry is made in the DAS register recording the approval of a debt payment programme in accordance with section 2 of the 2002 Act,
 - (d) [cancellation of the mental health moratorium takes effect under regulations 12 or 17],
 - (e) the mental health moratorium ends in accordance with regulation 18(1) as a result of the death of the individual.
- (3) [This paragraph applies if—
- (a) an application has been made for sequestration of the estate of the individual who is the subject of the mental health moratorium,
 - (b) the mental health moratorium has not ended by virtue of paragraph (2)(a), and
 - (c) no decision has been made by AiB under section 27(7)(b) of the 2016 Act.
- (4) Where paragraph (3) applies, the moratorium period ends on the day on which an entry is made in the register of insolvencies recording the award of sequestration of the estate.
- (5) This paragraph applies if—
- (a) an entry has been made in the register of insolvencies recording an application for a trust deed granted by or on behalf of the person who is the subject of the mental health moratorium to be granted the status of a protected trust deed, and
 - (b) the moratorium has not ended by virtue of paragraph (2)(b).
- (6) Where paragraph (5) applies, the moratorium period ends on the day on which an entry is made in the register of insolvencies recording that the trust deed granted by or on behalf of the person has been granted the status of protected trust deed.
- (7) This paragraph applies if—
- (a) the person who is the subject of the mental health moratorium has applied for approval of the debt payment programme in accordance with section 2 of the 2002 Act,
 - (b) the moratorium has not ended by virtue of paragraph (2)(c), and
 - (c) the application has not been determined.
- (8) Where paragraph (7) applies, the moratorium period ends on the day on which an entry is made in the DAS register recording the approval of the debt payment programme in accordance with section 2 of the 2002 Act.

The recovery period: notification requirements

10.—(1) A mental health professional who receives a notification under regulation 6(1)(b) or, where appropriate, a nominated alternative, must, without delay, notify AiB in writing as soon as they become aware that an individual no longer meets the mental health criteria (and the recovery period has accordingly started).

(2) Following a notification under paragraph (1), AiB must notify the money adviser and all known creditors—

- (a) that the recovery period has started,
- (b) of the anticipated end date for the mental health moratorium.

Mental health moratorium: review of eligibility criteria

11.—(1) Where the recovery period has not started in a particular mental health moratorium, AiB must, before the end of the period of 6 months beginning with the day on which the moratorium started, request from the relevant mental health professional—

- (a) confirmation of whether the individual still meets the mental health criteria, and
- (b) if the individual no longer meets the mental health criteria, confirmation of the date when the individual stopped meeting the criteria.

(2) Where AiB receives confirmation in accordance with paragraph (1)(b), AiB must notify the relevant money adviser and all known creditors—

- (a) that the recovery period has started,
- (b) of the anticipated end date for the mental health moratorium.

(3) Subject to paragraph (3), following a request under paragraph (1), AiB must then request from the relevant mental health professional the confirmation specified in paragraph (1) every 6 months beginning with the day on which the last request was made.

(4) AiB is not required to make further requests under paragraph (3) where either—

- (a) an individual has started the recovery period, or
- (b) a mental health professional has notified AiB in accordance with regulation 10(1).

(5) As part of any request under this regulation, AiB may request supporting evidence from the relevant mental health professional.

(6) Where AiB, following a request for supporting evidence under paragraph (5) is not satisfied that the mental health criteria continue to be met, AiB must, by the end of the following work day, send a notification of that decision to—

- (a) the individual or, where appropriate, their legal representative,
- (b) the individual's nominated point of contact (if different),
- (c) the mental health professional, and
- (d) the money adviser.

(7) A notification sent by virtue of paragraph (3) must include the reasons for AiB's decision.

(8) In this regulation references to the mental health professional and the money adviser are to those persons who received a notification under regulation 6(1)(a)(iii) or (iv) or, where appropriate, a nominated alternative.

