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STATUTORY INSTRUMENTS

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**2020 No. 1311**

**DEBT MANAGEMENT AND  
RELIEF, ENGLAND AND WALES**

**The Debt Respite Scheme (Breathing Space  
Moratorium and Mental Health Crisis Moratorium)  
(England and Wales) Regulations 2020**

*Made - - - - 17th November 2020  
Coming into force in accordance with regulation 1(2)  
to (7)*

The Treasury<sup>(1)</sup> in exercise of the powers conferred by section 7(2), (5)(a), (5)(c), (5)(d) and (6)(a) of the Financial Guidance and Claims Act 2018<sup>(2)</sup> make the following Regulations.

In accordance with section 7(8)(a) and (b) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament and Senedd Cymru.

In accordance with section 7(2) and (3) of that Act, the Treasury have received advice from the single financial guidance body on the establishment of a debt respite scheme and have taken that advice into account in making these Regulations.

**PART 1**

General provisions

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.

(2) With the exception of the provisions referred to in paragraphs (3) to (7), these Regulations come into force on 4th May 2021.

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(1) In accordance with section 26(2) of the Financial Guidance and Claims Act 2018, the reference to the Secretary of State in section 7(2) of that Act is to be read as a reference to the Secretary of State or the Treasury.

(2) 2018 c. 10.

(3) Sub-paragraph (b) of the definition of “lease” and the definition of “occupation contract” in regulation 2(1) come into force on the day that section 7 of the Renting Homes (Wales) Act 2016<sup>(3)</sup> comes into force.

(4) Regulation 7(7)(k)(i) comes into force on the day that section 157 of the Renting Homes (Wales) Act 2016 comes into force.

(5) Regulation 7(7)(k)(ii) comes into force on the day that section 181 of the Renting Homes (Wales) Act 2016 comes into force.

(6) Regulation 7(7)(k)(iii) comes into force on the day that section 187 of the Renting Homes (Wales) Act 2016 comes into force.

(7) Regulation 29(1)(j) and (k) comes into force on the day that Schedule AA1 to the Mental Capacity Act 2005<sup>(4)</sup> comes into force.

(8) These Regulations extend to England and Wales only.

(9) These Regulations apply in respect of debtors domiciled or ordinarily resident in England or Wales.

## Interpretation

2.—(1) In these Regulations—

“additional debt” has the meaning given in regulation 15(1);

“agent” is to be construed in accordance with regulation 12(6);

“approved mental health professional” means—

- (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under section 114(1) of the Mental Health Act 1983<sup>(5)</sup> by any local social services authority whose area is in England, and
- (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales;

“arrear” means any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of the application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability;

“bank holiday” means any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971<sup>(6)</sup>;

“bankruptcy petition” means a petition for a bankruptcy order made under Chapter 1 of Part 9 of the Insolvency Act 1986<sup>(7)</sup> by one or more of an individual’s creditors;

“breathing space moratorium” means a moratorium under Part 2;

“business day” means any day except a Saturday, Sunday, bank holiday, Christmas Day or Good Friday;

“capitalised mortgage arrears” means any arrears in relation to a mortgage that have been added to the outstanding balance to be paid over the duration of the mortgage;

“care co-ordinator” means—

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(3) [2016 anaw 1.](#)

(4) [2005 c. 9.](#)

(5) [1983 c. 20.](#) Section 114 was substituted by the Mental Health Act [2007 \(c. 20\)](#), section 18.

(6) [1971 c. 80.](#)

(7) [1986 c. 45.](#)

- (a) an individual with responsibility for co-ordinating care for a person with a mental disorder, as specified in the code of practice prepared by the Secretary of State in accordance with section 118(1) of the Mental Health Act 1983<sup>(8)</sup>, and
- (b) in relation to acting on behalf of a mental health services provider, an individual appointed in accordance with section 14(1) of the Mental Health (Wales) Measure 2010<sup>(9)</sup>;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“creditor by assignment” is to be construed in accordance with regulation 13(1);

“debt advice provider” has the meaning given in regulation 3;

“debt relief order” means an order under Part 7A of the Insolvency Act 1986<sup>(10)</sup>;

“debt solution” means an arrangement, scheme or procedure, whether statutory or not, the aim of which is to pay, discharge or liquidate some or all of a debtor’s debts;

“debtor” means—

- (a) in relation to a mental health crisis moratorium, the applicant or the person in relation to whom an application for a moratorium has been made,
- (b) in relation to a breathing space moratorium, the applicant;

“enforcement action” is to be construed in accordance with regulation 7(7);

“enforcement agent” means—

- (a) an individual authorised by section 63(2) of the Tribunals, Courts and Enforcement Act 2007<sup>(11)</sup> to act as an enforcement agent, or
- (b) an individual authorised in accordance with paragraph 2(1) of Schedule 7 to the Courts Act 2003<sup>(12)</sup> to act as an enforcement officer;

“eligibility criteria” is to be construed in accordance with regulations 24(3) and 30(3);

“FSMA” means the Financial Services and Markets Act 2000<sup>(13)</sup>;

“hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—

- (a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
  - (i) the exercise of an option to purchase by that person,
  - (ii) the doing of any other specified act by any party to the agreement,
  - (iii) the happening of any other specified event;

“individual voluntary arrangement” means a voluntary arrangement under Part 8 of the Insolvency Act 1986;

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<sup>(8)</sup> 1983 c. 20. Section 118(1) was substituted by the Mental Health Act 2007 (c. 12), Schedule 2, paragraph 9.

<sup>(9)</sup> 2010 nawm 7.

<sup>(10)</sup> 1986 c. 45. Part 7A was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 17, paragraph 1.

<sup>(11)</sup> 2007 c. 15.

<sup>(12)</sup> 2003 c. 39.

<sup>(13)</sup> 2000 c. 8.

“interest” means any interest charged by a creditor in relation to a moratorium debt;

“interim order” means an interim order under section 252(1) of the Insolvency Act 1986;

“joint debtor” means—

- (a) except where sub-paragraph (b) applies, a person who is—
  - (i) jointly or severally liable, or
  - (ii) jointly and severally liable,

with a debtor for a moratorium debt;

- (b) this paragraph applies where the liability referred to in sub-paragraph (a) arises solely as a result of an indemnity or guarantee provided by the person and the person has no other liability in relation to the moratorium debt;

“lease” means—

- (a) a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease tenancy, or assignment, or
- (b) an occupation contract;

“mental disorder” means any disorder or disability of the mind;

“mental health crisis moratorium” means a moratorium under Part 3;

“mental health crisis treatment” is to be construed in accordance with regulation 28(2);

“mental health nurse” means a person registered in Sub-Part 1 of the Nurses’ Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001<sup>(14)</sup> and who is so registered with an entry indicating their field of practice is mental health or learning disabilities nursing;

“mental health services provider” means—

- (a) the Welsh Ministers,
- (b) a local health board established under section 11 of the National Health Service (Wales) Act 2006<sup>(15)</sup> for an area which includes a principal area in Wales within the meaning of section 20 of the Local Government Act 1972<sup>(16)</sup>,
- (c) a county council in Wales, or
- (d) a county borough council in Wales;

“midway review” means a review of a breathing space moratorium carried out under regulation 27(1);

“moratorium” means, unless otherwise stated, a breathing space moratorium or a mental health crisis moratorium;

“moratorium debt” is to be construed in accordance with regulation 6;

“moratorium period” means the period from the start of a moratorium to the end of the moratorium;

“nominated point of contact” means—

- (a) an approved mental health professional,
- (b) a care co-ordinator, or
- (c) a mental health nurse,

who can provide the confirmation required in regulation 33(1);

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<sup>(14)</sup> S.I. 2002/253. Article 5(1) was amended by S.I. 2018/838, Schedule 1, paragraphs 1 and 4(a).

<sup>(15)</sup> 2006 c. 42.

<sup>(16)</sup> 1972 c. 70. Section 20 was amended by the Local Government (Wales) Act 1994 (c. 19), section 1(1).

