
DRAFT STATUTORY INSTRUMENTS

2020 No.

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

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.

(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.