Mental health moratorium: individuals' obligations

12.—(1) A mental health moratorium notified under regulation 6(1) is to be subject to the conditions specified in paragraph (2)

(2) The specified conditions are that an individual must—

- (a) pay a continuing liability when due for payment,
- (b) 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.

(3) A mental health moratorium may be cancelled by AiB where an individual fails without reasonable cause to satisfy a condition specified in paragraph (2).

(4) Where AiB proposes to cancel a mental health moratorium on the basis of paragraph (3), AiB must give written notice to—

- (a) the individual,
- (b) the mental health professional,
- (c) the money adviser, and
- (d) each creditor known to AiB.

(5) References in paragraph (4) to the mental health professional and the money adviser are to those persons who received a notification under regulation 6(1)(a)(iii) or (iv) or, where appropriate, a nominated alternative.

(6) AiB may not cancel a mental health moratorium until the expiry of a period of at least 28 days after the date on which notice is given under paragraph (4).

(7) AiB in determining whether to cancel a Mental Health Moratorium on the basis of paragraph (3) must have regard to—

- (a) any statement made by, or on behalf of, the individual,

- (b) the nature of any failure, and
- (c) any representations made by a mental health professional, a money adviser, creditor or any other interested person as regards the proposal.

(8) AiB in determining whether to cancel a mental health moratorium may have regard to any other factor that AiB considers appropriate in all the circumstances.

(9) Where AiB determines that a mental health moratorium should be cancelled, regulations 17(4) to (10) apply.

Creditor obligations: search for debt

13.—(1) A creditor who receives a notification of the start of a moratorium under regulation 6(1) must as soon as reasonably practicable undertake a reasonable search of their records to identify—

- (a) debt owed to the creditor by the individual to whom the moratorium relates, and
- (b) any creditor by assignment.

(2) The creditor must provide details to AiB of any debt owed by the individual which is identified by a search under paragraph (1).

(3) Where a creditor search identifies a creditor by assignment, the creditor must—

- (a) notify the creditor by assignment of the moratorium, and
- (b) provide contact details of the creditor by assignment to AiB.

Creditor obligations: consequences

14.—(1) Any action taken contrary to regulation 8 shall be null and void.

(2) Any creditor who knowingly takes action contrary to regulation 8 will be responsible for any losses or expenses incurred by the individual as a result of such action.

(3) Any creditor who fails to comply with regulation 13(2) or (3) as soon as reasonably practicable will be liable for any losses caused to the individual or, as the case may be, the creditor by assignment as a result.

Review of AiB decision: individuals

15.—(1) An individual, or, where appropriate, their legal representative, who has received a notification from AiB under regulation 6(3) or regulation 11(6) may request that AiB reviews the decision that the mental health criteria and debt criteria have not been met or, where appropriate, that mental health criteria do not continue to be met.

(2) A request under paragraph (1) must—

- (a) be made within the period of 14 days from the date of receipt of the notification,
- (b) be made in writing,
- (c) contain the following—
 - (i) a statement of the grounds on which the review is requested, and
 - (ii) evidence which supports the statement.

(3) Where AiB receives a request under paragraph (1), AiB—

- (a) must give written notice to—
 - (i) the mental health professional,
 - (ii) the money adviser,
 - (iii) each creditor known to AiB,
- (b) must have regard to any representations made by those persons specified under sub-paragraph (a) or any other interested person,

- (c) may request the views of any other mental health professional or money adviser,
- (d) must conduct the review before the end of the period of 28 days beginning with the day on which AiB received the request.

(4) Subject to paragraph (5), where, following a review under paragraph (3), AiB determines that the mental health criteria and debt criteria have been met, the notification requirements under regulation 6(1) apply and the mental health moratorium may start in accordance with these regulations.

(5) Where a review under paragraph (3) follows a notification under regulation 11(5) and AiB determines, following such review, that the mental health criteria continue to be met, the mental health moratorium may continue in accordance with these regulations.

