

*Draft Regulations laid before Parliament and Senedd Cymru under section 7(8)(a) and (b) of the Financial Guidance and Claims Act 2018, for approval by resolution of each House of Parliament and Senedd Cymru.*

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DRAFT STATUTORY INSTRUMENTS

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**2022 No. \*\*\*\***

**DEBT MANAGEMENT AND RELIEF, ENGLAND AND WALES**

**The Debt Respite Scheme (Statutory Debt Repayment Plan etc.)  
(England and Wales) Regulations 2022**

*Made* - - - - - **\*\*\*2022**

*Coming into force in accordance with regulation 1(2) to (7)*

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The Treasury<sup>(a)</sup> in exercise of the powers conferred by section 7(2), (4A) and (5)(a) and (ba) to (d) of the Financial Guidance and Claims Act 2018<sup>(b)</sup> make the following Regulations.

In accordance with section 7(8)(a) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

In accordance with section 7(8)(b) of that Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru.

In accordance with section 7(2) and (3) of that Act, the Treasury have received advice from the single financial guidance body<sup>(c)</sup> on the establishment of a debt respite scheme and have taken that advice into account in making these Regulations.

## PART 1

### General Provisions

#### Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Debt Respite Scheme (Statutory Debt Repayment Plan etc.) (England and Wales) Regulations 2022.

(2) This regulation and regulation 75 come into force at the end of the period of 90 days beginning with the day on which these Regulations are made.

(3) With the exception of the provisions referred to in paragraphs (4) to (7) the remainder of these Regulations come into force on the relevant date.

(4) Sub-paragraph (b) of the definition of “lease” and the definition of “occupation contract” in regulation 2(1) come into force on whichever date is the later of—

- (a) the relevant date;
- (b) the day that section 7 of the 2016 Act comes into force.

(5) Regulation 25(6)(l)(i) comes into force on whichever date is the later of—

- (a) the relevant date;
- (b) the day that section 157 of the 2016 Act comes into force.

(6) Regulation 25(6)(l)(ii) comes into force on whichever date is the later of—

- (a) the relevant date;
- (b) the day that section 181 of 2016 Act comes into force.

(7) Regulation 25(6)(l)(iii) comes into force on whichever date is the later of—

- (a) the relevant date;
- (b) the day that section 187 of 2016 Act comes into force.

(8) These Regulations extend to England and Wales.

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(a) In accordance with section 26(2) of the Financial Claims and Guidance Act 2018, the reference to the Secretary of State in section 7(2) of that Act is to be read as a reference to the Secretary of State or the Treasury.

(b) 2018 c. 10. Section 7(4A) and (5)(ba) were inserted by section 34 of the Financial Services Act 2021 (c. 22).

(c) The single financial guidance body is named the Money and Pensions Service under regulation 2 of the Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019 (S.I. 2019/383).

(9) These Regulations apply in respect of debtors domiciled in England and Wales or ordinarily resident in England or Wales.

(10) In this regulation—

“the 2016 Act” means the Renting Homes (Wales) Act 2016(a);

“the relevant date” means [\*\*\*\* 2024].

## Interpretation

2. In these Regulations—

“agent” includes—

- (a) an enforcement agent,
- (b) a public authority,
- (c) a solicitor, or
- (d) a person appointed to collect a plan debt on behalf of a creditor;

“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 an application for a plan 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;

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

“Breathing Space Regulations” means the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020(c);

“business day” means any day other than—

- (a) Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(d) in England and Wales;

“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;

“conditional notice” is to be construed in accordance with regulation 46;

“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;

“contingent debt” is to be construed in accordance with regulation 6(2)(c)(ii);

“controlled goods agreement” means an agreement under paragraph 13(4) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007;

“creditor by assignment” is to be construed in accordance with regulation 11;

“debt advice provider” has the meaning given in regulation 4;

“debt relief order” means an order under Part 7A of the Insolvency Act 1986(e);

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

(b) 1986 c.45.

(c) S.I. 2020/1311.

(d) 1971 c. 80.

(e) Part 7A was inserted by the Tribunals, Court and Enforcement Act 2007 (c. 15), Schedule 17, paragraph 1.

“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” in relation to a plan means the individual who applied for it;

“discretionary non-eligible debt” is to be construed in accordance with regulation 9;

“enforcement action” is to be construed in accordance with regulation 25(8);

“enforcement agent” means—

- (a) an individual authorised by section 63(2) of the Tribunals, Courts and Enforcement Act 2007(a) 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(b) to act as an enforcement officer;

“fair and reasonable assessment” is to be construed in accordance with regulation 59;

“final plan” is to be construed in accordance with regulations 29 and 30;

“final warning notice” means a notice issued by the Secretary of State that sets out that the plan is to be revoked on a date specified in the notice if the conditions specified in the notice have not been met by the debtor (or in the case of joint debtors, by both of them);

“FSMA” means the Financial Services and Markets Act 2000(c);

“future debt” is to be construed in accordance with regulation 6(2)(c)(i);

“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;

“income payments agreement” means an income payments agreement within the meaning of section 310A of the Insolvency Act 1986(d);

“income payments order” means an income payments order within the meaning of section 310 of the Insolvency Act 1986(e);

“individual voluntary arrangement” means a voluntary arrangement under Part 8 of the Insolvency Act 1986;

“interest” means any interest charged by a creditor in relation to a plan debt;

“interim order” means an interim order under section 252(1) of the Insolvency Act 1986(f);

“joint debt” has the meaning given in regulation 14(2);

“joint debtor” has the meaning given in regulation 14(2);

“joint plan” has the meaning given in regulation 14(2);

“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

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(a) 2007 c. 15. Section 63 was amended by section 170 of the Tax Collection and Management (Wales) Act 2016 (anaw 6).

(b) 2003 c. 39.

(c) 2000 c. 8.

(d) Section 310A was inserted by section 260 of the Enterprise Act 2002 (c. 40).

(e) Section 310 was amended by Schedule 3 to the Pensions Act 1995 (c. 26), Schedule 2 to the Welfare Reform and Pensions Act 1999(c. 30), section 259 of, and Schedule 2 to, the Enterprise Act 2002 and S.I. 2011/1730 as itself amended by S.I. 2012/709.

(f) Section 252 was amended by Schedule 3, paragraphs 1 and 2 of the Insolvency Act 2000 (c. 39).

(b) an occupation contract;

“limitation time limit” means any time limit applicable, whether under the Limitation Act 1980<sup>(a)</sup> or any other enactment, to the bringing of an action.

“local authority” means—

(a) in relation to England, a county council, a London borough council, a district council, the Common Council of the City of London, or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council, a county borough council or a community council;

“mandatory non-eligible debt” has the meaning given in regulation 8;

“notice of intention to initiate a plan” is to be construed in accordance with regulation 19;

“occupation contract” has the meaning given in section 7 of the Renting Homes (Wales) Act 2016;

“ongoing liability” means any payment, other than in respect of arrears, which is due in relation to—

(a) a secured credit agreement where the obligation of the debtor (or in the case of joint debtors, of either of them), to repay is secured by a mortgage on land used by the debtor (or in the case of joint debtors, either of them) as their primary residence,

(b) a lease in relation to a property used by a debtor (or in the case of joint debtors, either of them) as their sole or primary residence,

(c) an insurance agreement,

(d) taxes, duties and national insurance contributions,

(e) local taxes to fund local authority expenditure and rates,

(f) the supply of water, sewerage, electricity, gas, heating oil or solid fuel, or

(g) the supply of internet services or mobile phone network;

“Part 4A permission” has the meaning given in section 55A(5) of FSMA<sup>(b)</sup>;

“payment distributor” has the meaning given in regulation 12;

“plan” means a statutory debt repayment plan, established in accordance with these Regulations, for the repayment of qualifying debt owed by a debtor to one or more creditors that provides for the repayment of that debt over a period specified in the plan which, subject to regulations 36 and 41, must not exceed 10 years;

“plan debt” is to be construed in accordance with regulation 9;

“plan period” means the period beginning with the day after the day on which the Secretary of State sends the creditor a provisional plan under regulation 23, and ending—

(a) on the day on which the provisional plan is cancelled, or

(b) if the provisional plan takes effect as a final plan, on the day on which the final plan is revoked or completed (as the case may be);

“plan register” means the register maintained by the Secretary of State under regulation 64;

“priority debt” is to be construed in accordance with regulation 7;

“provisional plan” is to be construed in accordance with regulation 22;

“qualifying debt” is to be construed in accordance with regulation 6;

“representative” means—

(a) a person who has been granted—

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(a) 1980 c. 58.

(b) Part 4A of the Financial Services and Markets Act 2000 was substituted for sections 40 to 55 of that Act by section 11 of the Financial Services Act 2021 (c. 21). There are amendments to section 55A but none are relevant here.