“non-eligible debt” has the meaning given in regulation 5(4);

“occupation contract” has the meaning given in section 7 of the Renting Homes (Wales) Act 2016<sup>(17)</sup>;

“ongoing liabilities” means any payment, other than in respect of a payment shortfall, which is due in relation to—

- (a) a secured credit agreement where the obligation of the debtor to repay is secured by a mortgage on land used by the debtor as their primary residence,
- (b) a lease in relation to a property used by a debtor as their primary residence,
- (c) an insurance agreement,
- (d) taxes, duties and national insurance contributions,
- (e) local taxes to fund local authority expenditure and rates, or
- (f) the supply of water, sewerage, electricity, gas, heating oil or solid fuel;

“qualifying debt” is to be construed in accordance with regulation 5;

“register” means, unless otherwise indicated in this paragraph, the register of matters relating to moratoria maintained by the Secretary of State under regulation 35(1)(b);

“representative” means—

- (a) a person who has been granted—
  - (i) an enduring power of attorney in accordance with such of the regulations mentioned in paragraph 2 of Schedule 4 to the Mental Capacity Act 2005 as applied when the enduring power of attorney was executed, or
  - (ii) a lasting power of attorney in respect of the debtor’s property and affairs in accordance with section 9(1)(b) of the Mental Capacity Act 2005,
- (b) a deputy appointed by the court in respect of the debtor’s property and affairs in accordance with section 16(2)(b) of the Mental Capacity Act 2005, or
- (c) a person appointed as a guardian under the Guardianship (Missing Persons) Act 2017<sup>(18)</sup>;

“secured credit agreement” means an agreement under which a creditor provides credit to a debtor and the agreement provides for the obligation of the debtor to repay to be secured—

- (a) by a mortgage on land,
- (b) on assets whose value at least equals the amount of debt, or
- (c) on a letter of credit or guarantee;

“secured debt” means—

- (a) a secured credit agreement,
- (b) a hire-purchase agreement, or
- (c) a conditional sale agreement;

“social worker” means—

- (a) a social worker registered in the register of social workers in England maintained under section 39(1) of the Children and Social Work Act 2017<sup>(19)</sup>, or
- (b) a social worker registered in the register of social workers in Wales maintained under section 80(1) of the Regulation and Inspection of Social Care (Wales) Act 2016<sup>(20)</sup>;

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<sup>(17)</sup> 2016 anaw 1. Section 7 is not yet in force.

<sup>(18)</sup> 2017 c. 27.

<sup>(19)</sup> 2017 c. 16.

<sup>(20)</sup> 2016 anaw 2.

“universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012<sup>(21)</sup>.

(2) In these Regulations references to a debtor include the debtor’s representative.

### **Meaning of debt advice provider**

3.—(1) In these Regulations a “debt advice provider” is—

- (a) an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(22)</sup>, or
- (b) a local authority.

(2) In this regulation—

- (a) “authorised person” means a person who is authorised for the purposes of FSMA;
- (b) “local authority”, in relation to England, means a county council, a London borough council, a district council, the Common Council of the City of London, or the Council of the Isles of Scilly, in relation to Wales, means a county council, a county borough council or a community council;
- (c) “Part 4A permission” has the meaning given in section 55A(5) of FSMA;
- (d) “regulated activity” is to be construed in accordance with section 22 of FSMA.

### **Debt advice provider fees and referrals**

4.—(1) A debt advice provider must not charge a debtor a fee in connection with a moratorium.

(2) A debt advice provider may refer a debtor to another debt advice provider, if the debt advice provider considers it is appropriate to do so.

(3) Where a debt advice provider accepts a referral of a debtor they must, by the end of the following business day, provide a notification that they have accepted the referral to—

- (a) the Secretary of State, and
- (b) the debtor or (as the case may be) the debtor’s nominated point of contact.

(4) Where the Secretary of State receives a notification from a debt advice provider in accordance with paragraph (3)(a), the Secretary of State must, by the end of the following business day, send a notification of the referral to each creditor and agent who received notification of a moratorium in relation to the debtor under these Regulations.

(5) A referral of a debtor to a debt advice provider takes effect in relation to the obligations of the debt advice provider under these Regulations on the first business day following the day on which the debt advice provider accepts the referral.

### **Qualifying debt**

5.—(1) A “qualifying debt” means any debt or liability other than non-eligible debt.

(2) A debt is a qualifying debt for the purpose of these Regulations whether or not it is entered into, or due to be paid or repaid, before these Regulations come into force.

(3) A qualifying debt includes—

- (a) any amount which a debtor is liable to pay under or in relation to—
  - (i) an order or warrant for possession of the debtor’s place of residence or business,

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<sup>(21)</sup> 2012 c. 5.

<sup>(22)</sup> S.I. 2001/544. Article 39E was inserted by S.I. 2013/1881, article 5.

- (ii) a court judgment, or
- (iii) a controlled goods agreement;
- (b) any debt owed or liability payable to the Crown.
- (4) In these Regulations “non-eligible debt” means—
  - (a) secured debt which does not amount to arrears in respect of secured debt,
  - (b) non-eligible business debt,
  - (c) any debt which a debtor incurred by means of any fraud or fraudulent breach of trust by the debtor,
  - (d) any liability in respect of a fine imposed by a court for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury,
  - (e) any obligation arising under a confiscation order made under—
    - (i) section 1 of the Drug Trafficking Offences Act 1986(23) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Drug Trafficking Act 1994(24),
    - (ii) section 2 of the Drug Trafficking Act 1994(25) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002(26),
    - (iii) section 1 of the Criminal Justice (Scotland) Act 1987(27) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(28),
    - (iv) section 71 of the Criminal Justice Act 1988(29) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002, or
    - (v) Parts 2, 3 or 4 of the Proceeds of Crime Act 2002,
  - (f) any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance assessment or maintenance calculation made under the Child Support Act 1991(30),
  - (g) any obligation arising from a payment out of the social fund by way of crisis loan or budgeting loan under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992(31) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Welfare Reform Act 2012,
  - (h) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student loan and which the debtor receives whether before or after the moratorium starts,

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(23) 1986 c. 32. Section 1 was repealed by the Drug Trafficking Act 1994 (c.37), Schedule 3, paragraph 1 but saved by the Drug Trafficking Act 1994 (c. 37), Schedule 2, paragraph 2.

(24) 1994 c. 37.

(25) 1994 c. 37. Section 2 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(e) and 13(b).

(26) 2002 c. 29.

(27) 1987 c. 41. Section 1 was repealed by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 5, paragraph 1 but saved by Schedule 3 to that Act.

(28) 1995 c. 40.

(29) 1988 c. 33. Section 71 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(a) and 13(a).

(30) 1991 c. 48. “maintenance calculation” was substituted for “maintenance assessment” by section 1(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) in relation to certain cases in accordance with S.I. 2003/192.

(31) 1992 c. 4.

- (i) any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part 1 of the Consumer Protection Act 1987<sup>(32)</sup>, being in either case damages in respect of the death of or personal injury (including any disease or other impairment of physical or mental condition) to any person,
  - (j) a payment on account of universal credit under regulations 4 or 11 of the Social Security (Payments on Account of Benefit) Regulations 2013<sup>(33)</sup>,
  - (k) any liability in respect of council tax for a financial year, except where—
    - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
    - (ii) a reminder notice has been served on the debtor under regulation 23(1) of the Council Tax (Administration and Enforcement) Regulations 1992<sup>(34)</sup>,
  - (l) any liability in respect of non-domestic rates for a financial year, except where—
    - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
    - (ii) a further notice has been served on the debtor under regulation 8(1) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989<sup>(35)</sup>.
- (5) In paragraph (4)(c), fraud includes any amounts owed by a debtor as a result of supplies taken illegally of gas under paragraph 9 of Schedule 2B to the Gas Act 1986<sup>(36)</sup> or electricity under paragraph 4 of Schedule 6 to the Electricity Act 1989<sup>(37)</sup>.
- (6) In this regulation—
- (a) “controlled goods agreement” means an agreement under paragraph 13(4) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007;
  - (b) “family proceedings” means—
    - (i) proceedings in the family court, and
    - (ii) family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984<sup>(38)</sup>;
  - (c) “fine” includes—
    - (i) any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction, and
    - (ii) in relation to a fine imposed for an offence, a reference to a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985<sup>(39)</sup> (criminal courts charge), whether on conviction or otherwise,
 and includes any interest on the fine and any penalties or charges incurred in connection with it;

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<sup>(32)</sup> 1987 c. 43.

<sup>(33)</sup> S.I. 2013/383.

<sup>(34)</sup> S.I. 1992/613. Regulation 23 was amended by S.I. 1994/505, regulation.3 and S.I. 1997/393.

<sup>(35)</sup> S.I. 1989/1058. Regulation 8 was amended by S.I. 1992/1512, S.I. 1993/616, S.I. 2010/1656, S.I. 2010/2222, S.I. 2011/1665, and S.I. 2012/24.

