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STATUTORY INSTRUMENTS

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**2020 No. 1311**

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

**PART 2**

**Breathing space moratorium**

**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.