

# THE DEBT RESPITE SCHEME

## (BREATHING SPACE MORATORIUM AND MENTAL HEALTH CRISIS MORATORIUM) (ENGLAND AND WALES) REGULATIONS 2020 (THE REGULATIONS)

The regulations come into force, if approved, on **4 May 2021**. They introduce moratoria or 'breathing spaces' for people struggling to keep up with their debts.



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This regulation applies to debtors who ordinarily reside or are domiciled in England and Wales only, and largely to personal debts (owed to the debtor personally). Some business debts are eligible but not if the debts relate solely to the business and the debtor is VAT registered or if the debtor is in partnership with someone else.

The debts must be qualifying debts (see more on this below).

There is no limit on the individual's debt or total debts that can be protected in a moratorium.

The regulations bring in two breathing spaces:

- standard moratorium – for 60 days after taking professional advice, it can only be used once a year by a debtor; and
- mental health moratorium – there are no restrictions on how many times a debtor can apply for a breathing space if they are in receipt of treatment for their mental health.

### WHAT IS THE PURPOSE / OBJECTIVE?

The purpose of the instrument is to afford people who are struggling with debt a breathing space, especially if suffering with mental health and whilst they are undergoing treatment.

More particularly, the objective is to encourage more people to seek early advice. Often advice is not actually sought until a breaking point has already been reached, which results in hasty decisions being made that may not be in the best interests of the debtor or indeed their creditors as a whole.

It implements the Statutory Debt Repayment Plan (SDRP). The SDRP is a statutory agreement which allows people to repay their debts at an achievable level and over an agreed timeframe. It provides legal protection from creditor actions for the duration of the moratorium period of their plan.

The government set out in June 2019 their intention to implement the SDRP over a longer period, although it is not



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yet known when this will be implemented.

### GENERAL AND QUALIFYING DEBTS

It is important to note that the debt advisor (who must be FCA authorised) cannot charge any fees for their advice. This allows the debtor to engage in talks with reduced stress, knowing that additional interest, fees and charges are frozen and enforcement action is prevented.

The breathing space is not a payment holiday. Debtors should keep paying their debts during a moratorium as they become due and for certain debts failure to do so may even result in their moratorium being cancelled at the midway review (see below).

Only qualifying debts apply to a moratorium. 'Debts' covers any liabilities arising under any obligations, including specific sums of money. Most debts are likely to qualify, including those under loans or bank facilities, credit cards, utilities bills, taxes and benefit debts. Joint and guaranteed debts also qualify.

Non-eligible debts are set out fully in regulation 5(4), but include non-eligible business debts, court fines and debts incurred by fraudulent behaviour.

Additional debts can be added to the moratorium (regulation 14) after the breathing space has started. The creditors are under a duty to carry out a reasonable search once they have been notified of the moratorium

and notify the debtor and the debtor's advisor of any additional debts that should have been included within the moratorium. The creditor may be held liable for the debtor's costs and losses if they do not comply with their duties. The debt advisor will then carry out their checks as set out in regulation 15 and notify the Secretary of State if applicable.

There are two types of breathing space:

### 1 THE STANDARD MORATORIUM

This allows more time for the debtor to seek professional advice from an approved debt service advisor on a much-reduced stress level. It lasts for 60 days.

The criteria for a debtor to qualify for a standard breathing space moratorium are that they must:

- reside within England or Wales;
- not have had a standard moratorium within the last 12 months;
- not be subject to a debt relief order, in an individual voluntary arrangement or be an undischarged bankrupt;
- not be subject to a current mental health crisis moratorium;
- seek and obtain advice from an approved debt service provider; and

- in the opinion of the advisor, currently be unable to repay at least some of their debt but able to do so with the help of the moratorium.

Following on from the debt provider's initial advice, the individual debtor can then apply for an order to grant a breathing space moratorium.

### DEBT ADVICE PROVIDER FEES AND REFERRALS

Under Regulation 4:

- a debt advisor must not charge a fee with regards to a moratorium;
- a debt advice provider may make a referral to another debt advice provider, if they consider it appropriate to do so; and
- where a referral is made by the debt advisor, the debt advisor must give notification to the individual (or their agent) and the Secretary of State by the end of the following business day.

### WHEN DOES THE MORATORIUM START AND END?

The Secretary of State, upon receipt of the notification from a debt advisor, must send a notification of referral to all of the creditors and the agent and enter this in the register by the end of the following business day.