(6) Where following a review under paragraph (3), AiB determines that the mental health criteria and debt criteria have not been met or, as the case may be the mental health criteria do not continue to be met, AiB must notify the following persons accordingly—

- (a) the individual or, where appropriate, their legal representative,
- (b) the individual's nominated point of contact (if different),
- (c) the mental health professional, and
- (d) the money adviser.

(7) The individual or their legal representative may appeal to the sheriff against any decision of AiB under paragraph (4) or (5), within 14 days beginning with the day on which notification of the decision is sent.

(8) Any decision of the sheriff following an appeal under paragraph (7) is final.

(9) References to the mental health professional and the money adviser in paragraphs (3)(a) and (6) are to those persons who signed the relevant application under regulation 5 or, where appropriate a nominated alternative.

Review of the mental health moratorium: creditors

16.—(1) A creditor who has received notification of a moratorium under regulation 6(1) may request that AiB reviews the moratorium to determine whether it should continue or be cancelled on one or both of the following grounds—

- (a) the moratorium unfairly prejudices the interests of the creditor (for example because the individual has sufficient funds to discharge their debts as they fall due),
- (b) there has been some material irregularity in relation to the application process (for example, the individual did not meet the mental health criteria or the debt criteria when the application was made).

(2) A request under paragraph (1) must—

- (a) be made either—
 - (i) within the period of [14] days beginning with the day on which the moratorium started,
 - (ii) within a period of [14] days beginning with the day on which a creditor is made aware of any new information which is material in determining whether the grounds in paragraph (1) apply].
- (b) be made in writing, and
- (c) contain the following—
 - (i) a statement of the grounds on which the review is requested, and
 - (ii) evidence which supports the statement.

(3) Where AiB receives a request under paragraph (1), AiB must—

- (a) give written notice to—
 - (i) the individual,

- (ii) the mental health professional,
 - (iii) the money adviser,
 - (iv) each creditor known to AiB,
- (b) have regard to any representations made by those persons specified under sub-paragraph (a) or any other interested person,
- (c) conduct the review before the end of the period of 28 days beginning with the day on which AiB received the request.

(4) In this regulation a reference to the mental health professional and the money adviser is to those persons who received a notification under regulation 6(1)(a)(iii) or (iv) or, where appropriate, a nominated alternative.

Cancellation of a mental health moratorium

17.—(1) Subject to paragraph (3), AiB must cancel a mental health moratorium if—

- (a) following a review under regulation 16, AiB considers there is sufficient evidence—
 - (i) that the moratorium unfairly prejudices the creditor’s interests, or
 - (ii) of material irregularity in relation to the application process,
- (b) the individual, or their legal representative, requests that AiB cancels the moratorium.

(2) AiB is not required to cancel a mental health moratorium if the individual’s personal circumstances would make the cancellation unfair or unreasonable.

(3) Paragraph (2) does not apply in circumstances where the individual requests that AiB cancels the mental health moratorium in accordance with paragraph (1).

(4) Prior to cancelling a mental health moratorium, AiB must—

- (a) consult the individual to the extent that AiB is able to do so, and
- (b) notify the individual of the cancellation.

(5) Where AiB has notified the individual of the cancellation in accordance with paragraph (4)(b), AiB must, [by the end of the following working day/ without delay]—

- (a) cause an entry to be made on the mental health moratorium register, and
- (b) send a notification of the cancellation of the moratorium to each creditor in respect of whom the cancellation takes effect.

(6) The cancellation takes effect on the day following the day on which AiB causes entry to be made on the register in accordance with paragraph (5)(a).

(7) A notification sent to a creditor in accordance with paragraph (5)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

(8) Where AiB does not cancel a mental health moratorium on the basis of paragraph (2), AiB must, where relevant, notify the creditor who requested the review of this decision.

(9) The individual, their legal representative or any affected creditor may appeal to the sheriff, against any decision of AiB to cancel the moratorium, within 14 days beginning with the day on which [notification of the decision is sent].