- (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<sup>(a)</sup> 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<sup>(b)</sup>;
- “schedule of payments” is to be construed in accordance with regulation 22;
- “secured credit agreement” means an agreement under which one person provides credit to another and which provides for the obligation 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 debt incurred under—
- (a) a secured credit agreement,
  - (b) a hire-purchase agreement, or
  - (c) a conditional sale agreement;
- “Standard Financial Statement” means the tool, made available to certain member organisations by the Money and Pensions Service under that title, which provides a universal income and expenditure statement, together with a single set of spending guidelines and guidance and other materials which may be used for the purposes of assisting a debtor to find a debt solution;
- “threshold for creditor objection” has the meaning given in regulation 13;
- “universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012<sup>(c)</sup>.

**Further interpretation**

**3. In these Regulations—**

- (a) any reference to a debtor includes the debtor’s representative,
- (b) any reference to a plan is to be construed as a reference to either of a provisional plan or a final plan,
- (c) unless otherwise provided, for the purposes of joint plans—
  - (i) any reference to a plan includes a joint plan,
  - (ii) any reference to a debtor includes a joint debtor,
  - (iii) any reference to the debtor is to be construed as a reference to each of the joint debtors, and
- (d) a plan is “in force” until the day on which it is cancelled, revoked or completed (as the case may be).

**Meaning of debt advice provider**

**4. —(1) In these Regulations a “debt advice provider” means—**

- (a) an authorised person who has a Part 4A permission relating to regulated activities falling within both—

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(a) 2005 c. 9. There are amendments to paragraph 2 of Schedule 4 but none are relevant here.  
 (b) 2007 c. 27.  
 (c) 2012 c. 5.



- (i) article 39D (debt adjusting), and
  - (ii) article 39E (debt-counselling)
- of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a), or
- (b) a local authority carrying on regulated activities falling within both articles 39D and 39E of that Order.
- (2) In this regulation—
- (a) “authorised person” means a person who is authorised for the purposes of FSMA;
  - (b) “regulated activity” is to be construed in accordance with section 22 of FSMA.

### **Debt advice provider fees and referrals**

5. —(1) A debt advice provider must not charge a debtor a fee in connection with a plan.

(2) Paragraph (1) does not prevent payment to the debt advice provider under regulation 56(2)(a).

(3) A debt advice provider must refer a debtor to another debt advice provider if the circumstances specified in paragraphs (4) to (7) apply.

(4) A debt advice provider may refer a debtor to another debt advice provider in any other circumstances if they consider it is appropriate to do so.

(5) The circumstances specified in this paragraph are that—

- (a) the Secretary of State has sent a notice of intention to initiate a plan under regulation 19(2),
- (b) the debtor (or in the case of joint debtors, either of them) has notified the debt advice provider that the debtor is intending to make a request to the debt advice provider to be referred to another debt advice provider,
- (c) the debt advice provider and debtor have discussed the debtor’s intention, and
- (d) the debtor then makes the request to be referred to another debt advice provider.

(6) The circumstances specified in this paragraph are that the debt advice provider has applied to the Financial Conduct Authority to cancel or vary the Part 4A permission referred to in regulation 4(1)(a).

(7) The circumstances specified in this paragraph are that the debt advice provider has received a decision notice from the Financial Conduct Authority in accordance with section 55Z of FSMA (cancellation of Part 4A permission: procedure) in respect of the Part 4A permission referred to in regulation 4(1)(a) and does not intend to refer the matter to the Tribunal under that section.

(8) The circumstances specified in this paragraph are that the debt advice provider has received a decision notice from the Financial Conduct Authority in respect of the Part 4A permission referred to in regulation 4(1)(a) in accordance with section 55Z of FSMA and has referred the matter under section 55Z of FSMA and—

- (a) the Tribunal upheld the decision notice, and
- (b) the debt advice provider is no longer entitled to refer or otherwise appeal that decision notice (ignoring any possibility of an appeal out of time with permission).

(9) Where a debt advice provider accepts a referral of a debtor at any time after a notice of intention to initiate a plan has been sent by the Secretary of State under regulation 19(2), they must, by the end of the business day following that acceptance, provide a notification that they have accepted the referral to —

- (a) the Secretary of State, and
- (b) the debtor.

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(a) S.I. 2001/544. Articles 39 D and 39E were inserted by S.I. 2013/1881, article 5.

(10) Where the Secretary of State receives a notification from a debt advice provider in accordance with paragraph (8)(a), the Secretary of State must, by the end of the following business day, send a notification of the referral to—

- (a) each creditor or, if the agent’s contact details have been provided to the Secretary of State instead of the creditor’s under regulation 14, the agent, and
- (b) the payment distributor for the plan.

(11) A referral of a debtor to a debt advice provider takes effect in relation to the obligations of the debt advice provider under these Regulations on the business day following the day on which the debt advice provider accepts the referral.

(12) Unless otherwise provided, in this regulation references to “debtor” in relation to a joint plan are to be construed as references to both joint debtors.

### **Meaning of qualifying debt**

**6.**—(1) In these Regulations a “qualifying debt” means, in relation to a provisional plan, a final plan or an application for a plan, any debt or liability that was owed by the debtor at the time when the application for the plan was made, other than—

- (a) a mandatory non-eligible debt within the meaning of regulation 8, or
- (b) a discretionary non-eligible debt within the meaning of regulation 9.

(2) 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;
- (c) any debt or liability other than an ongoing liability which, at the date of the application for a plan, was—
  - (i) known and quantifiable but not yet due for payment (“future debt”), or
  - (ii) known but not yet quantifiable or due for payment (“contingent debt”).

(3) A debt can be 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.

### **Meaning of priority debt**

**7.**—(1) In these Regulations, “priority debt” means debt of the type specified in paragraph (2), to which payments under a plan must be allocated in accordance with regulation 64(2)(b).

(2) The type of debt specified in this paragraph is qualifying debt—

- (a) in relation to the letting to the debtor (or in the case of joint debtors, either of them) of a dwelling house in which the debtor resides as their sole or primary residence,
- (b) in relation to a mortgage agreement in relation to a dwelling house in which the debtor (or in the case of joint debtors, either of them) resides as their sole or primary residence,
- (c) owed by the debtor (or in the case of joint debtors, either of them) to a local authority or to the Crown,
- (d) in relation to the supply of gas or electricity,
- (e) in relation to a hire-purchase agreement, and
- (f) in relation to an agreement with an internet service provider or mobile phone network.

### **Meaning of mandatory non-eligible debt**

**8.**—(1) In these Regulations “mandatory non-eligible debt” means—

- (a) secured debt which does not amount to arrears in respect of secured debt;
- (b) non-eligible business debt;
- (c) additional credit obtained in accordance with regulation 24(1)(d) and 24(2) to (4);
- (d) any debt which the debtor (or in the case of joint debtors, either of them) incurred by means of any fraud or fraudulent breach of trust by the debtor;
- (e) any liability in respect of a fine imposed by a court for an offence or from any liability under a recognisance;
- (f) any liability in respect of—
  - (i) an income payments agreement, or
  - (ii) an income payments order;
- (g) any obligation arising under a confiscation order made under—
  - (i) section 1 of the Drug Trafficking Offences Act 1986(a) 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(b),
  - (ii) section 2 of the Drug Trafficking Act 1994(c) 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(d),
  - (iii) section 1 of the Criminal Justice (Scotland) Act 1987(e) 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(f),
  - (iv) section 71 of the Criminal Justice Act 1988(g) 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;
- (h) 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(h);
- (i) 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(i) 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(j);
- (j) 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 plan starts;
- (k) 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(k), being in either case damages in respect of the death of

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(a) 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.

(b) 1994 c. 37.

(c) 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).

(d) 2002 c. 29.

(e) 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.

(f) 1995 c. 40.

(g) 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).

(h) 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.

(i) 1992 c. 4.

(j) 2012 c. 5.

(k) 1987 c. 43.

or personal injury (including any disease or other impairment of physical or mental condition) to any person;

- (l) a payment on account of universal credit under regulations 4 or 11 of the Social Security (Payments on Account of Benefit) Regulations 2013(a);
- (m) 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(b);
- (n) 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
  - (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(c).

(2) The debt referred to in paragraph (1)(e) 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(d) or electricity under paragraph 4 of Schedule 6 to the Electricity Act 1989(e).

(3) In this regulation—

- (a) “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(f);
- (b) “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(g) (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;
- (c) “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 plan and for the purpose of that business—
  - (i) is registered under the Value Added Tax Act 1994(h), 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;
- (d) “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(i), or

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(a) S.I. 2013/383.

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

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

(d) 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.

(e) 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.

(f) 1984 c. 42.

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

(h) 1994 c. 23.

(i) 2006 c. 46.

- (ii) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;
- (e) “student loan” means a loan made under –
  - (i) regulations made under section 22(1) of the Teaching and Higher Education Act 1998(a), or
  - (ii) the Education (Student Loans) Act 1990(b), 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.