**...FOLLOWING ON FROM THE DEBT PROVIDER'S INITIAL ADVICE, THE INDIVIDUAL DEBTOR CAN THEN APPLY FOR AN ORDER TO GRANT A BREATHING SPACE MORATORIUM...**

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## ...THE 60 DAY 'BREATHING SPACE' IS FIXED AND CANNOT BE EXTENDED...

The breathing space moratorium starts the day after the Secretary of State makes an entry in the register and ends 60 days later.

The 60 day 'Breathing Space' is fixed and cannot be extended. This was agreed to give assurance to creditors. The only exception to this is if a mental health crisis moratorium is applicable.

At the end of the moratorium, the Secretary of State must make an entry in the register and notify relevant creditors that the moratorium has ended.

### **MIDWAY REVIEW AND CANCELLATION OF BREATHING SPACE MORATORIUM**

A debt advisor must carry out a midway review between 25 and 35 days after the moratorium has started.

A midway review may also be requested by the creditor, if done within 20 days from the start of the moratorium period and the creditor can show either that it is unfairly prejudiced or that there has been material error over the eligibility of the debtor or moratorium debts.

If the debt advisor deems it necessary to cancel all or part of a moratorium at the

mid-term review there are various actions that the debt advisor must take as set out in regulation 27.

If the debtor wishes to add a debt to the moratorium they must seek the debt advisor's advice on whether the debt is eligible to be added to the moratorium and if so, the debt advisor will notify the Secretary of State who will add it to the register and notify the creditors by the end of the following business day.

The period of the moratorium remains unaffected by additional debts being included.

### **2 THE MENTAL HEALTH CRISIS MORATORIUM**

Where an individual debtor is undergoing mental health treatment via an approved mental health professional, they are entitled to receive protection from the scheme via an approved mental health professional.

The approved mental health professional will be able to will carry out an assessment and enter into a moratorium without the debtor engaging with debt advice. This stands alone and outside the breathing space moratorium – ie you can still apply for a standard moratorium.



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The criteria for a debtor to qualify for a Mental Health Crisis moratorium is that they:

- must reside within England of Wales; and
- are in receipt of mental health treatment, ie they have been detained in hospital for assessment or treatment, or are receiving treatment, or have been moved to a place of safety as set out in Regulation 28(2).

There is a large list of people who may submit an application to a debt advice provider

for a mental health crisis moratorium in relation to a debtor, what information is required and what the debt advisor's obligations are, are set out in Regulations 29 and 30.

The approved mental health professional is able to provide this evidence to a debt advisor at the debtor's request or someone involved in the debtor's care.

The moratorium will apply for the duration of the debtor's treatment, plus an additional 30 days.

The debtor may also be entitled to the 60 days standard moratorium, if eligible (see above), via professional debt advice.

There is no limit on the number of times people receiving mental health crisis treatment can enter a moratorium this way, unlike debtors in the 60 day breathing space, who only have access once in a 12-month period.

### DEBT ADVICE PROVIDER FEES AND REFERRALS

This is the same as under the standard breathing space moratorium above, although in addition, the debt advisor must ensure that the eligibility criteria is met as details in Regulations 29 and 30 for debtors suffering mental health.

### WHEN DOES THE MORATORIUM START AND END?

The Secretary of State, upon receipt of the notification from a debt advisor, must send a notification of referral to all of the creditors and the agent and enter this in the register by the end of the following business day.

The mental health crisis moratorium starts the day after the Secretary of State makes an entry in the register and ends 30 days after the first day the mental health treatment ceases.

At the end of the moratorium, the Secretary of State must make an entry in the register and notify the creditors who are notified of the moratorium, that the moratorium has ended.

### REVIEW AND CANCELLATION OF MENTAL HEALTH CRISIS MORATORIUM

A debt advisor must carry out a midway review between 20 and 30 days after the moratorium has started with the debtors nominated point of contact to check whether the debtor is still undergoing mental health treatment.

The debt advisor needs to check the position with the point of contact every 20 to 30 days from when the previous check was carried out. The moratorium will end if the update is not provided by the point of contact.

If the moratorium ends, the debt advisor is not required to carry out any further checks.

Where the moratorium has ended the debt advisor must by the following working day, notify the Secretary of State so that they can carry out their duties as detailed above.

### ELECTRONIC SYSTEM AND REVIEWS

This scheme will be operated by the Secretary of State via an electronic system which will include a private register of person in moratoria:

- Regulation 35(4) sets out entitlements to information held on the register; and
- Regulation 35(5) limits the information available to the creditors.

The monitoring is outlined in regulation 40 of this instrument.

HM Treasury will publish a review by 4 May 2026 with further evaluations being published at five yearly intervals.

Included in the regulation is a statutory review clause.

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