<sup>(36)</sup> 1986 c. 44. Paragraph 9 of Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2 and amended by the Utilities Act 2000 (c. 27), Schedule 6, Part 1, paragraph 2(1) subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

<sup>(37)</sup> 1989 c. 29. Paragraph 4 of Schedule 6 was substituted by the Utilities Act 2000 (c. 27), Schedule 4, paragraph 1 subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

<sup>(38)</sup> 1984 c. 42.

<sup>(39)</sup> 1985 c. 23. Section 21A was inserted by the Criminal Justice and Courts Act 2015 (c. 2), section 54(1).



- (d) “non-eligible business debt” means debt incurred in connection with a business carried on by a debtor where the debtor at the point of the application for a moratorium and for the purpose of that business—
  - (i) is registered under the Value Added Tax Act 1994(40), or
  - (ii) is a partner in a partnership with any other person,and the debt solely relates to the business carried on by the debtor;
- (e) “partnership” means any relation which subsists between persons carrying on a business in common with a view of profit other than any relation between members of any company or association which is—
  - (i) registered under the Companies Act 2006(41), or
  - (ii) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;
- (f) “student loan” means a loan made under –
  - (i) regulations made under section 22(1) of the Teaching and Higher Education Act 1998(42), or
  - (ii) the Education (Student Loans) Act 1990(43), or that Act as it continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998, by an order made under section 46(4) of that Act.

### **Moratorium debt**

- 6. A “moratorium debt” is any qualifying debt—
  - (a) that was incurred by a debtor in relation to whom a moratorium is in place,
  - (b) that was owed by the debtor at the point at which the application for the moratorium was made, and
  - (c) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.

### **Effect of a moratorium**

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

(2) Subject to paragraph (3), during a moratorium period a creditor may not, in relation to any moratorium debt, take any of the steps specified in paragraph (6) in respect of the debt unless—

- (a) these Regulations specify otherwise, or
- (b) the county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.

(3) A court or tribunal may not give permission for a creditor or agent to take any of the steps specified in paragraph (6)(a) or (b).

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a court or tribunal may—

- (a) determine an application for permission to take a step specified in paragraph (6)(c) or (d) in any way that it thinks fit,

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(40) 1994 c. 23.

(41) 2006 c. 46.

(42) 1998 c. 30.

(43) 1990 c. 6.

- (b) give permission subject to such conditions as it thinks fit, and
  - (c) make such orders as may be necessary to give effect to the determination of the application.
- (5) A court or tribunal may only grant permission under paragraph 2(b) for a creditor or agent to take a step specified in paragraph (6)(c) or for a creditor to instruct an agent to take a step specified in paragraph (6)(c) where the court considers that—
- (a) it is reasonable to allow the creditor or their agent to take the step, and
  - (b) the step will not—
    - (i) be detrimental to the debtor to whom the moratorium relates, or
    - (ii) significantly undermine the protections of the moratorium.
- (6) The steps mentioned in paragraph (2) that a creditor is prevented from taking are any steps to—
- (a) require a debtor to pay interest that accrues on a moratorium debt during a moratorium period,
  - (b) require a debtor to pay fees, penalties or charges in relation to a moratorium debt that accrue during a moratorium period,
  - (c) take any enforcement action in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise), or
  - (d) instruct an agent to take any of the actions mentioned in sub-paragraphs (a) to (c).
- (7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt—
- (a) take a step to collect a moratorium debt from a debtor,
  - (b) take a step to enforce a judgment or order issued by a court or tribunal before or during a moratorium period regarding a moratorium debt,
  - (c) enforce security held in respect of a moratorium debt,
  - (d) obtain a warrant,
  - (e) subject to regulation 12(4)(d), sell or take control of a debtor’s property or goods,
  - (f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment of a moratorium debt,
  - (g) make an application for a default judgment in respect of a claim for money against the debtor,
  - (h) take steps to install a pre-payment meter under paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986<sup>(44)</sup> or paragraph 2(1)(a) of Schedule 6 to the Electricity Act 1989<sup>(45)</sup> to take payments in respect of a moratorium debt, or use a pre-payment meter already installed to take such payments, unless a debtor had provided their consent for the installation of the pre-payment meter before the moratorium started,
  - (i) take steps to disconnect a debtor’s premises from a supply of gas under paragraph 7(3)(b) of Schedule 2B to the Gas Act 1986 or electricity under paragraph 2(1)(b) of Schedule 6 to the Electricity Act 1989 unless the debtor had taken the supply of gas or electricity illegally,
  - (j) serve a notice to take possession of a dwelling-house let to a debtor on grounds 8, 10 or 11 in Schedule 2 to the Housing Act 1988<sup>(46)</sup> or take possession of a dwelling-house let to a debtor having served such a notice,

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<sup>(44)</sup> 1986 c. 44. Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2.

<sup>(45)</sup> 1989 c. 29.

<sup>(46)</sup> 1988 c. 50.

- (k) serve a notice to take possession of a dwelling let to a debtor or take possession of a dwelling let to a debtor having served such a notice—
    - (i) on the ground of breach of contract specified in section 157 of the Renting Homes (Wales) Act 2016(47) where that breach relates to rent arrears, or
    - (ii) on the grounds specified in section 181(2) of the Renting Homes (Wales) Act 2016(48), or
    - (iii) on the grounds specified in section 187(2) of the Renting Homes (Wales) Act 2016(49),
  - (l) contact a debtor for the purpose of enforcement of a moratorium debt,
  - (m) make an application in respect of a debtor for commitment to prison under regulation 16 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989(50) or regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992(51), or
  - (n) take any of the steps in this paragraph in relation to a joint debtor.
- (8) For the purposes of paragraph (7)(f), legal proceedings against a debtor includes a bankruptcy petition.
- (9) Where a moratorium debt is a secured debt, paragraph (6)(a) applies only to interest that accrues on any arrears on the debt during a moratorium period.
- (10) After the end of a moratorium period, neither a creditor nor their agent is entitled to—
- (a) require a debtor to pay interest, fees, penalties or charges referred to in paragraph (6)(a) and (b) that accrued during the moratorium period, or
  - (b) treat the non-payment during the moratorium period by the debtor of interest, fees, penalties or charges as a default by the debtor under, or a breach of, the agreement between the debtor and the creditor.
- (11) Subject to paragraph (13)(c), to the extent it applies to a moratorium debt, during a moratorium period, the Secretary of State and the Commissioners for Revenue and Customs must not direct that a new arrangement should be put in place for a debtor’s benefit to be paid, wholly or in part, to a third party under regulation 35 of the Social Security (Claims and Payments) Regulations 1987(52).
- (12) Any action taken contrary to this regulation shall be null and void.
- (13) Nothing in this regulation affects the following to the extent that they relate to a debtor—
- (a) a charging order made before the start of the moratorium under the Charging Orders Act 1979(53) or regulations 50 and 51 of the Council Tax (Administration and Enforcement) Regulations 1992,
  - (b) an attachment of earnings order made before the start of the moratorium under the Attachment of Earnings Act 1971(54) or regulation 37 of the Council Tax (Administration and Enforcement) Regulations 1992,
  - (c) a deduction from earnings made under—

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(47) 2016 anaw 1. Sections 157 is not yet in force.

(48) 2016 anaw 1. Section 181 is not yet in force.

(49) 2016 anaw 1. Section 187 is not yet in force.

(50) S.I. 1989/1058. Regulation 16 was amended by S.I. 1992/474, regulation 3(2)(a), S.I. 1993/616, Schedule 2(2), paragraph 1, S.I. 1998/3089, regulation 5(1) and S.I. 2014/600, Schedule 1(1), paragraph 2(1)(d).

(51) S.I. 1992/613. Regulation 47 was amended by S.I. 1994/505, regulation 6, S.I. 2014/600, Schedule (1), paragraph 3(e) and S.I. 2019/220, regulation 2(2).

(52) S.I. 1987/1968.

(53) 1979 c. 53.

(54) 1971 c. 32.

- (i) Parts 8 or 8A of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988<sup>(55)</sup>,
  - (ii) Part 3 of the Social Security Administration Act 1992<sup>(56)</sup>, or
  - (iii) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013<sup>(57)</sup>,
- where a deduction notice has been served before the start of the moratorium under that Act or those Regulations, or
- (d) the debtor's universal credit paid, wholly or in part, to a third party under regulation 60 of and Schedules 6 and 7 to the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013<sup>(58)</sup>.

