
DRAFT STATUTORY INSTRUMENTS

2020 No.

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

PART 1

General provisions

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⁽¹⁾ 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;

“arrears” 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⁽²⁾;

“bankruptcy petition” means a petition for a bankruptcy order made under Chapter 1 of Part 9 of the Insolvency Act 1986⁽³⁾ 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—

(1) 1983 c. 20. Section 114 was substituted by the Mental Health Act 2007 (c. 20), section 18.
(2) 1971 c. 80.
(3) 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(4), 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(5);

“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(6);

“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(7) 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(8) 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(9);

“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;

(4) 1983 c. 20. Section 118(1) was substituted by the Mental Health Act 2007 (c. 12), Schedule 2, paragraph 9.

(5) 2010 nawm 7.

(6) 1986 c. 45. Part 7A was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 17, paragraph 1.

(7) 2007 c. 15.

(8) 2003 c. 39.

(9) 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⁽¹⁰⁾ 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⁽¹¹⁾ for an area which includes a principal area in Wales within the meaning of section 20 of the Local Government Act 1972⁽¹²⁾,

(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);

⁽¹⁰⁾ S.I. 2002/253. Article 5(1) was amended by S.I. 2018/838, Schedule 1, paragraphs 1 and 4(a).

⁽¹¹⁾ 2006 c. 42.

⁽¹²⁾ 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⁽¹³⁾;

“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⁽¹⁴⁾;

“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⁽¹⁵⁾, 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⁽¹⁶⁾;

⁽¹³⁾ 2016 anaw 1. Section 7 is not yet in force.

⁽¹⁴⁾ 2017 c. 27.

⁽¹⁵⁾ 2017 c. 16.

⁽¹⁶⁾ 2016 anaw 2.

- “universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012⁽¹⁷⁾.
- (2) In these Regulations references to a debtor include the debtor’s representative.

⁽¹⁷⁾ 2012 c. 5.