**Meaning of discretionary non-eligible debt**

- 9.**—(1) In these regulations “discretionary non-eligible debt” means debt—
- (a) of a type specified in paragraph (2) or to which paragraph (3) applies; and
  - (b) that a debt advice provider and a debtor agree is not to be treated as a qualifying debt for the purposes of the plan.
- (2) The type of debt specified in this paragraph is—
- (a) arrears in relation to the letting to the debtor of a dwelling house in which the debtor resides as their sole or primary residence, and
  - (b) arrears in respect of secured debt in relation to a mortgage agreement for a dwelling house in which the debtor resides as their sole or primary residence.
- (3) This paragraph applies in relation to a debt where—
- (a) a limitation time limit relates to a right of action in respect of the debt, and
  - (b) the limitation time limit has expired or is due to expire before the date the debt advice provider takes the steps specified in regulation 19.
- (4) References in this regulation to “debtor” in relation to a joint plan are to be construed as references to either or both joint debtors.

**Meaning of plan debt**

- 10.** In these Regulations “plan debt” is any qualifying debt—
- (a) that was incurred by a debtor in relation to whom a provisional plan or a final plan is in force or in respect of whom a notice of intention to initiate a plan has been sent under regulation 19, and
  - (b) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.

**Meaning of creditor by assignment**

- 11.**—(1) In these Regulations references to a creditor as a person to whom a qualifying debt is owed by a debtor include a reference to any person who, by assignment or operation of law, before or after the date of the application for a plan has—
- (a) assumed or has the right to exercise the rights and duties of the creditor, or
  - (b) to whom the right to claim the whole or any part of the debt has passed,
- (a “creditor by assignment”).
- (2) In these Regulations, “assignment”, in relation to Scotland, means assignation and “assigned” shall be construed accordingly.

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(a) 1998 c. 30.  
 (b) 1990 c. 6.

## Meaning of payment distributor

12. In these Regulations a “payment distributor” is —

- (a) a debt advice provider—
  - (i) subject to rules set out in the Financial Conduct Authority Client Asset Sourcebook<sup>(a)</sup>, and
  - (ii) listed on the list of payment distributors maintained by the Secretary of State under regulation 53, or
- (b) the Secretary of State when appointed to act as a payment distributor under regulation 54(3).

## Meaning of threshold for creditor objection

13. In these Regulations “threshold for creditor objection” means—

$$A/T \times 100 = \geq 25\%$$

where —

A is the combined value of the debt owed to each of the creditors who object to the proposal, and

T is the total value of the debt recorded for the purposes of any objections —

- (a) to a provisional plan, in the provisional plan that is provided to the Secretary of State under regulation 23(1), or
- (b) to a proposed plan variation, in the copy of the final plan as it is proposed to be varied included in the proposed variation submitted to the Secretary of State under regulation 37(1).

## PART 2

### Plans

#### CHAPTER 1

##### Making, withdrawing and cancelling plan applications

### Application for a plan

14.—(1) An individual may apply to a debt advice provider for a plan.

(2) Two individuals (each a “joint debtor”) who are jointly liable for at least one debt (a “joint debt”) may together apply for a plan for the repayment over a period specified in the plan of qualifying debt owed by either of them, whether jointly or not (a “joint plan”).

(3) An application under paragraph (1) or (2) may not be made unless the debtor has, or the joint debtors have, first obtained advice from a debt advice provider.

(4) The advice referred to in paragraph (3)—

- (a) may be obtained in person, over the telephone or by electronic means, and
- (b) must, in the case of a joint plan, be obtained by both joint debtors from the same debt advice provider.

(5) A debtor making an application for a plan must—

- (a) take reasonable care to provide accurate information to the debt advice provider, and
- (b) not deliberately withhold relevant information from the application.

(6) The application must include the following information—

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(a) Available at [online and hard copy].

- (a) the debtor’s full name and date of birth,
- (b) the debtor’s usual residential address,
- (c) any other address at which the debtor has resided, and which the debtor knows or believes the debtor may have been provided to a creditor in connection with a qualifying debt included in the application, and
- (d) the trading name or names and address of any business carried on by the debtor.

(7) The application must include the following information to the extent that the information is known by the debtor—

- (a) details of all of the debts, including contingent or future debt, to which the debtor is subject at the date of the application,
- (b) contact details of the creditor to whom each debt is owed or, if the debtor does not have the creditor’s contact details, those of any agent acting on behalf of the creditor, and
- (c) in the case of an application for a joint plan, confirmation of which joint debtor owes which debt.

(8) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor’s usual residential address under regulation 69.

(9) In this regulation—

- (a) in paragraph (3) “advice” means advice as to the suitability, conditions and consequences of a plan for the debtor or of a joint plan for the joint debtors, and
- (b) in paragraphs (5) to (8), references to “the debtor” in relation to a joint plan mean both joint debtors.

#### **Withdrawal of application by debtor**

**15.**—(1) A debtor may, at any time before a provisional plan has effect as the final plan, withdraw the application by giving notice to the debt advice provider that the application is withdrawn.

(2) Where an application is withdrawn after a debt advice provider has taken the steps specified in regulation 19(1)(a), the debt advice provider must, by the end of the following business day notify the Secretary of State that the plan has been withdrawn.

(3) Where the Secretary of State receives a notification under paragraph (3), the Secretary of State must, by the end of the following business day, send a notification that the notice of intention to initiate a plan or the provisional plan (as the case may be) is cancelled to—

- (a) the debtor,
- (b) each relevant creditor, and
- (c) the payment distributor appointed under regulation 19(1)(b).

(4) In this regulation and regulation 16 “relevant creditor” means—

- (a) where the Secretary of State has sent a notice of intention to initiate a plan but has not sent notice of a provisional plan, each of the creditors notified under regulation 19;
- (b) where the Secretary of State has sent notice of a provisional plan, each of the creditors named in that provisional plan.

#### **Cancellation of application by debt advice provider**

**16.**—(1) A debt advice provider may cancel an application for a plan at any time before a provisional plan has effect as the final plan if—

- (a) the debt advice provider considers that the debtor (or in the case of joint debtors, either of them) has failed to engage with the debt advice provider in such a way as the debt advice provider considers to be appropriate, or
- (b) the debt advice provider considers that a plan would no longer be appropriate.

(2) Where an application is cancelled after a debt advice provider has taken the steps specified in regulation 19(1)(a), the debt advice provider must, by the end of the following business day notify the Secretary of State that the application has been cancelled.

(3) Where the Secretary of State receives a notification under paragraph (2), the Secretary of State must, by the end of the following business day send a notification that the notice of intention to initiate a plan or the provisional plan (as the case may be) is cancelled to—

- (a) the debtor,
- (b) each relevant creditor, and
- (c) the payment distributor appointed under regulation 19(1)(b),

and for the purposes of sub-paragraph (b) “relevant creditor” has the meaning given in regulation 15.

## CHAPTER 2

### Consideration of applications, intention to initiate a plan

#### **Obligations of debt advice provider when considering an application**

**17.—**(1) A debt advice provider must consider any application for a plan made to them by an individual, or two individuals (each an “applicant”) in accordance with regulation 14.

(2) When considering the application, the debt advice provider must agree with the applicant which, if any, of the applicant’s debts should be treated as discretionary non-eligible debts for the purposes of the plan.

(3) Where the debt advice provider and applicant agree that a debt should be treated as discretionary non eligible debt in accordance with regulation 8, the debt advice provider must record the value of the debt on the date of the application for the plan.

(4) Having considered the application, if the debt advice provider considers —

- (a) that the requirements specified in regulation 18 are satisfied, the debt advice provider must take the steps specified in regulation 19(1),
- (b) that the requirements specified in regulation 18 are not satisfied, the debt advice provider must inform the applicant of the refusal of the application and the reasons for it.

#### **Requirements in relation to an application for a plan**

**18.—**(1) The requirements specified in this regulation are—

- (a) the debtor meets the eligibility criteria in paragraph (2),
- (b) the conditions in paragraph (4) are met, and
- (c) the debts proposed to be included in the plan are each of the debtor’s qualifying debts other than contingent or future debt.

(2) The eligibility criteria referred to in paragraph (1)(a) are that, on the date of the application for a plan, the debtor—

- (a) owes a qualifying debt to a creditor,
- (b) is domiciled in England and Wales or ordinarily resident in England or Wales,
- (c) is not subject to a debt relief order,
- (d) is not subject to an interim order or individual voluntary arrangement,
- (e) is not an undischarged bankrupt,
- (f) is not subject to another plan, and
- (g) subject to regulation 48(3) in relation to a joint debtor, has not been subject to another plan which was revoked or completed within 12 months of the date of the application.