(14) In this regulation, "benefit" means any payment made to a debtor under the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995<sup>(59)</sup>, the Welfare Reform Act 2007<sup>(60)</sup> or the Welfare Reform Act 2012.

(15) This regulation is subject to regulation 11.

#### **Extension of limitation periods because of a moratorium**

8.—(1) This regulation applies where—

- (a) a limitation time limit relates to a right of action in respect of a moratorium debt,
- (b) a moratorium in relation to the debt starts before the limitation time limit expires, and
- (c) if not extended by this regulation, the limitation time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

(2) For the purposes of bringing an action in respect of a moratorium debt, the limitation time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) Where more than one limitation time limit applies in relation to a right of action in respect of a moratorium debt, the extension by paragraph (2) of one of those time limits does not affect the others.

(4) In this regulation, "limitation time limit" means any time limit applicable, whether under the Limitation Act 1980<sup>(61)</sup> or any other enactment, to the bringing of an action.

#### **Extension of other deadlines because of a moratorium**

9.—(1) This regulation applies where—

- (a) an enforcement time limit relates to the taking of enforcement action in respect of a moratorium debt by a creditor or an agent acting by or on behalf of a creditor,
- (b) a moratorium in relation to the debt starts before the enforcement time limit expires, and
- (c) if not extended by this regulation, the enforcement time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

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<sup>(55)</sup> S.I. 1988/664. Regulation 29A was inserted by S.I. 2013/384, article 31(9).

<sup>(56)</sup> 1992 c. 5. Section 75(1) was amended by the Social Security Administration (Fraud) Act 1997 (c. 47). Part 3 was amended by the Welfare Reform Act 2012 (c. 5) but some of those amendments are not yet in force.

<sup>(57)</sup> S.I. 2013/384. Part 6 was amended by S.I. 2015/499.

<sup>(58)</sup> S.I. 2013/380. Regulation 60 was amended by S.I. 2017/725, Schedule 5(1), paragraph 8(b) subject to transitional provisions in regulations 19, 19A and 20 of that instrument.

<sup>(59)</sup> 1995 c. 18.

<sup>(60)</sup> 2007 c. 5.

<sup>(61)</sup> 1980 c. 58.

(2) For the purposes of taking enforcement action in respect of the debt, the enforcement time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) In this regulation, “enforcement time limit” means a time limit—

- (a) by which a creditor or (as the case may be) an agent is legally obliged to take enforcement action in respect of a moratorium debt (or would be so obliged but for the existence of the moratorium in relation to the debt), and
- (b) which is not a limitation time limit (within the meaning of regulation 8) relating to a right of action in respect of the debt.

### **Existing legal proceedings at the start of a moratorium**

**10.**—(1) If at the start of a moratorium a creditor to whom a moratorium debt is owed has a bankruptcy petition or any other action or other proceeding in any court or tribunal pending in relation to a moratorium debt, then the creditor must notify the court or tribunal of the moratorium.

(2) After a court or tribunal has received a notification referred to in paragraph (1) or is otherwise made aware of a moratorium—

- (a) any bankruptcy petition in relation to a moratorium debt must be stayed by the court until the moratorium ends or is cancelled, and
- (b) the court or tribunal must deal with any other action or proceeding in relation to a moratorium debt in accordance with this regulation.

(3) Subject to paragraph (5), if at the start of a moratorium any action or proceeding that relates to a moratorium debt is pending in a court or tribunal then such action or proceeding may continue until the court or tribunal makes an order or judgment in conclusion of such action or proceeding.

(4) Where a debtor makes an admission before or during a moratorium in connection with an action or other proceeding relating to a moratorium debt, a creditor who is a party to the action or proceeding may enter judgment in that action or proceeding during the moratorium if they would otherwise be entitled to do so.

(5) Subject to paragraph (7), during a moratorium a court or tribunal must take all necessary steps to ensure that any action or proceeding to enforce a court order or judgment concerning a moratorium debt does not progress during the moratorium period.

(6) For the purpose of paragraph (5), the progression of an action or proceeding includes (but is not limited to)—

- (i) holding a hearing during a moratorium period,
- (ii) making or serving an order or warrant, writ of control, writ of execution or judgment summons, and
- (iii) instructing an enforcement agent to serve an order, warrant, writ of control, writ of execution or judgment summons.

(7) This regulation does not prevent a court or tribunal from sending notices or correspondence to a debtor in relation to an action or proceeding.

(8) This regulation is subject to regulation 7(2)(b).

### **Contact between creditor or agent and debtor during a moratorium**

**11.**—(1) During a moratorium period neither a creditor nor the creditor’s agent must contact a debtor in relation to the enforcement of a moratorium debt, including to demand payment or as a precursor to starting any legal proceedings against the debtor in connection with the moratorium debt, save as provided for in paragraph (2).

- (2) This regulation does not prevent a creditor or an agent during a moratorium period from contacting or engaging with—
- (a) a debtor’s debt advice provider regarding a moratorium debt or a debt solution in respect of the debtor,
  - (b) a debtor—
    - (i) for purposes unrelated to a moratorium debt including in relation to ongoing liabilities or non-eligible debt,
    - (ii) at the debtor’s request regarding a moratorium debt or a debt solution,
    - (iii) in response to a query or complaint raised by the debtor,
    - (iv) in relation to any action or legal proceedings in a court or tribunal permitted under regulation 10, or
    - (v) if the creditor or agent is otherwise required to do so under—
      - (aa) the Consumer Credit Act 1974<sup>(62)</sup>, or
      - (bb) any rules made under Part 9A of FSMA<sup>(63)</sup>.

#### **Agent appointed by creditor**

**12.—**(1) A creditor who has appointed an agent to act on their behalf in relation to a moratorium debt and who receives a notification under these Regulations must notify the agent of the moratorium and its effect.

(2) Subject to paragraph (3), any creditor who fails to notify their agent in accordance with paragraph (1), or fails to do so as soon as reasonably practicable, will be responsible for any losses incurred by a debtor or the agent as a result of the creditor’s failure.

(3) If an agent of a creditor receives a notification of a moratorium under these Regulations, the creditor will not be liable for any losses incurred by the agent that the agent could have avoided after the earliest of the date on which the agent actually receives, or the agent is deemed to have received, the notification.

(4) During a moratorium period, an enforcement agent appointed in relation to a moratorium debt who is notified of a moratorium or is otherwise aware that a moratorium is in place in relation to a debtor must not in relation to any moratorium debt—

- (a) give notice to the debtor under paragraph 7 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007,
- (b) visit the debtor’s place of residence or business for the purpose of taking control of goods,
- (c) take control of goods,
- (d) sell goods belonging to the debtor unless the enforcement agent took possession of the goods prior to the start of the moratorium, or
- (e) require the debtor to pay fees, penalties or charges that accrue during a moratorium period relating to the storage of goods seized before the start of the moratorium.

(5) After the end of a moratorium period, an enforcement agent is not entitled to require a debtor to pay the fees, penalties or charges referred to in paragraph (4)(e) that accrued during the moratorium period.

- (6) For the purpose of these Regulations, “agent” includes—
- (a) an enforcement agent,

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<sup>(62)</sup> 1974 c. 39.

<sup>(63)</sup> 2000 c. 8. Section 137A was substituted by section 24 of the Financial Services Act 2012 (c. 21), section 24(1) and amended by S.I. 2018/1115, regulation 7(6).

(b) a solicitor, or

(c) a person appointed to collect a moratorium debt on behalf of a creditor.

(7) In this regulation “take control of goods” is to be construed in accordance with paragraph 13(1) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

### **Meaning of creditor by assignment**

**13.—**(1) In these Regulations references to a creditor as a person to whom a qualifying debt is owed by a debtor include a reference to any person who, by assignment or operation of law, before or after the date of the application for a moratorium has—

(a) assumed or has the right to exercise the rights and duties of the creditor, or

(b) to whom the right to claim the whole or any part of the debt has passed,

(a “creditor by assignment”).

(2) In these Regulations, “assignment”, in relation to Scotland, means assignation and “assigned” shall be construed accordingly.

### **Creditor search for additional debt**

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

(a) debt owed to the creditor by the debtor to whom the moratorium relates, and

(b) any creditor by assignment.

(2) Where a creditor search identifies a debt owed by the debtor that was not included in the notification referred to in paragraph (1), the creditor must provide details of the debt to the debtor’s debt advice provider.