(10) Any decision of the sheriff following an appeal under paragraph (9) is final.

Death of individual during a moratorium period

18.—(1) Where the individual dies during a moratorium period, the moratorium ends on the day after the day on which the individual died.

(2) A debt adviser must, as soon as reasonably practicable after being informed or becoming aware of the death of the debtor, notify AiB of the death.

(3) Where AiB receives notification under paragraph (2), AiB must, [by the end of the following working day / without delay]—

- (a) cause an entry to be made on the mental health moratorium register, and
- (b) send a notification of the end of the mental health moratorium to each creditor who received notification of the moratorium under these Regulations.

(4) A notification sent to a creditor or agent in accordance with paragraph (3)(b) must—

- (a) specify the date on which the moratorium ended, and
- (b) state the reason for the end of the moratorium.

Notifications provided to and by the Secretary of State

19.—(1) Any notice or information provided by a money adviser to AiB under these Regulations must be sent electronically [by means of an electronic procedure established and maintained by AiB].

(2) Any information or notice sent electronically in accordance with paragraph (1) is taken to have been received on the day of transmission unless the contrary is shown.

(3) Where a provision of these regulations authorises or requires the sending of a notification by AiB under these Regulations, section 224A of the 2016 Act applies.

Interaction with standard moratorium on diligence

20.—(1) After section 195(2) of the 2016 Act (moratorium on diligence: notice of intention to make debtor application under section 2(1)(a)), insert—

“(2A) A person may not give notice under subsection (1) if that person is subject to or has been subject to a mental health moratorium by virtue of regulations made under section 1 of the Bankruptcy and Diligence (Scotland) Act 2024 in the immediately preceding [6 months].”.

(2) After section 198(2)(d) of the 2016 Act (period of moratorium), insert—

“(ca) an entry is made in the mental health moratorium register under regulation 6(1)(b) of the Debt Recovery (Mental Health Moratorium) (Scotland) Regulations 2024 that the person is subject to a mental health moratorium.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish a moratorium on debt recovery action by creditors against individuals habitually resident in Scotland who have a mental illness (a mental health moratorium).

Regulations 2 and 3 are provisions to assist with the interpretation of the regulations.

Regulation 4 sets out the mental health and debt eligibility criteria which apply to an individual who may wish to enter a mental health moratorium.

Regulations 5 and 6 make provision as to the mental health moratorium application and registration process which applies, as well as the notification requirements to ensure specified persons are made aware of the operation of a particular moratorium.

Regulation 7 requires AiB to maintain a mental health moratorium register to which only restricted persons will have access.

Regulations 8 and 9 make provision as to the effect and duration of a moratorium, including the specific debt enforcement action which creditors or their agents are not permitted to take whilst a moratorium is ongoing. There are two stages to a mental health moratorium: the mental health treatment period and the recovery period. Regulation 10 sets out the notification requirements which apply when an individual starts the recovery period.

Regulation 11 requires AiB to request confirmation at 6 month intervals from the relevant mental health professional that an individual continues to meet the mental health criteria.

Regulations 12 to 14 set out further requirements which are required of individuals and creditors during a moratorium and the consequences of not complying with such obligations including, in some cases, that the moratorium may be cancelled (subject to review procedures).

Regulation 15 permits an individual to seek a review of a decision that the eligibility criteria for a mental health moratorium have not been met.

Regulations 16 and 17 make provision as to the procedures which apply in order for a creditor to bring about a review and potential cancellation of a moratorium on the basis of material irregularity or that the moratorium unfairly prejudices the interests of the creditor. Regulation 18 sets out the process for the end of a moratorium following the death of an individual.

Regulation 19 makes provision about methods of communication and notification requirements under the regulations.

Regulation 20 makes consequential amendments to the standard moratorium under the Bankruptcy (Scotland) Act 2016, including an amendment in relation to the restrictions which apply to a person entering the standard moratorium when they have been subject to a mental health moratorium within the preceding [6 months].