

Greg Black  
Clerk  
Delegated Powers & Law Reform Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Date 14 June 2023

Dear Greg

### Bankruptcy and Diligence (Scotland) Bill

I refer to your letter of 7 June to Helen Webster, Head of Cabinet, Parliament and Governance Division within the Scottish Government, in which you drew attention to the comments of the Delegated Powers and Law Reform Committee in relation to the above Bill and specifically **Section 1(1): Moratorium on debt recovery action: debtors who have a mental illness**. I have been asked to reply, in my capacity as lead for officials' support for the Bill.

The Committee is correct to understand that it is intended that any mental health moratorium (MHM) resulting from this provision will be temporary. During a period of mental health crisis, it will temporarily prohibit creditors from taking specific actions to recover monies owed by the debtor. However, it will not extinguish the debt, which will ultimately remain the responsibility of the debtor.

The Committee is also correct that, notwithstanding the temporary nature of the proposed MHM:

- the Bill itself does not specify a maximum duration for the MHM;
- the delegated power in the Bill does not oblige Ministers through regulations to specify a time limit for the MHM, though it does provide them with the discretionary power to do so.

Against this background, I fully understand why the Committee has questions about the apparent lack of specification of the MHM's duration. Careful consideration has been, and continues to be, given to the issue of duration. Our current view, however, is that taking account of the essential purpose of the MHM and the particular circumstances of the client group for which it is to offer protection, a standard, one-size-fits-all approach might not be appropriate.

As stated in the Bill's Policy Memorandum [para 20], what is envisaged is "a bespoke moratorium protection" for a specific group of debtors, being those struggling with problem debt and serious mental health issues. Given the potential severity and complexity of the issues involved, and the associated uncertainties around prognosis and time required to focus on treatment for, or recovery from, any individual's serious mental illness, it was felt that using legislation to fix a standard expiry period for the protections, rather than allowing for a tailored approach reflecting a person's particular medical circumstances, could potentially be problematic.

With these considerations in mind – and taking account of the ongoing discussions in the expert Working Group which is advising us on the design of the MHM (and which seems to be moving towards favouring a two-stage approach, comprising an individually tailored period of treatment followed by a fixed period to give the individual time to settle and adjust, reflecting something of the approach already in place in England and Wales) – it was felt that it would not be right either to specify the length of the proposed MHM on the face of this Bill, or even necessarily to require a time period to be set in regulations, though that may prove to be appropriate, in due course.

As further stated in the Bill's Policy Memorandum [para 23], the Scottish Government's intention is that further work should be progressed in tandem with this Bill, in order to develop the details of the scheme. It is intended that Parliament will be kept in close touch with this work, which will cover a range of areas, including the duration of the protections afforded by the MHM. Indeed, the Minister has given a commitment that the report of the Working Group will be provided to the Economy and Fair Work Committee when it becomes available, which we anticipate being before the end of the summer recess. It is this report that will be the key driver for the regime that the Scottish Government eventually seeks to introduce although, of course, we will need to make our own assessments of its proposals and take account of any representations from other stakeholders. The Minister has also said that he is happy to keep the Committee abreast of those assessments and representations. He has further committed that, in addition to providing the Committee with such background analysis, which is what will inform the approach to regulations, he will ask officials to strive to ensure that draft regulations can be made available to Parliament for stage 3, if not earlier.

Our ongoing work will continue to be taken forward with crucial input from a variety of different professionals including those in the mental health and debt advice sectors, as well as groups or individuals with particular experiences. Equally, we are also conscious that any moratorium has a potential impact on the rights of creditors, and will be working to satisfy the requirement for the



MHM to be developed in such a way as to achieve a fair balance of rights between the creditor and the debtor. These considerations will form a key part of the policy development work on the MHM, including duration, which will be progressed alongside the Bill, and which will be informed by the forthcoming report of the expert Working Group.

I hope this response is helpful.

Yours sincerely,

A faint, handwritten signature in blue ink, appearing to read "Richard Dennis".



**Richard Dennis**  
**Chief Executive**