(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 the debtor’s debt advice provider.

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

(5) A debt advice provider who receives details of a debt from a creditor in accordance with paragraph (2) must take the relevant steps specified in regulation 15.

(6) Where a debt advice provider receives contact details of a creditor by assignment in accordance with paragraph (3)(b) the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.

### **Application of moratorium to additional debt**

**15.—**(1) This regulation applies where a debt advice provider has initiated a moratorium under these Regulations and subsequently—

(a) receives details under regulation 14(2) of a debt not specified as a moratorium debt in a notification from the Secretary of State referred to in regulation 14(1), or

(b) otherwise becomes aware of a debt that is owed by a debtor in relation to whom a moratorium is in place but which was not included in the information provided to the Secretary of State under regulations 25(1)(b) or (c) or 31(1)(b) or (d),

(an “additional debt”).

(2) Where this regulation applies, a debt advice provider must consider whether an additional debt is a qualifying debt.

(3) Subject to paragraph (4), if a debt advice provider considers that an additional debt is a qualifying debt, the debt advice provider must provide to the Secretary of State details of the additional debt, including contact details of the creditor to whom the debt is owed.

(4) For a breathing space moratorium, if a debt advice provider receives details, or becomes aware, of an additional debt after the period of 45 days beginning with the day on which a moratorium started, the debt advice provider may provide to the Secretary of State the information required under paragraph (3) in relation to the additional debt if the debt advice provider considers it appropriate for the moratorium to apply in respect of the additional debt.

(5) Where the Secretary of State receives information under paragraphs (3) or (4), the Secretary of State must, by the end of the following business day, provide a notification of the moratorium to those creditors whose contact details have been provided to the Secretary of State in accordance with those paragraphs.

(6) Paragraph (5) is subject to regulation 38.

(7) A moratorium has the effect specified in regulation 7 in relation to an additional debt from the earliest of the date that the creditor to whom the additional debt is owed—

- (a) received a notification of the moratorium under paragraph (5), or
- (b) is deemed under regulation 37(4) to receive the notification under paragraph (5).

(8) This regulation does not affect the date on which a moratorium starts or ends under these Regulations.

### **Applicant and debtor obligations**

**16.**—(1) Any person who makes an application for a moratorium under these Regulations must—

- (a) take reasonable care to provide accurate information to the debt advice provider, and
- (b) not deliberately withhold relevant information from the application.

(2) During a breathing space moratorium a debtor must—

- (a) inform their debt advice provider if there is any material change in the debtor’s circumstances or financial position,
- (b) make any payment due in relation to an ongoing liability as it falls due to be paid during the moratorium period,
- (c) not obtain additional credit, either alone or jointly with any other person, that at any one point in time collectively exceeds £500, and
- (d) engage with the debt advice provider in such a way as the debt advice provider considers to be appropriate.

(3) The reference in paragraph (2)(c) to the debtor obtaining additional credit includes where goods are bailed to a debtor under a hire-purchase agreement or agreed to be sold to the debtor under a conditional sale agreement.

### **Creditor’s request for review of a moratorium**

**17.**—(1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these Regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of



the moratorium reviews the moratorium to determine whether it should continue or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that—

- (a) the moratorium unfairly prejudices the interests of the creditor, or
- (b) there has been some material irregularity in relation to any of the matters specified in paragraph (2).

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that—

- (a) the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made,
- (b) a moratorium debt is not a qualifying debt, or
- (c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

(3) A request under paragraph (1) must be made within the period of 20 days beginning with the day on which the moratorium started.

(4) Where an additional debt is included in a moratorium in accordance with regulation 15, the creditor to whom the additional debt is owed may request a review of the moratorium in relation to the additional debt in accordance with this regulation.

(5) A request under paragraph (4) must be made within the period of 20 days beginning with the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(6) Any request made under this regulation must—

- (a) be made in writing to the debtor's debt advice provider, and
- (b) contain the following—
  - (i) a statement of the ground or grounds on which the review is requested, and
  - (ii) evidence which supports the statement.

### **Review and cancellation of a moratorium as a result of a creditor request**

**18.**—(1) Having received a request for a review in accordance with regulation 17, a debt advice provider must conduct the review and carry out the steps in paragraph (4) before the end of the period of 35 days beginning with—

- (a) the day on which the moratorium started, or
- (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(2) Subject to paragraph (3), having carried out a review in response to a request from a creditor, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that the creditor has provided sufficient evidence that—

- (a) the moratorium unfairly prejudices the interests of the creditor, or
- (b) there has been some material irregularity in relation to any of the matters specified in regulation 17(2).

(3) A debt advice provider is not required to cancel a moratorium under paragraph (2) in respect of a moratorium debt if the debt advice provider considers that the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(4) The steps referred to in paragraph (1) are that a debt advice provider must—

- (a) inform the creditor who requested a review of the outcome of the review, and
- (b) if the debt advice provider considers that a moratorium should be cancelled in respect of some or all of the moratorium debts—

- (i) consult the debtor to whom the moratorium relates prior to doing so to the extent that the debt advice provider is able to do so, and
  - (ii) if, after acting in accordance with paragraph (i), the debt advice provider remains of the view that the moratorium should be cancelled in respect of some or all of the moratorium debts, notify the Secretary of State and the debtor of the cancellation.
- (5) Where the Secretary of State receives a notification under paragraph (4)(b)(ii), the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made on the register, and
  - (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.
- (6) Paragraph (5) is subject to regulation 38.
- (7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).
- (8) A notification sent to a creditor or agent 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.
- (9) A review carried out under this regulation in respect of a breathing space moratorium may be carried out as part of a midway review.

#### **Court application by creditor for cancellation of a moratorium**

- 19.**—(1) If a debt advice provider has carried out a review of a moratorium following a request made by a creditor under regulation 17 and the moratorium has not been cancelled under regulation 18 in respect of some or all of the moratorium debts as a result, then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).
- (2) An application under this regulation must be made before the end of the period of 50 days beginning with—
- (a) the day on which the moratorium started, or
  - (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).
- (3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1), it may do either or both of the following, namely—
- (a) cancel the moratorium in relation to a moratorium debt owed to the creditor who made the application to the court,
  - (b) cancel the moratorium in respect of any other moratorium debt.
- (4) Where a court has cancelled a moratorium in relation to a moratorium debt under paragraph (3), the court can require the debtor to pay any interest, fees or charges that accrued during the moratorium period in respect of the debt.
- (5) In any case where a court cancels a moratorium in relation to a moratorium debt under paragraph (3) or requires a debtor to pay interest, fees or charges under paragraph (4), the court—
- (a) may give such supplemental directions as it thinks fit, and
  - (b) must notify the creditor, the debtor and the Secretary of State that the moratorium has been cancelled in relation to the moratorium debt.
- (6) Where the Secretary of State receives a notification under paragraph (5)(b), the Secretary of State must, by the end of the following business day—

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

(7) Where a court cancels a moratorium under paragraph (3) the cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (6)(a).

### **Provision of updated information to the Secretary of State to correct mistakes and inaccuracies**

**20.**—(1) If a debt advice provider becomes aware that the information in paragraph (2) contains a mistake or inaccuracy the debt advice provider must provide updated information to the Secretary of State.

(2) A debt advice provider must provide updated information to the Secretary of State in accordance with paragraph (1) in relation to information—

- (a) provided by a debt advice provider to the Secretary of State in accordance with these Regulations, or
- (b) on the register.

(3) Where the Secretary of State receives updated information from a debt advice provider in accordance with paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register to reflect the updated information, and
- (b) send a notification to any relevant creditor and agent.

(4) The obligation to send a notification to a creditor and agent under paragraph (3)(b) only applies in relation to updated information concerning—

- (a) a debtor's name, date of birth and usual residential address, and
- (b) the trading name or names and address of any business carried on by the debtor.

### **Death of debtor during a moratorium period**

**21.**—(1) Where a debtor dies during a moratorium period, the moratorium ends on the day after the day on which the debtor died.

(2) A debt advice provider must, as soon as reasonably practicable after being informed or becoming aware of the death of the debtor, notify the Secretary of State of the death.

(3) Where the Secretary of State receives a notification under paragraph (2), the Secretary of State must, by the end of the following business day—

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

(4) Paragraph (3) is subject to regulation 38.

(5) 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.