(3) The conditions in this paragraph are that, in light of the information provided by the debtor under regulation 14 and any other information obtained by the debt advice provider, the debt advice provider considers that—

- (a) the debtor is unable, or is likely to be unable, to repay some or all of their qualifying debt as it falls due, but
- (b) the debtor would be able to repay all of that debt within a period not exceeding 10 years, and
- (c) a plan would be appropriate.

(4) For the purposes of paragraph (4)(c), when considering whether a plan would be appropriate the debt advice provider must have regard to—

- (a) the amount at the date of the application of the debtor's qualifying debt,
- (b) whether the debtor is already subject to—
  - (i) an income payments order,
  - (ii) an income payments agreement, or
  - (iii) an appropriate debt solution,
- (c) whether another debt solution may be more appropriate,
- (d) the debtor's income and expenditure,
- (e) the amount at the date of the application, if any, of—
  - (i) the debtor's mandatory non-eligible debt,
  - (ii) the debtor's discretionary non-eligible debt, and
- (f) whether the debtor has savings or other assets that could be realised to repay the qualifying debts proposed to be included in the plan.

(5) The debt advice provider must use the Standard Financial Statement when considering whether the conditions referred to in paragraph (4) are met.

(6) For the purposes of paragraphs (2)(f) and (g), a debtor is “subject to” a plan if a plan is in force in relation to the debtor.

#### **Notice of intention to initiate a plan**

**19.—**(1) The steps specified in this regulation to be taken by a debt advice provider are—

- (a) providing to the Secretary of State—
  - (i) confirmation that the debt advice provider intends to devise a plan for the debtor,
  - (ii) the information provided by the debtor under regulation 14(6) and (7) to the extent that it relates to the debtor or the qualifying debts,
  - (iii) confirmation that—
    - (aa) the debtor meets the eligibility criteria in regulation 18(2), and
    - (bb) that the conditions in regulation 18(4) are met,
  - (iv) notice of which qualifying debts are to be treated as priority debts, and
  - (v) information identified by the debt advice provider about any other qualifying debts, and
- (b) appointing a payment distributor in accordance with regulation 54 to undertake the functions specified in regulation 55 in relation to the plan, and
- (c) including the details of that payment distributor in the information provided to the Secretary of State under paragraph (a).

(2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day, send a notification of the debt advice provider's intention to devise a plan (a “notice of intention to initiate a plan”) to—

- (a) those creditors whose contact details have been provided to the Secretary of State in accordance with paragraphs (1)(a)(ii) and (v),
  - (b) any agent whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(a)(ii) and (v) in relation to a debt, unless the creditor to whom that debt is owed has received or will receive a notification under paragraph (a), and
  - (c) the payment distributor appointed under paragraph (1)(b).
- (3) A notification under paragraph (2)(a) or (b) must include —
- (a) the debtor’s full name and date of birth,
  - (b) the debtor’s usual residential address,
  - (c) any other address at which the debtor has resided, and which the debt advice provider knows or believes the debtor may have been provided to the creditor or agent (as the case may be), in connection with the qualifying debt owed by the debtor to the creditor,
  - (d) a description of the debt including the amount of the debt as it is calculated at the date that the notification is sent, and
  - (e) notice of whether or not the debt is a priority debt.
- (4) A notification under paragraph (2)(c) must include—
- (a) details of all of the debts, including contingent or future debt, to which the debtor is subject at the date of the application, and
  - (b) contact details of the creditor to whom each debt is owed or, if the debtor does not have the creditor’s contact details, those of any agent acting on behalf of the creditor.
- (5) Where an agent appointed to act on behalf of a creditor in relation to a debt receives a notification under this regulation (because the agent’s contact details have been provided to the Secretary of State under paragraph (1)(a)(i) or (iv) instead of the creditor’s), the agent must, without delay—
- (a) inform the creditor of the notification, and
  - (b) provide the creditor’s contact details to the debtor’s debt advice provider.
- (6) Where a debt advice provider receives contact details of a creditor in accordance with paragraph (5)(b) the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.
- (7) Where the Secretary of State receives contact details of a creditor under paragraph (6), the Secretary of State must, by the end of the following business day—
- (a) send to that creditor—
    - (i) a notice of intention to initiate a plan, and
    - (ii) the information in paragraph (3), and
  - (b) provide that creditor’s contact details to—
    - (i) the debtor, and
    - (ii) the payment distributor appointed under paragraph (1)(b).
- (8) This regulation is subject to regulation 69.

**Creditor – obligations on receipt of a notice of intention to initiate a plan**

**20.**—(1) A creditor who receives a notice of intention to initiate a plan under regulation 19 must—

- (a) undertake a reasonable search of their records to identify debt owed to the creditor by the debtor to whom the provisional plan would relate, and
- (b) if the creditor has appointed an agent to act on their behalf in relation to a debt, notify the agent of the debt advice provider’s intention to devise a plan.

(2) When a creditor has undertaken a search, the creditor must provide information to the debtor's debt advice provider in accordance with paragraphs (4) to (7).

(3) The creditor must undertake the search and provide the information to the debt advice provider as soon as reasonably practicable but in any event before the end of the 21 day period.

(4) If the notification identifies all of the debt that the creditor's search identifies is owed by the debtor to the creditor, the creditor must—

- (a) indicate which, if any, of the debt, should in the creditor's opinion be treated as priority debt, and
- (b) provide details of any creditor by assignment.

(5) If the notification does not identify all of the debt that the creditor's search identifies is owed by the debtor, to the creditor the creditor must—

- (a) provide details of all of the debt (including the amount of that debt as it is calculated at the date of the notification), that the creditor's search identifies,
- (b) indicate which, if any, of the debt, should in the creditor's opinion be treated as priority debt, and
- (c) provide details of any creditor by assignment.

(6) If the notification identifies debt that the creditor's search does not identify is owed by the debtor to the creditor, the creditor must inform the debt advice provider.

(7) A creditor may provide details to the debt advice provider under both paragraphs (5) and (6).

(8) Where a creditor search identifies a material error in the notification referred to in paragraph (1) in relation to the amount of debt owed by the debtor (or in the case of joint debtors, by either or both of them), the creditor must provide details of the amount that the creditor's records record as owed to the creditor at the date of the notification to the debtor's debt advice provider.

(9) Where a creditor search identifies a creditor by assignment, the creditor must notify the creditor by assignment of the intention to initiate a plan.

(10) Any creditor who fails to comply with paragraphs (1)(a) or (2) will be liable for any losses caused to the debtor or (as the case may be) the creditor by assignment as a result.

(11) A debt advice provider who receives details of a debt from a creditor in accordance with this regulation must take the relevant steps specified in regulation 21.

(12) Where a debt advice provider receives contact details of a creditor by assignment in accordance with paragraphs (4) or (5), the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.

(13) In this regulation, regulation 22 and regulation 23, "the 21 day period" means the period of 21 days beginning with the day on which the Secretary of State sends the notice of intention to initiate a plan.

### **Obligations on a debt advice provider – creditor's response to intention to initiate a plan**

**21.**—(1) This regulation applies at any time before the debt advice provider gives notice of a provisional plan under regulation 23 where—

- (a) a debt advice provider—
  - (i) receives details under regulation 20(5) of a debt that was not included in a notice of intention to initiate a plan, or
  - (ii) otherwise becomes aware of a debt that is owed by a debtor (or in the case of joint debtors, by either of them), in relation to whom a notice of intention to initiate a plan has been given but which was not included in the information given to the Secretary of State under regulation 19,

(an "additional debt"),

- (b) a debt advice provider receives information under regulation 20(8) and there has been a material error in relation to the amount of debt owed by the debtor (or in the case of joint debtors, by either of them), or
  - (c) a debt advice provider receives information under regulation 20(6) that a creditor cannot identify a debt that was included in the notice of intention to initiate a plan.
- (2) Where paragraph (1)(a) applies the debt advice provider must—
- (a) consider whether an additional debt is a qualifying debt that was owed by the debtor at the point at which the application for the plan was made and, if so,
  - (b) confirm with the debtor the amount of that debt as it is calculated on the date of the notification, and
  - (c) take all reasonable steps to include that debt in the provisional plan that is devised under regulation 22.
- (3) Where paragraph (1)(b) applies the debt advice provider must—
- (a) confirm with the debtor (or in the case of a joint debt, with either of the joint debtors), the amount of the debt that is owed to the creditor as it is calculated on the date of the notification, and
  - (b) take all reasonable steps to include that debt in the provisional plan that is devised under regulation 22.
- (4) Where paragraph (1)(c) applies the debt advice provider must—
- (a) notify the debtor (or in the case of a joint debt, both of the joint debtors), that the creditor cannot identify whether or not the debt is owed, and
  - (b) take all reasonable steps to establish whether or not the debt is owed.
- (5) If having taken the steps in paragraph (4) a debt advice provider considers that the debt is owed the debt advice provider must take all reasonable steps to include that debt in the provisional plan that is devised under regulation 22.

