
DRAFT STATUTORY INSTRUMENTS

2020 No.

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

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(1),
 - (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(2),
 - (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(3), or
 - (k) an appropriate person as specified in paragraph 42(5) of Schedule AA1 to the Mental Capacity Act 2005(4).
- (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,
 - (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—

(1) 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.

(2) 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.

(3) 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.

(4) 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.

- (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⁽⁵⁾;
- (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⁽⁶⁾ 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⁽⁷⁾.

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,
 - (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) [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.

(6) [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.

(7) [2019 c. 18](#). This Act is not yet in force.

(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.