EXPLANATORY MEMORANDUM TO

THE DEBT RESPITE SCHEME (BREATHING SPACE MORATORIUM AND MENTAL HEALTH CRISIS MORATORIUM) (ENGLAND AND WALES) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument establishes the first part of a debt respite scheme for people in problem debt. This part gives eligible people in problem debt who receive professional debt advice access to a 60-day period in which interest, fees and charges are frozen and enforcement action is paused. This moratorium period is often referred to as ‘Breathing Space’. For people receiving mental health crisis treatment, this instrument establishes an alternate route by which the protections of a moratorium may be accessed and ensures that the protections are in place for the duration of their crisis treatment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first use of the power provided by sections 6 and 7 of the Financial Guidance and Claims Act 2018.

3.2 This instrument will apply to qualifying debts and will prevent creditors from taking enforcement action and will prevent debtors being liable for certain interest, fees and charges in relation to their qualifying debts during the moratorium period.

3.3 Various parts of this instrument therefore have retrospective effect. The authority to make provisions with retrospective effect is contained in section 7(5)(d) of the Financial Guidance and Claims Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 The territorial application of this instrument includes Northern Ireland.

3.5 The powers under which this instrument is made cover England, Wales and Northern Ireland (see section 7(4)). This instrument has effect in England and Wales only (see regulation 1(8)) and applies in respect of debtors ordinarily resident or domiciled in England and Wales (see regulation 1(9)). However, the instrument could apply in respect of a debt incurred outside this jurisdiction.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This is the first use of the power provided by section 7(2) of the Financial Guidance and Claims Act 2018 for the establishment of a debt respite scheme. This instrument is being made to establish the first part of that scheme: a Breathing Space moratorium on enforcement action and the charging of interest and fees for eligible individuals. This instrument also provides for a moratorium in respect of individuals receiving mental health crisis treatment.

6.2 In an Oral Statement on the scheme delivered in June 2019, the Economic Secretary to the Treasury committed to implementing the moratorium in early 2021.[1]

7. Policy background

What is being done and why?

What is the problem under consideration?

7.1 Sections 6 and 7 of the Financial Guidance and Claims Act 2018 make provision for a debt respite scheme by secondary regulations. This instrument represents the first part of that scheme through the establishment of two types of moratorium on debt-related enforcement action and interest, fees, and charges.

7.2 People who need debt advice often do not seek to access it. Those who do receive advice often experience sub-optimal outcomes due to the circumstances in which they seek advice. Advice is often sought at a late stage, when debtors are at crisis point.[2] They are often driven to receive advice by creditor action, such as starting court proceedings or taking enforcement action. This creditor action compounds the stress and anxiety that problem debt causes.[3] Under this level of stress, debtors often take the quickest rather than the most appropriate solution, contributing to sub-optimal debt advice outcomes.

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[1] Official Report, 19 June 2019, Vol. 662, c. 246. Available at: https://hansard.parliament.uk/Commons/2019-06-19/debates/252B8ABA-F40D-4848-8D59-DFB0734A78AC/BreathingSpaceScheme

[2] Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at: https://capuk.org/fileserver/downloads/general/cap-clientreport-2019-dp.pdf

[3] Money Advice Service (2017) *Better debt advice: from a moment of crisis to a lifetime of resilience* Available at: https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience

What is the policy objective and how will it be achieved?

7.3 The policy objective is to incentivise more people in problem debt to access professional debt advice, to do so sooner, and to enable them to enter the debt solution that is most appropriate in view of their individual circumstances.

7.4 A moratorium under the scheme will freeze charges and certain interest as well as pause enforcement action. This will give debtors time to engage fully with professional advice by reducing the stress caused by spiralling debt and impending enforcement action. Enhancing the engagement between debtors and their advisers will promote more positive debt advice outcomes, including by increasing creditor recoveries.

7.5 These protections are accessible only via professional debt advice. This will encourage more people to seek debt advice and to do so at an appropriate time.

Mental health crisis moratorium

7.6 People receiving mental health crisis treatment will receive the protections of the scheme but through different entry requirements. This reflects the fact that while this group could benefit from the protections in the standard scheme, they may face challenges in meeting the requirement to engage with debt advice in order to meet the eligibility criteria.

7.7 This group will be able to enter a mental health crisis moratorium without engaging with debt advice. The policy protections will apply for the duration of their crisis treatment and then for a further 30 days. If eligible, debtors will then have access to the 60-day Breathing Space moratorium. As mental health problems often recur, there will be no limit on the number of times that people receiving mental health crisis treatment may enter a moratorium via this mechanism, whereas debtors in the 60-day Breathing Space moratorium will have access once in each 12-month period.

7.8 This instrument also provides for the administration of the scheme by the Secretary of State. The Secretary of State's functions will be carried out by the Insolvency Service, which is an executive agency, sponsored by the Department for Business, Energy & Industrial Strategy.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This regulation will not consolidate other instruments.