## CHAPTER 3

### Devising the provisional plan

#### **Provisional plan**

**22.—(1)** A debt advice provider must devise a provisional plan no later than the 7th day after the end of the 21 day period.

(2) A debt advice provider must devise the plan even if a creditor has not provided information under regulation 20 by the end of the 21 day period.

(3) The provisional plan must include —

- (a) the debtor’s full name and date of birth,
- (b) the debtor’s usual residential address,
- (c) any other address at which the debtor has resided, and which the debt advice provider knows or believes the debtor may have provided to a creditor or agent (as the case may be) named in the plan, in connection with the debt owed by the debtor to the creditor,
- (d) a list of the debtor’s qualifying debts as at the application date,
- (e) which qualifying debts, if any, are priority debts,
- (f) the amount of each debt at the date that the debt advice provider submits the plan to the Secretary of State under regulation 23,
- (g) the creditor’s name, address and reference (if any),
- (h) details of the debtor’s income and expenditure (including in respect of ongoing liabilities) considered by the debt advice provider for the purposes of regulation 18(4),
- (i) details of the debtor’s assets and savings,

- (j) allocation of amounts of income to be set aside in relation to any payment of mandatory non-eligible debt or discretionary non-eligible debt,
- (k) allocation of amounts of income to be set aside in relation to any savings,
- (l) allocation of the debtor's remaining income after the allocations under sub-paragraphs (l) and (m) have been made, for the purposes of making payments under the plan,
- (m) a proposed schedule of payments, including—
  - (i) provision for payments of a fixed amount to be made by the debtor to the payment distributor at regular intervals,
  - (ii) the date on which the debt advice provider expects the first payment to be made by the debtor under the plan,
  - (iii) the date on which the debt advice provider expects the final payment to be made by the debtor under the plan, and
- (n) the amount of each of the payments under sub-paragraph (m) which it is proposed is to be made to each of the creditors referred to in sub-paragraph (g).

(4) The date of the first payment under a plan must be after, but within 42 days from, the date on which an entry confirming that the provisional plan has effect as the final plan is made on the plan register under regulation 29(4) or 30(4).

(5) In devising the provisional plan the debt advice provider must—

- (a) use the Standard Financial Statement to calculate the debtor's income and expenditure, and
- (b) use the electronic system maintained by the Secretary of State under regulation 64(1)(c) for the purposes of calculating the proposed amounts of the payments and allocations referred to in paragraph (3)(l), (m) and (p).

(6) In this regulation, "the 21 day period" has the meaning given in regulation 20(13).

### **Notice of provisional plan**

**23.**—(1) Where the debt advice provider has devised a provisional plan in accordance with regulation 22 the debt advice provider must, by the end of the following business day, provide to the Secretary of State a copy of—

- (a) the provisional plan, and
- (b) the summary of the income and expenditure information in the Standard Financial Statement completed in relation to the debtor.

(2) Where the Secretary of State receives a provisional plan, the Secretary of State must, by the end of the following business day—

- (a) send a copy of the provisional plan and information referred to in paragraph (1)(b) to—
  - (i) the debtor,
  - (ii) those creditors who are named in the plan,
  - (iii) any agent whose contact details have been provided to the Secretary of State in relation to a debt, unless the creditor to whom that debt is owed is named in the plan, and
- (b) send a copy of the provisional plan to the payment distributor appointed in relation to the plan.

(3) Where the Secretary of State has not received a provisional plan by the end of the 7th day after the end of the 21 day period, the Secretary of State must, by the end of the following business day, cancel the notice of intention to initiate a plan by sending a notification of the cancellation to—

- (a) the debtor,
- (b) the debt advice provider,
- (c) each of the creditors notified under regulation 19,

- (d) any agent whose contact details have been provided to the Secretary of State in relation to a debt, unless the creditor to whom that debt is owed will receive a notification under paragraph (iii), and
  - (e) the payment distributor appointed in relation to the plan.
- (4) This regulation is subject to regulations 65(2) and 69.
- (5) In this regulation, “the 21 day period” has the meaning given in regulation 20(13).

## CHAPTER 4

### Effect of provisional plan or final plan

#### **Obligations on debtor from date of provisional plan**

**24.**—(1) During the plan period a debtor must—

- (a) inform their debt advice provider as soon as reasonably practicable if—
  - (i) there is a change to their name or to their usual residential address,
  - (ii) there is a material change in the debtor’s circumstances or financial position,
  - (iii) a future debt known at the date of application is due to be paid or repaid, or
  - (iv) a contingent debt, known but not quantifiable at the date of application for a plan, is quantified and due to be paid;
- (b) subject to arrangements for any payment break in accordance with regulation 41 make payments in accordance with the plan;
- (c) make any payment in relation to an ongoing liability as it falls due;
- (d) not obtain additional credit, either alone or jointly with any other person, including a joint debtor with whom the debtor has a joint plan, except in accordance with paragraphs (2) to (4);
- (e) engage with the debt advice provider in such a way as the debt advice provider considers to be appropriate.

(2) During the plan period, the debtor may only obtain additional credit, either alone or jointly with any other person (including a joint debtor with whom the debtor has a joint plan), after informing the person providing the credit that a plan is in force in relation to the debtor.

(3) The debtor must ensure that the total amount of additional credit outstanding at any time during the plan period (including any credit obtained jointly with another person) does not exceed—

- (a) £500, or
- (b) if the debtor notifies the debt advice provider of the intention to obtain additional credit in excess of £500 and the debt advice provider does not object, £2,000.

(4) Where the debtor informs their debt advice provider of a change of name or usual residential address the debt advice provider must, as soon as reasonably practicable, provide that information to the Secretary of State.

(5) Where the Secretary of State receives information from a debt advice provider in accordance with paragraph (6), the Secretary of State must, by the end of the following business day provide the updated information to —

- (a) each of the creditors named in the plan, and
- (b) the payment distributor appointed in relation to the plan.

(6) In this regulation—

- (a) the references to the debtor obtaining additional credit include where goods are bailed to a debtor under a hire-purchase agreement or agreed to be sold to the debtor under a conditional sale agreement;

- (b) in the case of a joint plan, the additional credit limit referred to in paragraphs (3) and (4) applies to additional credit obtained cumulatively by the joint debtors, whether individually or jointly.

#### **Effect of a plan on enforcement action**

**25.**—(1) Subject to paragraph (2), a creditor may not, in relation to any plan debt, take any of the steps specified in paragraph (7) in respect of the debt during the plan period unless—

- (a) these Regulations specify otherwise, or
- (b) a county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.

(2) A court or tribunal may not give permission for a creditor or agent to take any of the steps specified in paragraph (5)(a) or (b).

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b), a court or tribunal may—

- (a) determine an application for permission to take a step specified in paragraph (5)(c) or (d) in any way that it thinks fit,
- (b) give permission subject to such conditions as it thinks fit, and
- (c) make such orders as may be necessary to give effect to the determination of the application.

(4) A court or tribunal may only grant permission under paragraph (1)(b) for a creditor or agent to take a step specified in paragraph (5)(c) or for a creditor to instruct an agent to take a step specified in paragraph (5)(c) where the court considers that—

- (a) it is reasonable to allow the creditor or their agent to take the step, and
- (b) the step will not—
  - (i) be detrimental to the debtor to whom the plan relates, or
  - (ii) significantly undermine the protections of the plan.

(5) The steps specified in this paragraph that a creditor is prevented from taking are any steps to—

- (a) require a debtor to pay interest that accrues on a plan debt during the period of the plan,
- (b) require a debtor to pay fees, penalties or charges in relation to a plan debt that accrue during the period of the plan
- (c) take any enforcement action in respect of a plan 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 sub-paragraphs (a) to (c).

(6) A creditor or agent takes enforcement action if they take any of the following steps in relation to a plan debt—

- (a) take a step to collect such a debt from a debtor,
- (b) take a step to enforce a judgment or order issued by a court or tribunal before or during the period of the plan,
- (c) enforce a security held in respect such a debt,
- (d) obtain a warrant,
- (e) sell or take control of a debtor's property or goods,
- (f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment,
- (g) make an application for a default judgment in respect of a claim for money against the debtor,

- (h) take steps to install a pre-payment meter under paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986<sup>(a)</sup> or paragraph 2(1)(a) of Schedule 6 to the Electricity Act 1989<sup>(b)</sup> to take payments, or use a pre-payment meter already installed to take such payments,
- (i) take steps to disconnect a debtor's premises from a supply of gas under paragraph 7(3)(b) of Schedule 2B to the Gas Act 1986 or electricity under paragraph 2(1)(b) of Schedule 6 to the Electricity Act 1989 unless the debtor had taken the supply of gas or electricity illegally,
- (j) serve a notice to take possession of a dwelling-house let to a debtor on ground 1 in Schedule 2 to the Housing Act 1985 <sup>(c)</sup> or take possession of a dwelling-house let to a debtor having served such a notice,
- (k) serve a notice to take possession of a dwelling-house let to a debtor on grounds 8, 10 or 11 in Schedule 2 to the Housing Act 1988<sup>(d)</sup> or take possession of a dwelling-house let to a debtor having served such a notice,
- (l) serve a notice to take possession of a dwelling let to a debtor or take possession of a dwelling let to a debtor having served such a notice—
  - (i) on the ground of breach of contract specified in section 157 of the Renting Homes (Wales) Act 2016<sup>(e)</sup> where that breach relates to rent arrears, or
  - (ii) on grounds specified in section 181(1) of the Renting Homes (Wales) Act 2016<sup>(f)</sup>, or
  - (iii) on grounds specified in section 187(1) of the Renting Homes (Wales) Act 2016<sup>(g)</sup>,
- (m) contact a debtor for the purpose of enforcement, or
- (n) make an application in respect of a debtor for commitment to prison under regulation 16 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989<sup>(h)</sup> or regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992<sup>(i)</sup>.