### **Disclosure of information**

**22.**—(1) This regulation applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under these Regulations.

(2) A duty or power to which this regulation applies does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(3) In this regulation, “data protection legislation” has the meaning given in section 3(9) of the Data Protection Act 2018<sup>(64)</sup>.

## **PART 2**

### **Breathing space moratorium**

#### **Application for a breathing space moratorium**

**23.**—(1) A debtor may apply to a debt advice provider for a breathing space moratorium.

(2) An application may not be made unless the debtor has first obtained advice, whether in person, over the telephone or by electronic means.

(3) The application must be made to the debt advice provider who has provided the advice referred to in paragraph (2).

(4) The application must include the following information—

- (a) the debtor’s full name, date of birth and usual residential address, and
- (b) the trading name or names and address of any business carried on by the debtor.

(5) The application must include the following information to the extent that the information is known by the debtor and relevant—

- (a) details of the debts to which the debtor is subject at the date of the application and contact details of the creditor to whom each debt is owed, and
- (b) details of any enforcement agent or other agent instructed by a creditor for the purpose of collection or enforcement of the debt including the agent’s contact details.

(6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor’s usual residential address under regulation 38.

(7) In paragraph (2) “advice” means advice as to the suitability, conditions and consequences of a breathing space moratorium for the debtor.

#### **Debtor eligibility for a breathing space moratorium and debt advice provider obligations**

**24.**—(1) A debt advice provider must consider any application for a breathing space moratorium made to them by a debtor.

(2) Having considered the application, the debt advice provider must initiate a breathing space moratorium in relation to the debtor if the debt advice provider considers that—

- (a) the debtor meets the eligibility criteria in paragraph (3),
- (b) the conditions in paragraph (4) are met, and
- (c) the debts to be included in the moratorium are qualifying debts.

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<sup>(64)</sup> 2018 c. 12. Section 3(9) is amended by S.I. 2019/419, Schedule 2, paragraph 4(3) but that amendment is not yet in force.

(3) The eligibility criteria referred to in paragraph (2)(a) are that, on the date of the application for a breathing space moratorium, the debtor—

- (a) is an individual,
- (b) owes a qualifying debt to a creditor,
- (c) is domiciled or ordinarily resident in England or Wales,
- (d) is not subject to a debt relief order,
- (e) is not subject to an interim order or individual voluntary arrangement,
- (f) is not an undischarged bankrupt,
- (g) is not subject to another breathing space moratorium and, if they have previously been subject to a breathing space moratorium, that moratorium ended more than 12 months before the date of the application, and
- (h) is not subject to a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided by the debtor under regulation 23 and any other information obtained by the debt advice provider—

- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due, and
- (b) a breathing space moratorium would be appropriate.

(5) For the purpose of paragraph (4)(b), when considering whether a breathing space moratorium is appropriate the debt advice provider—

- (a) must consider whether—
  - (i) the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due,
  - (ii) it would benefit the debtor to enter into a debt solution,
  - (iii) the debtor may be eligible to enter into a debt solution during a moratorium or as soon as reasonably practicable after the moratorium ends, and
  - (iv) the moratorium period is necessary in order for the debt advice provider to assess which debt solution would be appropriate for the debtor, to advise the debtor on which debt solution would be appropriate or for a debt solution to be put in place, and
- (b) may have regard to any other factor that the debt advice provider considers relevant, including but not limited to whether—
  - (i) it is necessary for the debtor to enter into a debt solution in order to discharge or liquidate their debt,
  - (ii) it is necessary for the debtor to enter into a debt solution without delay and the debtor is in a position to do so, or
  - (iii) the debtor is already subject to an appropriate debt solution.

### **Initiation of breathing space moratorium**

**25.—**(1) In order to initiate a breathing space moratorium a debt advice provider must provide to the Secretary of State—

- (a) confirmation that—
  - (i) the debtor meets the eligibility criteria in regulation 24(3), and
  - (ii) the conditions in regulation 24(4) are met,
- (b) the information provided by the debtor under regulation 23(4) and (5) to the extent that it relates to the debtor or qualifying debt, and

- (c) information identified by the debt advice provider about any other qualifying debt.
- (2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—
  - (a) cause an entry to be made on the register, and
  - (b) send a notification of the start of the breathing space moratorium to those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (c).
- (3) Paragraph (2) is subject to regulation 38.

### **Duration of breathing space moratorium**

- 26.**—(1) A breathing space moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 25(2)(a).
- (2) A moratorium continues for 60 days beginning with the date on which it started in accordance with paragraph (1) unless—
- (a) it ends in accordance with regulation 21 as a result of the death of the debtor, or
  - (b) it is cancelled in accordance with regulations 18, 19 or 27.
- (3) Unless a moratorium ends as a result of the death of the debtor or is cancelled, on the day that a moratorium ends in accordance with paragraph (2) the Secretary of State must—
- (a) cause an entry to be made on the register, and
  - (b) send notification that the moratorium has ended to each creditor and agent who received notification of the moratorium under these Regulations.
- (4) Where a moratorium ends on a Saturday, Sunday or Bank Holiday, other than in circumstances where the debtor has died or the moratorium has been cancelled, the Secretary of State must send the notification required under paragraph (3)(b) on the next business day after the moratorium has ended.
- (5) Paragraph (3) is subject to regulation 38.

### **Midway review and cancellation of breathing space moratorium**

- 27.**—(1) A debt advice provider who initiated a moratorium or (as the case may be) the debt advice provider to whom a debtor has been referred since the start of the moratorium must review the moratorium to determine whether it should continue or be cancelled in accordance with this regulation (a “midway review”).
- (2) Subject to paragraph (3), a debt advice provider must complete a midway review before the end of the period of 35 days beginning with the day on which the moratorium started.
- (3) A midway review must not be carried out in the period of 25 days beginning with the day on which the moratorium started.
- (4) Where a creditor has requested a review of a moratorium under regulation 17, the debt advice provider may conduct the review as part of a midway review.
- (5) Subject to paragraphs (6) and (7), having carried out a midway review, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that—
- (a) the debtor has failed to comply with any of the debtor’s obligations under regulation 16,
  - (b) a debt solution has been put in place in respect of all the moratorium debts, or
  - (c) the debt advice provider is unable to consult the debtor as required under paragraph (8)
    - (a), including for reasons of the unavailability of the debtor.

(6) A debt advice provider is not required to cancel a moratorium in respect of a moratorium debt if the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(7) Where a debtor has failed to comply with the obligation in regulation 16(2)(b) to pay an ongoing liability, a debt advice provider is not required to cancel a moratorium in respect of a moratorium debt if the debtor does not have the financial means to pay the ongoing liability.

(8) If the debt advice provider considers it necessary to cancel a moratorium in respect of some or all of the moratorium debts, the debt advice provider must—

- (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
- (b) notify the Secretary of State and the debtor of the cancellation.

(9) Where the Secretary of State receives a notification under paragraph (8)(b), the Secretary of State must, by the end of the following business day—

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

(10) Paragraph (9) is subject to regulation 38.

(11) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (9)(a).

(12) A notification sent to a creditor or agent in accordance with paragraph (9)(b) must—

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

## PART 3

### Mental health crisis moratorium

#### Meaning of mental health crisis moratorium

**28.**—(1) A mental health crisis moratorium is a moratorium under this Part in respect of a debtor who is receiving mental health crisis treatment.

(2) In these Regulations, a debtor is receiving mental health crisis treatment when the debtor—

- (a) has been detained in hospital for assessment under sections 2 or 4 of the Mental Health Act 1983,
- (b) has been detained in hospital for treatment under section 3 of that Act,
- (c) has been removed to a place of safety by a police constable under sections 135 or 136 of that Act,
- (d) has been detained in hospital for assessment or treatment under sections 35, 36, 37, 38, 45A, 47 or 48 of that Act, or
- (e) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature.

(3) In this regulation “specialist mental health service” means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service.

### **Application for a mental health crisis moratorium**

**29.**—(1) Any of the following persons may submit an application to a debt advice provider for a mental health crisis moratorium in relation to a debtor—

- (a) the debtor,
- (b) the debtor’s carer,
- (c) an approved mental health professional,
- (d) a care co-ordinator appointed in respect of the debtor,
- (e) a mental health nurse,
- (f) a social worker,
- (g) an independent mental health advocate appointed in respect of the debtor for the purposes of arrangements made under sections 130A(1) or 130E(1) of the Mental Health Act 1983**(65)**,
- (h) an independent mental capacity advocate appointed in respect of the debtor for the purposes of arrangements made under section 35(1) of the Mental Capacity Act 2005**(66)**,
- (i) a relevant person’s representative,
- (j) an approved mental capacity professional approved under paragraph 39 of Schedule AA1 to the Mental Capacity Act 2005**(67)**, or
- (k) an appropriate person as specified in paragraph 42(5) of Schedule AA1 to the Mental Capacity Act 2005**(68)**.

