

23rd May 2024

Claire Baker MSP
Economy and Fair Work Committee
Scottish Parliament
Edinburgh

Dear Claire

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

I am writing in relation to the above draft regulations that have been submitted to the Committee by the Minister for Public Finance.

I believe the main point that should be made about these regulations is they propose a model of Mental Health Moratorium that will fail to achieve its key purpose, which is to provide debtors who are suffering from a mental health crisis with a safe place where they can concentrate on improving their mental health.

The reason for this, is it fails to provide people with key protections from their creditors, primarily from being evicted from their home or having it repossessed. This will mean that anyone who has a Mental Health Moratorium and is facing that risk, will still have to seek advice and representation, meaning they will not be able to concentrate on improving their mental health. This is a key difference between what a Scottish Mental Health Moratorium will do and what an English and Welsh Mental Health Breathing Space solution does.

I fully understand that the argument is this is not necessary in a Scottish context as Scots Law contains other key protections, such as the reasonable defence that exist in Scottish housing law, that means a judge should only grant an eviction or repossession if it is reasonable to do so in all the circumstances. This, however, ignores a key point which is this protection is only available if you can seek advice and obtain representation at any court or tribunal case. Clearly someone suffering a mental health crisis, may not be able to do this, or the process of doing so, may worsen their mental health. They will also not have the certainty of knowing their home is safe whilst they are receiving their treatment, unlike tenants and homeowners in the rest of the UK, who will have that certainty whilst they are using an equivalent measure.



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Advice Talks Ltd (SC533215) is registered with the Information Commissioners Office (ZB190131) and is authorised by the Financial Conduct Authority to provide Debt Counselling and Adjusting Services (Registration Number: 951248). Alan McIntosh is an Approved Money Adviser for the purposes of the Debt Arrangement Scheme. You can get further free advice and assistance by visiting the Money & Pensions Service's [MoneyHelper](#) site.

Another observation I would make in relation to the model being proposed, is in some ways it contains less protections than a Statutory Moratorium does. The reason why is when you apply for a Statutory Moratorium it protects you for six months from diligence for all debts: past, present, and future. So, once you apply for a Statutory Moratorium if you were still unable to pay a continuing liability like rent or council tax, possibly as you are trying to get benefits sorted or find new employment, you cannot have diligence executed to recover that debt, even if you accrued it after you applied for your Statutory Moratorium.

This won't be the case for people with a Mental Health Moratorium, who will only be protected from diligence for debts that they owed up to the day they applied for the mental health moratorium. In addition to that if they are unable to pay a continuing liability during their Mental Health Moratorium, it can be revoked. This cannot happen for a Statutory Moratorium.

For this reason, I would argue considering the crisis that someone may be in and they may not be immediately able to pay their continuing liabilities, it may be advisable in many cases for people not to immediately apply for a Mental Health Moratorium and instead use a Statutory Moratorium in any initial period, at least until their situation and finances can be stabilised and they can pay all their continuing liabilities. The only downside of this approach would be interest and charges would not be stopped by a Statutory Moratorium, but this could be achieved by informally requesting creditors do this by possibly sending them a Debt and Mental Health Evidence Form. On balance, however, in this situation a Statutory Moratorium may be better as it would protect from all debts that may be getting recovered during the period of the Moratorium and there is no risk of having it cancelled. Also, it is far easier to apply for a Statutory Moratorium.

Another observation is bizarrely it prevents anyone who is already in a statutory debt solution from applying for a Mental Health Moratorium (they can apply for a Statutory Moratorium). I understand the thinking behind this (the person is already in a debt solution) but ignores the fact that because of their deteriorating mental health, many people may accrue further debts, even when in a formal debt solution, which are not covered by that debt solution (something that is quite common), and, therefore, may need the protections of a Mental Health Moratorium. Indeed, arguably they may also need protection from their Trustee in bankruptcy or protected trust deed (including the Accountant in Bankruptcy themselves).

Overall, I find the proposed model is disappointing. It lacks ambition, is not very attractive and will only help a very small number of people. It also fails to achieve its key purpose, of providing someone having a mental health crisis with a safe place that allows them to concentrate on their recovery.

To make it effective, considering the policy positions the Scottish Government have publicly taken, I would argue more has to be on the face of the Bill, so the matter can be debated and settled by the Parliament as a whole.

Yours Sincerely

Alan McIntosh
Approved Money Adviser



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