(7) For the purposes of paragraph (6)(f), legal proceedings against a debtor includes a bankruptcy petition.

(8) Where a plan debt is a secured debt, paragraph (5)(a) applies only to interest that accrues on any arrears on the debt during the period of the plan.

(9) Where a provisional plan is withdrawn or cancelled nothing in this regulation prohibits a creditor or their agent from—

- (a) requiring a debtor to pay interest, fees, penalties or charges referred to in paragraph (5)(a) and (b) that accrued after the date on which the Secretary of State sent the creditor a provisional plan under regulation 23, or
- (b) treating the non-payment by the debtor of interest, fees, penalties or charges since that date as a default by the debtor under, or a breach of, the agreement between the debtor and the creditor.

(10) Where a final plan is revoked or completed, neither a creditor nor their agent is entitled to—

- (a) require a debtor to pay interest, fees, penalties or charges referred to in paragraph (5)(a) and (b) that accrued during the plan period, or

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(a) 1986 c. 44. Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2.

(b) 1989 c. 29.

(c) 1985 c. 68.

(d) 1988 c. 50.

(e) 2016 anaw 1. Sections 157 is not yet in force.

(f) 2016 anaw 1. Section 181 is not yet in force.

(g) 2016 anaw 1. Section 187 is not yet in force.

(h) S.I. 1989/1058. Regulation 16 was amended by S.I. 1992/474, regulation 3(2)(a), S.I. 1993/616, Schedule 2(2), paragraph 1, S.I. 1998/3089, regulation 5(1) and S.I. 2014/600, Schedule 1(1), paragraph 2(1)(d).

(i) S.I. 1992/613. Regulation 47 was amended by S.I. 1994/505, regulation 6, S.I. 2014/600, Schedule (1), paragraph 3(e) and S.I. 2019/220, regulation 2(2).



- (b) treat the non-payment by the debtor of interest, fees, penalties or charges during the plan period as a default by the debtor under, or a breach of, the agreement between the debtor and the creditor.

(11) To the extent it applies to a plan debt, during the period of a plan, the Secretary of State and the Commissioners for Revenue and Customs must not direct that a new arrangement should be put in place for a debtor's benefit to be paid, wholly or in part, to a third party under—

- (a) regulation 35 of the Social Security (Claims and Payments) Regulations 1987(a), or
- (b) regulation 60 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(b).

(12) Any action taken contrary to this regulation shall be null and void.

(13) Nothing in this regulation affects the following to the extent that they relate to a debtor—

- (a) a charging order made before the start of the plan under the Charging Orders Act 1979(c),
- (b) regulations 50 and 51 of the Council Tax (Administration and Enforcement) Regulations 199, or
- (c) the debtor's universal credit paid, wholly or in part, to a third party under regulation 60 of and Schedules 6 and 7 to the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(d).

(14) In this regulation—

- (a) "benefit" means any payment made to a debtor under the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995(e), the Welfare Reform Act 2007(f) or the Welfare Reform Act 2012; and
- (b) references to "debtor" in relation to a joint plan are references to either or both joint debtors.

(15) This regulation is subject to regulation 69.

### **Effect of payments under a plan**

**26.**—(1) During the plan period, a creditor—

- (a) must treat the schedule of payments under the plan as a variation of the original contract between the creditor and the debtor in relation to the terms of repayment,
- (b) must only accept payments from a debtor in relation to a qualifying debt in accordance with the plan, and
- (c) may accept payments from a debtor in relation to—
  - (i) mandatory non-eligible debt,
  - (ii) discretionary non-eligible debt, or
  - (iii) ongoing liabilities.

(2) A creditor must treat each payment received under a plan as if the payment—

- (i) had not been reduced in accordance with regulation 56,
- (ii) permanently reduces the debt to which it relates.

(3) Completion of all payments in relation to a debt under the plan extinguishes all liability owed by the debtor to the creditor in relation to that debt.

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(a) S.I. 1987/1968.

(b) S.I. 2013/380.

(c) 1979 c. 53.

(d) S.I. 2013/380. Regulation 60 was amended by S.I. 2017/725, Schedule 5, paragraph 8(b) subject to transitional provisions in regulations 19, 19A and 20 of that instrument.

(e) 1995 c. 18.

(f) 2007 c. 5.

### **Error in debt value – effect on provisional plan**

**27.**—(1) If, within the period of 14 days beginning with the day on which the Secretary of State sends out notice of the provisional plan under regulation 23 (“the 14 day period”), a creditor identifies what the creditor considers to be a material error in relation to the amount of qualifying debt that the provisional plan states is owed by the debtor to the creditor, the creditor must—

- (a) notify the Secretary of State before the end of the 14 day period, and
- (b) provide details of the amount that the creditor’s records record as owed to the creditor at the date that the Secretary of State has sent a notice of a provisional plan under regulation 23(1).

(2) If at the end of the 14 day period, it appears to the Secretary of State that the details notified under paragraph (1) result in a difference between the total value of the debt already recorded in the provisional plan, and the correct value of qualifying debt owed to creditors named in the provisional plan (“the difference in value”), of less than 10%—

- (a) the provisional plan remains in force, and
- (b) the Secretary of State must send notification of the amended debt value to the debt advice provider.

(3) Where the debt advice provider receives a notification under paragraph (2)(b)—

- (a) that notification is to be treated as if it was a notification under regulation 32(5)(a) for the purposes of regulations 32(6) and (7), and
- (b) regulation 32(5)(b) applies.

(4) If at the end of the 14 day period, it appears to the Secretary of State that the difference in value is of 10% or more, the Secretary of State must—

- (a) cancel the provisional plan, and
- (b) send notification of the cancellation to—
  - (i) the debtor,
  - (ii) the debt advice provider,
  - (iii) each of the creditors named in the provisional plan, and
  - (iv) the payment distributor appointed in relation to the provisional plan.

(5) Where paragraph (4) applies a debt advice provider must consider whether, taking into account the amended debt value, the requirements in regulation 18(1)(b) are satisfied such that devising a new plan would be appropriate.

(6) If the debt advice provider considers that those requirements are satisfied, the debt advice provider must take the steps specified in regulation 19(1) and regulation 26 applies in relation to that new plan.

### **Creditor objection to provisional plan – grounds and procedure**

**28.**—(1) A creditor must, before the end of the 14 day period, notify the Secretary of State if the creditor objects to the terms of the provisional plan on one or more of the following grounds—

- (a) the provisional plan unfairly prejudices the interests of the creditor in relation to—
  - (i) a qualifying debt included in, or omitted from, the plan, or
  - (ii) any aspect of the proposed schedule of payments.
- (b) there has been some material irregularity in relation to—
  - (i) the eligibility of the debtor (or in the case of joint debtors, of either of them), or
  - (ii) the accuracy of the information relied upon in devising the plan, or
- (c) the creditor considers that the debt advice provider’s assessment of the debtor’s income or expenditure departs without good reason from the spending guidelines set out in the Standard Financial Statement.

- (2) The creditor must provide reasons for their objection together with supporting evidence.
- (3) In this regulation, “the 14 day period” has the meaning given in regulation 27(1).

### **Creditor objection to provisional plan – effect**

- 29.**—(1) Paragraph (2) applies in relation to a provisional plan if—
- (a) one or more of the creditors who are notified of the provisional plan under regulation 23 notifies the Secretary of State in accordance with regulation 28 indicating that they object to the terms of the provisional plan so far as they relate to qualifying debt owed to the creditor, and
  - (b) the threshold for creditor objection is met.
- (2) The Secretary of State must undertake a fair and reasonable assessment under regulation 59.
- (3) Where paragraph 2 does not apply in relation to the provisional plan, the Secretary of State must, by the end of the first business day after expiry of the 14 day period—
- (a) cause an entry to be made on the plan register, and
  - (b) send a notification that the provisional plan has effect as the final plan to—
    - (i) the debtor,
    - (ii) the debt advice provider,
    - (iii) each of the creditors named in the provisional plan,
    - (iv) the payment distributor appointed in relation to the provisional plan.
- (4) The provisional plan has effect as the final plan from the date that the Secretary of State causes an entry to be made on the plan register under paragraph (3)(a).
- (5) In this regulation, “the 14 day period” has the meaning given in regulation 27(1).