10. Consultation outcome

10.1 The government has issued two consultations on the debt respite scheme. First, a call for evidence ran between October 2017 and January 2018. The government's response was published in June 2018. Over 80 unique responses were received.[4] Most respondents were supportive. Many respondents suggested that individuals in problem debt should have to seek debt advice before entering a Breathing Space, although

[4] HM Treasury (2018) *Breathing space: call for evidence.* Available at: https://www.gov.uk/government/consultations/breathing-space-call-for-evidence

some noted that there were certain, unique cases where this could be inappropriate, with individuals experiencing mental health crises highlighted as an example.

10.2 The Government consulted on a policy proposal informed by responses to this call for evidence between October 2018 and January 2019, publishing its response in June 2019. Over 130 responses were received. Respondents included creditors, trade bodies, local authorities, charities, debt advice providers, credit reference agencies, utility companies, telecoms providers, and others.[5]

10.3 The key points raised by these respondents are summarised in the Government's consultation response document.[6] A wide range of views were expressed on a very large number of issues such as: the duration of a moratorium, the initial eligibility criteria, ongoing eligibility criteria, which debts should be included in the policy, whether there should be a public register of people in breathing space, the treatment of business debts, and other questions. Most respondents were supportive, for example of the eligibility criteria and of the proposed protections for debtors.

10.4 Further engagement with specific expert stakeholders from the creditor and debt advice sectors was undertaken in support of the drafting of this instrument. This informal exercise generated many helpful comments on the draft regulations.

11. Guidance

11.1 Departmental guidance will be prepared in due course to assist creditors, creditor agents, and debt advice providers as they apply the regulations. Other forms of publicity will be employed to raise awareness of the policy amongst users. This publicity material will consider the advice provided to the government by the Money and Pensions Service, in accordance with section 6 of the Financial Guidance and Claims Act 2018, on raising awareness of the policy.[7]

12. Impact

12.1 The impact on business, charities or voluntary bodies is forecast to be a total cost over the ten years from 2021-22 of £2.1bn, which includes foregone interest and charges, delayed repayments, and familiarisation, dissemination and administration costs. The economic benefits to businesses, charities and voluntary bodies (that is the business net present value) is forecast to be £6.1bn in 2016 prices, which includes higher recoveries for creditors, productivity benefits for employers and reduced negative mental and physical health outcomes amongst debtors.

12.2 The impact on the public sector is forecast to be £7m over the same period. The wider benefits on society (that is the net present social value) are forecast to be £9.2bn in 2016 prices.

12.3 A full impact assessment is submitted with this memorandum and published on GOV.UK.[8]

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[5] HM Treasury (2019) *Breathing space scheme: consultation on a policy proposal.* Available at: https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal

[6] *Ibid.*

[7] Money and Pensions Service (2019) *Breathing space scheme – Money and Pensions Service advice.* Available at: https://www.gov.uk/government/publications/breathing-space-scheme-money-and-pensions-service-advice

[8] HM Treasury (2019) *Breathing space impact assessment.* Available at: https://www.gov.uk/government/publications/breathing-space-impact-assessment

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is outlined in full in the Small and Micro Business Assessment in the accompanying Impact Assessment.[9] Exemption or mitigation for small businesses would not achieve the policy intent, so no specific action is proposed to minimise the regulatory burdens on such businesses.

13.4 Full exemption from the protections of a moratorium for small businesses would mean that the respite afforded to debtors by a moratorium was incomplete, particularly where debtors' liabilities were owed mostly or entirely to creditors exempted by virtue of their size. It would also be impractical, imposing an excessive burden on debt advice providers (often themselves small businesses, charities or civil society organisations) to identify whether a creditor qualified as a small business.

13.5 As full exemption would undermine the policy intent and would be impractical, mitigations to minimise the regulatory burden of a moratorium on small businesses were considered. The government considered three options: allowing small businesses more time to prepare for the commencement of the debt respite scheme, in recognition of their high familiarisation costs relative to larger firms; applying the protections to small businesses only in respect of enforcement action rather than enforcement action and interest- and fee-charging, and reducing the duration of a moratorium in respect of debts owed to small businesses.

13.6 All three of these mitigations were discounted. The first mitigatory option was found to be disproportionate: the familiarisation costs of small businesses are only forecast to be 8% higher than those of larger businesses.[10] The second and third were found to undermine the policy intent by providing only incomplete respite from creditor action for debtors. In addition, these options would impose an impractical and excessive administrative burden on debt advice providers in requiring them to determine whether creditors qualified as small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is outlined in regulation 40 of this instrument. HM Treasury will publish a review by 4th May 2026, five years after the commencement of the instrument. In addition, subsequent evaluations will be published at five-year intervals. These evaluations will be carried out with due regard to the advice provided on this topic by the Money and Pensions Service.[11] Further information is set out in the accompanying impact assessment.

14.2 A statutory review clause is included in the Regulation.

15. Contact

15.1 Shannon Cochrane at HM Treasury, Telephone: 020 7270 5621 or email: shannon.cochrane@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

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[9] *Ibid.*
[10] *Ibid.*
[11] Money and Pensions Service (2019)

15.2 Anna Harvey, Deputy Director for Personal Finances and Funds at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.