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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 1**

General provisions

**Qualifying debt**

5.—(1) A “qualifying debt” means any debt or liability other than non-eligible debt.

(2) A debt is a qualifying debt for the purpose of these Regulations whether or not it is entered into, or due to be paid or repaid, before these Regulations come into force.

(3) A qualifying debt includes—

- (a) any amount which a debtor is liable to pay under or in relation to—
  - (i) an order or warrant for possession of the debtor’s place of residence or business,
  - (ii) a court judgment, or
  - (iii) a controlled goods agreement;
- (b) any debt owed or liability payable to the Crown.

(4) In these Regulations “non-eligible debt” means—

- (a) secured debt which does not amount to arrears in respect of secured debt,
- (b) non-eligible business debt,
- (c) any debt which a debtor incurred by means of any fraud or fraudulent breach of trust by the debtor,
- (d) any liability in respect of a fine imposed by a court for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury,
- (e) any obligation arising under a confiscation order made under—
  - (i) section 1 of the Drug Trafficking Offences Act 1986(1) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Drug Trafficking Act 1994(2),

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(1) 1986 c. 32. Section 1 was repealed by the Drug Trafficking Act 1994 (c.37), Schedule 3, paragraph 1 but saved by the Drug Trafficking Act 1994 (c. 37), Schedule 2, paragraph 2.  
(2) 1994 c. 37.

- (ii) section 2 of the Drug Trafficking Act 1994(3) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002(4),
- (iii) section 1 of the Criminal Justice (Scotland) Act 1987(5) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(6),
- (iv) section 71 of the Criminal Justice Act 1988(7) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002, or
- (v) Parts 2, 3 or 4 of the Proceeds of Crime Act 2002,
- (f) any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance assessment or maintenance calculation made under the Child Support Act 1991(8),
- (g) any obligation arising from a payment out of the social fund by way of crisis loan or budgeting loan under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992(9) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Welfare Reform Act 2012,
- (h) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student loan and which the debtor receives whether before or after the moratorium starts,
- (i) any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part 1 of the Consumer Protection Act 1987(10), being in either case damages in respect of the death of or personal injury (including any disease or other impairment of physical or mental condition) to any person,
- (j) a payment on account of universal credit under regulations 4 or 11 of the Social Security (Payments on Account of Benefit) Regulations 2013(11),
- (k) any liability in respect of council tax for a financial year, except where—
  - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
  - (ii) a reminder notice has been served on the debtor under regulation 23(1) of the Council Tax (Administration and Enforcement) Regulations 1992(12),
- (l) any liability in respect of non-domestic rates for a financial year, except where—
  - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or

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(3) 1994 c. 37. Section 2 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(e) and 13(b).

(4) 2002 c. 29.

(5) 1987 c. 41. Section 1 was repealed by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 5, paragraph 1 but saved by Schedule 3 to that Act.

(6) 1995 c. 40.

(7) 1988 c. 33. Section 71 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(a) and 13(a).

(8) 1991 c. 48. “maintenance calculation” was substituted for “maintenance assessment” by section 1(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) in relation to certain cases in accordance with S.I. 2003/192.

(9) 1992 c. 4.

(10) 1987 c. 43.

(11) S.I. 2013/383.

(12) S.I. 1992/613. Regulation 23 was amended by S.I. 1994/505, regulation.3 and S.I. 1997/393.

- (ii) a further notice has been served on the debtor under regulation 8(1) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989<sup>(13)</sup>.
- (5) In paragraph (4)(c), fraud includes any amounts owed by a debtor as a result of supplies taken illegally of gas under paragraph 9 of Schedule 2B to the Gas Act 1986<sup>(14)</sup> or electricity under paragraph 4 of Schedule 6 to the Electricity Act 1989<sup>(15)</sup>.
- (6) In this regulation—
- (a) “controlled goods agreement” means an agreement under paragraph 13(4) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007;
- (b) “family proceedings” means—
- (i) proceedings in the family court, and
- (ii) family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984<sup>(16)</sup>;
- (c) “fine” includes—
- (i) any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction, and
- (ii) in relation to a fine imposed for an offence, a reference to a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985<sup>(17)</sup> (criminal courts charge), whether on conviction or otherwise,
- and includes any interest on the fine and any penalties or charges incurred in connection with it;
- (d) “non-eligible business debt” means debt incurred in connection with a business carried on by a debtor where the debtor at the point of the application for a moratorium and for the purpose of that business—
- (i) is registered under the Value Added Tax Act 1994<sup>(18)</sup>, or
- (ii) is a partner in a partnership with any other person,
- and the debt solely relates to the business carried on by the debtor;
- (e) “partnership” means any relation which subsists between persons carrying on a business in common with a view of profit other than any relation between members of any company or association which is—
- (i) registered under the Companies Act 2006<sup>(19)</sup>, or
- (ii) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;
- (f) “student loan” means a loan made under –
- (i) regulations made under section 22(1) of the Teaching and Higher Education Act 1998<sup>(20)</sup>, or

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<sup>(13)</sup> S.I. 1989/1058. Regulation 8 was amended by S.I. 1992/1512, S.I. 1993/616, S.I. 2010/1656, S.I. 2010/2222, S.I. 2011/1665, and S.I. 2012/24.

<sup>(14)</sup> 1986 c. 44. Paragraph 9 of Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2 and amended by the Utilities Act 2000 (c. 27), Schedule 6, Part 1, paragraph 2(1) subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

<sup>(15)</sup> 1989 c. 29. Paragraph 4 of Schedule 6 was substituted by the Utilities Act 2000 (c. 27), Schedule 4, paragraph 1 subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

<sup>(16)</sup> 1984 c. 42.

<sup>(17)</sup> 1985 c. 23. Section 21A was inserted by the Criminal Justice and Courts Act 2015 (c. 2), section 54(1).

<sup>(18)</sup> 1994 c. 23.

<sup>(19)</sup> 2006 c. 46.

<sup>(20)</sup> 1998 c. 30.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (ii) the Education (Student Loans) Act 1990<sup>(21)</sup>, or that Act as it continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998, by an order made under section 46(4) of that Act.

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<sup>(21)</sup> 1990 c. 6.