### **Provisional plan – outcome of fair and reasonable assessment**

- 30.**—(1) This regulation applies where, in accordance with regulation 29, the Secretary of State has undertaken a fair and reasonable assessment under regulation 59.
- (2) If the Secretary of State considers that the provisional plan meets the requirements of the fair and reasonable assessment the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made in the plan register, and
  - (b) send notification that the requirements of the fair and reasonable assessment are met together with a statement of supporting reasons and confirmation that the provisional plan has effect as the final plan to—
    - (i) the debtor,
    - (ii) the debt advice provider,
    - (iii) each of the creditors named in the provisional plan, and
    - (iv) the payment distributor appointed in relation to the provisional plan.
- (3) Where paragraph (2) applies the provisional plan has effect as the final plan from the date that the Secretary of State causes an entry to be made on the plan register under paragraph (2)(a).
- (4) If the Secretary of State considers that the provisional plan does not meet the requirements of the fair and reasonable assessment the Secretary of State must, by the end of the following business day, send a notification that the requirements of the fair and reasonable assessment are not met and that the provisional plan is to be cancelled with effect from the following day, together with a statement of supporting reasons, to —
- (a) the debtor,
  - (b) the debt advice provider,
  - (c) each of the creditors named in the provisional plan, and
  - (d) the payment distributor appointed in relation to the provisional plan.

(5) Where paragraph (4) applies the provisional plan is cancelled with effect from the day after the day that the Secretary of State sends the notification under that paragraph.

### **Requirements of fair and reasonable assessment not met – debt advice provider re-consideration**

**31.**—(1) Where a provisional plan is cancelled under regulation 30(5), a debt advice provider must consider whether, taking into account the decision of the Secretary of State, it would be appropriate to devise a new plan for the debtor.

(2) If the debt advice provider considers that a new plan would be appropriate, the debt advice provider must take the steps specified in regulation 19(1).

(3) In devising a new provisional plan for the debtor in accordance with regulation 22, the debt advice provider must have regard to the decision of the Secretary of State under regulation 30.

## **CHAPTER 5**

### **Final plans – amending debt values, reviews, variations and payment breaks**

#### **Error in debt value – effect on final plan**

**32.**—(1) This regulation applies where—

- (a) a creditor has received a notification under regulation 29(3)(b) or regulation 30(2)(b) that a provisional plan is to have effect as the final plan, and
- (b) the creditor identifies what the creditor considers to be a material error in relation to the amount of a plan debt that the final plan states is owed by the debtor to the creditor.

(2) The creditor must provide details to the Secretary of State of the amount that the creditor's records record as owed to the creditor at the date that the notification referred to in paragraph (1)(a) was sent to the creditor.

(3) Subject to paragraph (4) the creditor must provide details under paragraph (2) before the end of the period of 120 days beginning with the day after the day on which the Secretary of State sends the creditor the notification referred to in paragraph (1)(a) (“the 120 day period”).

(4) If there are exceptional circumstances such that the creditor cannot comply with paragraph (3) the creditor may provide the details to the Secretary of State as soon as reasonably practicable, and, where details are provided, regulation 36 applies.

(5) Where the Secretary of State receives details under paragraph (2)—

- (a) the Secretary of State must notify the debtor's debt advice provider of the amount of the debt as it has been calculated by the creditor, and
- (b) the debt advice provider must confirm with the debtor the amount of the debt that is owed to the creditor as it is calculated on the date of the notification referred to in paragraph (1)(a), and may in the case of a joint debt confirm that amount with either of the joint debtors.

(6) If at the end of the 120 day period, the details notified to the debt advice provider under paragraph (5) result in a difference between the total value of the debt already recorded in the plan and the correct value of qualifying debt owed to creditors named in the plan (“the difference in value”) of less than 10%—

- (a) the plan remains in force, and
- (b) the difference in value must be taken into account during the next annual review of the plan under regulation 33.

(7) If at the end of the 120 day period, the difference in value is of 10% or more—

- (a) the Secretary of State must send notification of this to the debt advice provider, and
- (b) the debt advice provider must carry out an in-year review under regulation 34.

### **Annual review**

**33.**—(1) Subject to paragraph (2), a debt advice provider must carry out a review (an “annual review”) of each final plan no later than 12 months from the date of the final plan being entered on the plan register, and then at intervals of no more than 12 months.

(2) Where an in-year review is carried out under regulation 34—

- (a) that in-year review may replace an annual review under paragraph (1), and
- (b) the next annual review must be no later than 12 months after the date of that in-year review.

(3) An annual review under paragraph (1) must in particular—

- (a) where regulation 32(6) applies, take into account the details provided to the debt advice provider under regulation 32(5),
- (b) ensure that the summary of the income and expenditure information in the Standard Financial Statement completed in relation to the debtor is up to date, and
- (c) have regard to that statement in undertaking the review.

### **In-year review – general**

**34.**—(1) A debt advice provider must carry out an additional review (an “in-year review”) if—

- (a) the debt advice provider is notified by the creditor or debtor or otherwise becomes aware of, a qualifying debt that was—
  - (i) owed by the debtor at the time of the application for the plan, and
  - (ii) omitted from the final plan whether by mistake or otherwise,
- (b) regulation 32(7) applies and the details provided to the debt advice provider under regulation 32(5) have not already been taken into account for the purposes of an in-year review,
- (c) the debtor informs the debt advice provider under regulation 24(1)(a) of a material change in the debtor’s circumstances or financial position, or
- (d) a creditor makes an application under regulation 35.

(2) A debt advice provider may carry out an in-year review in any other circumstances if the debt advice provider considers that it is appropriate to do so.

(3) An in-year review under paragraph (1) must be carried out within 21 days of—

- (a) the debt advice provider being notified by the creditor or debtor or otherwise becoming aware of, a qualifying debt to which paragraph (1)(a) applies,
- (b) the Secretary of State sending a notification to the debt advice provider under regulation 32(7)(a), or
- (c) the debtor informing the debt advice provider under regulation 24(1)(a) of a material change in the debtor’s circumstances or financial position.

(4) When carrying out a review under this regulation a debt advice provider must—

- (a) consider whether—
  - (i) there has been any change in the circumstances of the debtor,
  - (ii) the debtor has complied with their obligations under regulation 24,
  - (iii) a plan remains an appropriate debt solution,
  - (iv) a variation of the plan or a payment break may be appropriate, and
- (b) ensure that the summary of the income and expenditure information in the Standard Financial Statement completed in relation to the debtor is up to date, and
- (c) have regard to that statement in undertaking the review.

(5) In this regulation, references to “debtor” in relation to a joint plan are references to either or both joint debtors.

### **In-year review – creditor application**

**35.**—(1) A creditor may make a request to a debt advice provider that the debt advice provider review a final plan on one or more of the following grounds—

- (a) the plan unfairly prejudices the interests of the creditor,
- (b) there has been some material irregularity in relation to any of the matters specified in paragraph (2),
- (c) the debtor made a false statement when making any application under these Regulations,
- (d) the creditor believes that one of the grounds for revocation of a plan in Chapter 7 of this Part apply, or
- (e) the creditor has agreed to write-off a debt that is included in the plan.

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that—

- (a) the creditor has reason to believe that the debtor did not meet the relevant eligibility criteria when the application for the plan was made,
- (b) a debt is not a qualifying debt, or
- (c) the creditor has reason to believe that the debtor has sufficient funds to pay their debt as it falls due.

(3) A request under paragraph (1) must be made in writing and accompanied by a statement of supporting reasons.

(4) A creditor may only make one request under paragraph (1) in any calendar year.

(5) Where a debt advice provider receives a request under paragraph (1) the debt advice provider must—

- (a) undertake the review no later than 21 days after the date on which they receive the request, and
- (b) without delay, notify the Secretary of State of the outcome of the review.

(6) When carrying out any review under this regulation a debt advice provider must consider—

- (a) whether it would be appropriate to vary the plan, and if so, regulations 36 to 40 apply, and
- (b) whether any of the grounds for revocation of a plan in regulations 43 and 44 apply, and if so, regulations 45 to 47 apply.

(7) Where the Secretary of State receives notification under paragraph (4)(b), the Secretary of State must, by the end of the following business day send a notification of the outcome of the review to—

- (a) the creditor who made the request,
- (b) if more than one creditor is named in the plan, each of the other creditors named in the plan, and
- (c) the payment distributor appointed in relation to the plan.