(2) The application must include the following information—

- (a) sufficient information to identify the debtor, and
- (b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.

(3) For the purpose of paragraph (2)(b), evidence from an approved mental health professional must include the following—

- (a) sufficient information to identify the debtor,
- (b) the name and contact details of the approved mental health professional,
- (c) the name and contact details of the debtor’s nominated point of contact,
- (d) a declaration by the approved mental health professional that the debtor is receiving mental health crisis treatment, and
- (e) a signed statement by the approved mental health professional that the evidence is, to the best of their knowledge and belief, correct.

(4) 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, is relevant and has not already been provided in accordance with paragraph (2)(a)—

- (a) the debtor’s full name, date of birth and usual residential address,

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**(65)** 1983 c. 20. Section 130A was inserted by the Mental Health Act 2007 (c. 12), section 30(2) and amended by the Mental Health Act (Wales) Measure 2010 (nawm 7), Schedule 1, paragraph 2 and the Health and Social Care Act 2012 (c. 7), section 43(1). Section 130E was inserted by the Mental Health Act (Wales) Measure 2010 (nawm 7), section 31.

**(66)** 2005 c. 9. Section 35(1) was amended by the Health and Social Care Act 2012 (c. 7), Schedule 5, paragraph 134(a) and the Mental Health Act 2007 (c. 12), Schedule 9, paragraph 3. Section 35(1) is also amended by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 2(1), paragraph 3 but those amendments are not yet in force.

**(67)** 2005 c. 9. Schedule AA1 is inserted by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 1 but that insertion is not yet in force.

**(68)** 2005 c. 9. Schedule AA1 is inserted by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 1 but that insertion is not yet in force.



- (b) the trading name or names and address of any business carried on by the debtor,
  - (c) details of the debts to which the debtor is subject at the date of the application and the contact details of the creditor to whom each debt is owed, and
  - (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.
- (5) The nominated point of contact referred to in paragraph (3)(c) may be the approved mental health professional who provided the evidence referred to in paragraph (2)(b).
- (6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor’s usual residential address under regulation 38.
- (7) In this regulation—
- (a) “adult” means a person aged 18 or over;
  - (b) “carer” means an adult who—
    - (i) provides care for another adult, and
    - (ii) is in receipt of carer’s allowance or an award of universal credit of an amount under regulation 29 of the Universal Credit Regulations 2013<sup>(69)</sup>;
  - (c) “carer’s allowance” means an allowance paid to a person in accordance with section 70 of the Social Security Contributions and Benefits Act 1992;
  - (d) “relevant person’s representative” means a person appointed in respect of the debtor in accordance with paragraph 137 of Schedule A1 to the Mental Capacity Act 2005<sup>(70)</sup> or that provision as it continues in force by virtue of any transitional or savings provisions made in connection with its repeal by the Mental Capacity (Amendment) Act 2019<sup>(71)</sup>.

### **Debtor eligibility for a mental health crisis moratorium and debt advice provider obligations**

**30.**—(1) When considering an application for a mental health crisis moratorium made under regulation 29, a debt advice provider must—

- (a) assess whether the debts included in the application are qualifying debts, and
- (b) obtain information relevant to the financial standing of the debtor from at least one credit reference agency.

(2) Having considered an application for a mental health crisis moratorium, a debt advice provider must initiate a mental health crisis moratorium on behalf of a debtor if the debt advice provider considers that—

- (a) the debtor meets the eligibility criteria in paragraph (3),
  - (b) the conditions in paragraph (4) are met, and
  - (c) the debts to be included in the moratorium are qualifying debts.
- (3) The eligibility criteria referred to in paragraph (2)(a) are that the debtor—
- (a) is an individual,
  - (b) owes a qualifying debt to a creditor,
  - (c) is domiciled or ordinarily resident in England or Wales,
  - (d) is not subject to a debt relief order,

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<sup>(69)</sup> *S.I. 2013/376*. Regulation 29 was amended by *S.I. 2015/1754*, regulation 13 and *S.I. 2017/204*, regulation 4(6) subject to transitional and savings provisions in Schedule 2(2) of that instrument.

<sup>(70)</sup> *2005 c. 9*. Schedule A1 was inserted by the Mental Health Act 2007 (c. 12), Schedule 7, paragraph 1. Schedule A1 is also repealed by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 2(1), paragraph 2(c) but that repeal is not yet in force.

<sup>(71)</sup> *2019 c. 18*. This Act is not yet in force.

- (e) is not subject to an interim order or individual voluntary arrangement,
- (f) is not an undischarged bankrupt, and
- (g) is not subject to a breathing space moratorium or a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided in accordance with regulation 29(2) and (4) and any other information obtained by the debt advice provider—

- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due,
- (b) a mental health crisis moratorium would be appropriate, and
- (c) an approved mental health professional has provided evidence that the debtor is receiving mental health crisis treatment.

(5) For the purpose of paragraph (4)(b), when considering whether a mental health crisis moratorium is appropriate, the debt advice provider—

- (a) must consider whether the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due, and
- (b) may have regard to any other factor that the debt advice provider considers relevant.

(6) In this regulation, “credit reference agency” means a person who carries on by way of business an activity of the kind specified by article 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

#### **Initiation of mental health crisis moratorium**

**31.**—(1) In order to initiate a mental health crisis moratorium a debt advice provider must provide to the Secretary of State—

- (a) confirmation that—
  - (i) the debtor meets the eligibility criteria in regulation 30(3), and
  - (ii) the conditions in regulation 30(4) are met,
- (b) the information provided in accordance with regulation 29(2)(a) and (4),
- (c) the name and contact details of the debtor’s nominated point of contact, and
- (d) information identified by the debt advice provider about any other qualifying debt.

(2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the start of the mental health crisis moratorium to—
  - (i) the debtor’s nominated point of contact, and
  - (ii) those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (d).

(3) Paragraph (2) is subject to regulation 38.

#### **Duration of mental health crisis moratorium**

**32.**—(1) A mental health crisis moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 31(2)(a).

(2) A mental health crisis moratorium ends on the earliest of—

- (a) the end of the period of 30 days beginning with the day on which the debtor stops receiving mental health crisis treatment,

- (b) the end of the period of 30 days beginning with the day on which a debt advice provider makes a request to the debtor's nominated point of contact in accordance with regulation 33 and during which period the debt advice provider does not receive a response,
  - (c) the day on which cancellation of the mental health crisis moratorium takes effect under regulations 18, 19 or 34, or
  - (d) the day on which it ends in accordance with regulation 21 as a result of the death of the debtor.
- (3) Paragraph (4) applies where a debtor's nominated point of contact—
- (a) notifies the debtor's debt advice provider that the debtor has stopped receiving mental health crisis treatment, or
  - (b) provides confirmation that the debtor has stopped receiving mental health crisis treatment in accordance with regulation 33.
- (4) Where a debt advice provider receives a notification or confirmation under paragraph (3), the debt advice provider must, by the end of the following business day, notify the Secretary of State of the date on which the debtor stopped receiving mental health crisis treatment.
- (5) Where a mental health crisis moratorium ends in accordance with paragraph (2)(b), the debt advice provider must, by the end of the following business day, notify the Secretary of State that the moratorium has ended.
- (6) Where the Secretary of State receives a notification under paragraphs (4) or (5), the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made on the register, and
  - (b) send a notification to each creditor and agent who received notification of a mental health crisis moratorium under this Part.
- (7) Paragraph (6) is subject to regulation 38.

### **Request by a debt advice provider for information about a debtor's receipt of mental health crisis treatment**

- 33.**—(1) Subject to paragraph (2), a debt advice provider must, before the end of the period of 30 days beginning with the day on which the moratorium started, request from a debtor's nominated point of contact—
- (a) confirmation of whether the debtor is still receiving mental health crisis treatment, and
  - (b) if the debtor is no longer receiving mental health crisis treatment, confirmation of the date on which the treatment ended.
- (2) The debt advice provider must not make the request to a nominated point of contact under paragraph (1) in the period of 20 days beginning with the day on which the moratorium started.
- (3) Having made a request under paragraph (1) and subject to paragraph (4), a debt advice provider must then request from the nominated point of contact the confirmation specified in paragraph (1) every 20 to 30 days beginning with the day on which the last request was made.
- (4) If a moratorium ends in accordance with regulation 32(2)(b) because a debt advice provider has not received a response to a request made under this regulation, then the debt advice provider is not required to make further requests under paragraph (3).

