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# The Debt Respite and Breathing Space Regulations

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# Overview



- The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) England and Wales Regulations 2020/1311
- Part 1 – all types of moratoria
- Part 2 – breathing space moratoria
- Part 3 – mental health crisis moratoria

# Key definitions

- “**debt advice provider**” is (a) a person authorised under FSMA to carry on debt-counselling activities or (b) a local authority
- “**qualifying debt**” is “any debt or liability other than a “**non-eligible debt**”
- “**moratorium debt**” is any “qualifying debt” owed at point when application for moratorium made (plus other criteria)

# Key definitions

- “non-eligible debts” – Regulation 5(1)
- Includes:
  - Secured debt which does not amount to arrears
  - “non-eligible business debts” – Regulation 5(6)
  - See sub-paragraphs (a) to (l) of Reg 5(1) for detail

# What is the effect of a moratorium?

- Regulation 7:

“... during a **moratorium period** a creditor may not, in relation to any moratorium debt, **take any of the steps specified in paragraph (6)** in respect of the debt unless—

- (a) these Regulations specify otherwise, or

- (b) the county court or any other court ... **has given permission** for the creditor to take the step.”

# What steps are prohibited by paragraph (6)?

- A creditor may not:

“(a) **require a debtor to pay interest** that accrues on a moratorium debt during a moratorium period,

(b) **require a debtor to pay fees, penalties or charges** in relation to a moratorium debt that accrue during a moratorium period,

(c) take **any enforcement action** in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise), or

(d) **instruct an agent to take any of the actions** mentioned in subparagraphs (a) to (c).” [emphasis added]

# What amounts to enforcement?

- Extensive definition in paragraph (7) of Regulation 7, paragraphs (a) to (n)
- Not just taking steps to collect a moratorium debt, includes wide range of actions
- Any action contrary to Regulation 7 is **null and void**

# Restrictions on contact

- Creditors and their agents must not contact debtors during a moratorium in respect of a moratorium debt: Regulation 11
- Specific exemptions in Regulation 11(2) e.g. may contact debt advice provider, for unrelated purpose, to respond to a query or complaint, or in relation to permitted legal proceedings or CCA / FSMA obligations



# Creditors' other responsibilities



- Notification of agents: Regulation 12
- Searches for other debts: Regulation 14
- Searches for assignees
- Failure to notify – liable for losses

# When may a court give permission?

- No permission can be given for steps specified in paragraphs 6(a) or (b)
- Permission can be given for steps specified in paragraphs 6(c) and (d)
- Test in Regulation 7(5) - where **reasonable** but not if **detrimental** or if **undermines moratorium**

# Effect on limitation periods

- If creditor cannot issue proceedings, obvious problem
- See Regulation 8(1) for solution – 8 week extension of time under Regulation 8(2)

# Effect on existing legal proceedings

- Notification requirement - Reg 10(1)
- Court **must** stay bankruptcy petition: Reg 10(2)(a)
- Other proceedings **may** continue, but no steps to enforce: Reg 10(3)

# Obligations on the debtor?

- Regulation 16(1): an applicant **must**:
  - (a) take reasonable care to provide accurate information to the debt service provider, and
  - (b) not deliberately withhold relevant information from the applicant
- Regulation 16(2) - additional obligations in respect of Breathing Space Moratorium

# Grounds for review?

- Creditor may request a review – Regs 17(1) and (2) on grounds of:
  - Unfair prejudice to interests; or
  - Material irregularity in respect of eligibility, qualifying debts or ability to pay debt
- Time limits – 20 days from start or inclusion of debt: Regs 17(3) and (5). Request in writing.

# Steps upon receipt of request



- DAP must conduct review and take certain steps before day 35 of moratorium: Reg 18(4)
- Must cancel if grounds established, unless debtor's personal circumstances would make unfair or unreasonable
- If creditor dissatisfied, application to court before day 50

# Breathing Space Moratorium



- Part 2 of Regulations
- Advice from DAP required prior to application
- Contents of application: name, date of birth, residential address, (if known and relevant) details of debts and enforcement agents



# Who is eligible?

- Regulation 24:
  - Debtor eligibility criteria – paragraph (3)(a) to (h) (i.e. individual, domiciled in E&W, etc ...)
  - Additional conditions - paragraph (4) (i.e. unable or unlikely to be able to pay some or all debts as fall due and BSM appropriate)
- At least one debt is a qualifying debt

# When is BSM appropriate?

- See Regulation 24(4)(b) –
  - sufficient funds to pay debts?
  - benefit debtor to enter debt solution?
  - debtor eligible for debt solution?
  - moratorium necessary?
- “**debt solution**” is “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.”

# How long does a BSM last?

- 60 days generally, unless cancelled earlier: Reg 26
- “midway review” between day 25 and 35: Reg 27(1) and (2)

# Additional obligations on debtors in BSM

- During a BSM a debtor **must**:
  - (a) inform their debt advice provider if there is any **material change** in their circumstances or financial position,
  - (b) make any payment due in relation to an **ongoing liability** as it falls due to be paid during the moratorium period, (but see Reg 27(7))
  - (c) not obtain additional credit that exceeds £500 at any one point in time and
  - (d) engage with the debt advice provider in such a way as the debt advice provider considers appropriate (Reg 16(2))