### **Cancellation of mental health crisis moratorium**

- 34.**—(1) Subject to paragraph (2), a debt advice provider must cancel a mental health crisis moratorium if—

- (a) the debt advice provider considers that the evidence from an approved mental health professional referred to in regulation 29(2)(b) contains inaccurate, misleading or fraudulent information, or
  - (b) the debtor requests that the debt advice provider cancels the moratorium.
- (2) A debt advice provider is not required to cancel a mental health crisis moratorium if the debtor's personal circumstances would make the cancellation unfair or unreasonable.
- (3) Paragraph (2) does not apply in circumstances where the debtor requests that the debt advice provider cancels the mental health crisis moratorium in accordance with paragraph (1).
- (4) In order to cancel a mental health crisis moratorium, a debt advice provider must—
- (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
  - (b) notify the Secretary of State and the debtor of the cancellation.
- (5) Where the Secretary of State receives a notification under paragraph (4)(b), the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made on the register, and
  - (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.
- (6) Paragraph (5) is subject to regulation 38.
- (7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).
- (8) A notification sent to a creditor or agent 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.

## PART 4

### Debt respite scheme administration

#### **Electronic system maintained by the Secretary of State**

- 35.—**(1) The Secretary of State must maintain an electronic system for the purpose of—
- (a) giving and receiving communications and notifications in connection with moratoria, and
  - (b) maintaining a register of matters relating to moratoria.
- (2) The Secretary of State may send and receive communications in connection with moratoria by means of the electronic system where the Secretary of State considers it appropriate to do so.
- (3) The following persons are entitled to information contained on the electronic system that concerns or is relevant to a debtor—
- (a) the Secretary of State,
  - (b) the debt advice provider who initiated a moratorium on behalf of the debtor, and
  - (c) the debt advice provider to whom the debtor has been referred since the start of the moratorium.
- (4) The following persons are entitled to information contained on the register that concerns or is relevant to a debtor—
- (a) the debtor,

- (b) the Secretary of State,
  - (c) any debt advice provider, and
  - (d) those creditors who have received notification of a moratorium relating to the debtor under these Regulations.
- (5) A creditor is not entitled to information contained on the register or otherwise held by the Secretary of State about—
- (a) any other creditor of the debtor,
  - (b) any moratorium debt owed by the debtor to any other creditor, or
  - (c) the debtor’s usual residential address where regulation 38 applies.
- (6) The Secretary of State must delete from the register all information concerning a moratorium where fifteen months have elapsed from the date on which the moratorium ended or was cancelled under these Regulations.

**Information about a debtor held on the register**

- 36.**—(1) The register maintained by the Secretary of State in accordance with regulation 35(1) (b) must include the following information relating to a moratorium—
- (a) information provided by a debt advice provider under these Regulations concerning—
    - (i) the identification details of the debtor to whom the moratorium relates, including the debtor’s full name, date of birth and usual residential address,
    - (ii) the trading name or names and address of any business carried on by the debtor,
  - (b) the date on which the moratorium started, and
  - (c) where a moratorium has ended, the date on which the moratorium ended or was cancelled in accordance with these Regulations.
- (2) This regulation is subject to regulation 38.

**Notifications provided to and by the Secretary of State**

- 37.**—(1) Any information provided by a debt advice provider to the Secretary of State under these Regulations must be given by means of the electronic system maintained by the Secretary of State in accordance with regulation 35(1).
- (2) Any notification by the Secretary of State to a person under these Regulations must be given by one of the following methods—
- (a) transmitting it by means of electronic communication,
  - (b) leaving it at the person’s address, or
  - (c) posting it to that address.
- (3) Paragraphs (1) and (2) are subject to regulation 38.
- (4) Unless the contrary is shown a notification will be deemed to have been received on the following days—
- (a) on the day the electronic communication was sent by the Secretary of State,
  - (b) on the day that the notification was left at the person’s address, or
  - (c) at the end of the period of four business days beginning with the day on which the notification was posted by the Secretary of State.
- (5) The Secretary of State may provide notification by means of electronic communication if the person to whom it has to be provided—

- (a) has indicated to the debt advice provider or the Secretary of State (and has not withdrawn the indication) that they are willing to receive notification by those means, and
  - (b) has provided, to the debt advice provider or the Secretary of State for this purpose, an e-mail address or other electronic identification.
- (6) An e-mail address or other electronic identification provided to the debt advice provider or the Secretary of State for receiving notifications is sufficient indication for the purpose of paragraph (5) (a).
- (7) In this regulation “address” means the registered office, registered principle address or any address provided to the debt advice provider or the Secretary of State for receiving notifications.

### **Non-disclosure of a debtor’s usual residential address**

**38.**—(1) In the circumstances specified in this regulation, the Secretary of State must not include a debtor’s usual residential address—

- (a) in any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
  - (b) in any notification sent to creditors or agents under these Regulations.
- (2) A debtor, or the person applying for a moratorium on the debtor’s behalf, may make an application to a debt advice provider under this regulation for non-disclosure of the debtor’s usual residential address.
- (3) An application for non-disclosure of a debtor’s usual residential address must contain—
- (a) a statement of the grounds on which the application is made,
  - (b) evidence which supports the statement of the grounds on which the application is made.
- (4) The grounds for non-disclosure of a debtor’s usual residential address are that disclosure of the debtor’s usual residential address might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor’s family.
- (5) A debt advice provider must consider any application for non-disclosure of a debtor’s usual residential address and determine whether the address should be disclosed.
- (6) Within 7 days beginning with the day on which a determination by a debt advice provider under paragraph (5) is made, the debt advice provider must notify the outcome of the determination to the debtor or the person who made an application for a moratorium on the debtor’s behalf.
- (7) If a debt advice provider determines that the grounds specified in paragraph (4) apply, when providing information to the Secretary of State in accordance with these Regulations, the debt advice provider must notify the Secretary of State that the debtor’s usual residential address must not be included in—
- (a) any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
  - (b) any notification sent to creditors or agents under these Regulations.
- (8) Where an application under this regulation is unsuccessful, a notification under paragraph (6) must inform the debtor, or the person applying for a moratorium on the debtor’s behalf, of their right to appeal to the county court under paragraph (9).
- (9) Where an application under this regulation is unsuccessful, a debtor, or the person applying for a moratorium on the debtor’s behalf, may appeal to the county court against the determination on the grounds specified in paragraph (4) before the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6).
- (10) Where an application is made to a debt advice provider under this regulation, the debt advice provider may not initiate a moratorium under these Regulations until the earliest of—

- (a) the day on which the debt advice provider determines that the address should not be disclosed,
- (b) where the application is unsuccessful but no appeal proceedings are brought under paragraph (9), the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6), or
- (c) the conclusion of any appeal proceedings relating to the application under this regulation.

### **Electronic system malfunction**

**39.**—(1) In the event of any malfunction or error in the operation of the electronic system, the Secretary of State must inform debt advice providers that information, communications and notifications may be provided under these Regulations to the Secretary of State in such a form as the Secretary of State will specify.

(2) In the event of any malfunction or error in the operation of the electronic system, where the Secretary of State is required to send notifications under these Regulations, the Secretary of State is required to send the notifications as soon as is reasonably possible.

## **PART 5**

### **Supplemental**

#### **Review**

**40.**—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 4 May 2026.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(72) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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17th November 2020

*James Morris*  
*Michael Tomlinson*  
Two of the Lords Commissioners of Her  
Majesty's Treasury



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations establish a debt respite scheme.

These Regulations make provision for two types of moratorium available to eligible debtors domiciled or ordinarily resident in England or Wales, namely a breathing space moratorium and a mental health crisis moratorium.

Part 1 makes provision relevant to any moratorium under these Regulations, including the effect of a moratorium and the rights of creditors to request a review of a moratorium and to apply to the county court to cancel the moratorium.

Parts 2 and 3 make provision concerning a breathing space moratorium and a mental health crisis moratorium respectively.

Part 4 provides for the administration of the debt respite scheme by the Secretary of State.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).