### **Variation of a plan – general**

**36.**—(1) This regulation applies where—

- (a) a debt advice provider has carried out an annual or in-year review,
- (b) a debtor informs the debt advice provider under regulation 24(1)(a)(ii) or (iii) that—
  - (i) a future debt is now due to be paid or repaid, or
  - (ii) a contingent debt is now quantified and due for payment,
- (c) a debtor obtains additional credit in accordance with regulation 24(1)(d) and (2) to (4),
- (d) a debtor informs the debt advice provider that the debtor no longer wishes a debt of a type falling within regulation 8(2) to be treated as a discretionary non eligible debt,

- (e) a creditor informs the debt advice provider that the creditor has agreed to write-off a debt that is included in the plan, or
  - (f) a creditor has made a notification to the Secretary of State under regulation 32(5).
- (2) A debt advice provider must propose a variation of a plan where—
- (a) the debt advice provider has carried out—
    - (i) an annual review to which regulation 33(3) applies,
    - (ii) an in-year review to which regulation 34(1)(a) or (b) applies,
  - (b) paragraph (1)(b) applies, or
  - (c) paragraph (1)(e) applies and the debt advice provider is satisfied that the debt will be written-off.
- (3) Where paragraph (1)(b) applies, the debt advice provider must propose to vary the plan to include the quantified debt.
- (4) Where paragraph (2)(a)(ii) applies because the debt advice provider has been notified under regulation 34(1)(a) that a qualifying debt was omitted from the plan by mistake or otherwise, the debt advice provider must propose to vary the plan to include that debt, using the most recent available debt value as at the date on which the debt advice provider submits the proposed variation under regulation 37(1).
- (5) A debt advice provider may propose a variation of a final plan where a debt advice provider considers that a variation of a plan would be appropriate where—
- (a) the debt advice provider has carried out an annual review or an in-year review to which paragraph (2)(a) does not apply,
  - (b) paragraph (1)(c) or (d) apply, or
  - (c) paragraph (1)(f) applies and the debt advice provider is satisfied that there were exceptional circumstances such that the creditor could not comply with regulation 32(3).
- (6) A debt advice provider may propose to vary a plan by one or more of the following actions—
- (a) adjusting the amount of each payment under the plan (whether temporarily or for the remainder of the plan period),
  - (b) amending the value of a debt included in the plan,
  - (c) including a debt referred to in paragraph (1)(d),
  - (d) omitting a debt from the plan where a creditor has made an application for an in-year review under regulation 34(1)(d),
  - (e) treating a debt as a priority debt or ceasing to treat a debt as a priority debt, or
  - (f) adjusting the period of a plan where this is a consequence of a variation falling within paragraphs (a) to (d).
- (7) In proposing a plan variation the debt advice provider must in particular—
- (a) have regard to an up to date summary of the debtor’s income and expenditure information using the Standard Financial Statement, and
  - (b) use the electronic system maintained by the Secretary of State under regulation 64(1)(c) for the purposes of recalculating the amount of each payment which is proposed to be made to each creditor under the varied plan, based on the most recent available debt values.
- (8) A proposed variation under paragraph (6)(a) must—
- (a) specify the period during which it is proposed to have effect (“the variation period”), and
  - (b) if the variation period ends before the date on which the plan is due to be completed, provide that after the variation period ends the amount of the payments will return to the amount as it applied before the variation.

### **Proposed variation of a plan – submission to Secretary of State**

**37.**—(1) Where a debt advice provider—

- (a) is required by regulation 36(2) to propose a variation of the plan, or
- (b) decides to propose such a variation in a case where the debt advice provider is authorised by regulation 36(4) to do so,

the debt advice provider must submit the proposed variation to the Secretary of State.

(2) A proposed variation submitted under paragraph (1) must include—

- (a) a copy of the final plan,
- (b) a copy of the final plan as it is proposed to be varied, and
- (c) a statement of the reasons, together with supporting evidence, for the proposed variation.

(3) The Secretary of State must determine if the proposed variation would have one or more of the outcomes specified in paragraph (4).

(4) The outcomes specified in this paragraph are that—

- (a) each payment made by the debtor under the plan would be decreased by 10% or more,
- (b) the total value of plan debt, taken on the date the debt advice provider submits the proposed variation under paragraph (1), would be increased by 10% or more, or
- (c) the plan would be in force for a total period exceeding 10 years and six months.

(5) If the Secretary of State determines that the proposed variation would not result in any of the outcomes specified in paragraph (4), the proposed variation is to take effect and the Secretary of State must, by the end of the following business day—

- (a) notify the debt advice provider of that decision and the reasons for it, and
- (b) send a copy of the plan as varied to—
  - (i) the debtor,
  - (ii) each creditor named in the plan as varied,
  - (iii) any creditor who was named in the final plan but is not named in the plan as varied,
  - (iv) the payment distributor for the plan.

(6) Where paragraph (5) applies the proposed variation takes effect from the day after the day on which the Secretary of State sends a notification under that paragraph.

(7) If the Secretary of State determines that the proposed variation would result in any of the outcomes specified in paragraph (4), the Secretary of State must, by the end of the following business day—

- (a) notify the debt advice provider of that decision and the reasons for it,
- (b) send a copy of the proposed variation to—
  - (i) each creditor named in the final plan,
  - (ii) any creditor who, if the proposed variation took effect, would be named in the plan.

### **Creditor objection to proposed variation – grounds and procedure**

**38.**—(1) A creditor must, before the end of the 14 day period, notify the Secretary of State if the creditor objects to the proposed variation on one or more of the following grounds—

- (a) the proposed variation unfairly prejudices the interests of the creditor in relation to—
  - (i) the debt included in, or omitted from, the plan, or
  - (ii) any aspect of the schedule of payments under the proposed variation, or
- (b) there has been some material irregularity in relation to the accuracy of the information relied upon by the debt advice provider for the proposed variation.

(2) A creditor must provide reasons for their objection together with supporting evidence.



(3) In this regulation, “the 14 day period” means the period of 14 days beginning with the day on which the Secretary of State has sent a notification of a proposed variation under regulation 37(7).

#### **Creditor objection to proposed variation – effect**

**39.**—(1) Paragraph (2) applies in relation to a proposed variation of a plan if—

- (a) one or more of the creditors who are notified of proposed variation under regulation 37 notifies the Secretary of State in accordance with regulation 38 indicating that they object to the proposed variation so far as it relates to qualifying debt owed to the creditor, and
- (b) the threshold for creditor objection is met.

(2) The Secretary of State must undertake a fair and reasonable assessment under regulation 59.

(3) Where paragraph (2) does not apply, the Secretary of State must, by the end of the first business day after expiry of the 14 day period, send a notification that the proposed variation is to take effect to —

- (a) the debt advice provider.
- (b) the debtor,
- (c) each creditor named in the plan as varied,
- (d) any creditor who was named in the final plan but is not named in the plan as varied,
- (e) the payment distributor for the plan.

(4) The proposed variation takes effect from the day after the day on which the Secretary of State sends the notification under paragraph (3).

(5) In this regulation, “the 14 day period” has the meaning given in regulation 38(3).

#### **Creditor objection to proposed variation – outcome of fair and reasonable assessment**

**40.**—(1) This regulation applies where, in accordance with regulation 39, the Secretary of State has undertaken a fair and reasonable assessment under regulation 59.

(2) If the Secretary of State considers that the proposed variation meets the requirements of the fair and reasonable assessment, the Secretary of State must, by the end of the following business day, send notification that the requirements of the fair and reasonable assessment are met together with a statement of supporting reasons and confirmation that the proposed variation must take effect to—

- (a) the debtor,
- (b) the debt advice provider,
- (c) each creditor named in the plan as varied,
- (d) any creditor who was named in the final plan but is not named in the plan as varied,
- (e) the payment distributor for the plan.

(3) The proposed variation takes effect from the day after the day that the Secretary of State sends the notification under paragraph(4).

(4) If the Secretary of State considers that the proposed variation does not meet the requirements of the fair and reasonable assessment the Secretary of State must, by the end of the following business day, send a notification that the requirements of the fair and reasonable assessment are not met together with a statement of supporting reasons and confirmation that the proposed variation will not take effect to—

- (a) the debtor,
- (b) the debt advice provider,
- (c) each creditor named in the plan as varied,
- (d) any creditor who was name in the final plan but is not named in the plan as varied,

(e) the payment distributor for the plan.

(5) Where paragraph (4) applies the proposed variation does not take effect and the final plan continues in effect unamended.

### **Application for a payment break**

**41.**—(1) The debtor to whom a final plan relates (or in the case of joint debtors, either of them) may apply to the debt advice provider for a payment break of a period of up to one month or in respect of one payment.

(2) An application under paragraph (1)—

- (a) may only be made on the grounds that the debtor (or in the case of joint debtors, either of them) considers that they are unable to make the payment due to a material change in the debtor's circumstances or financial position that the debtor could not have reasonably foreseen,
- (b) must be made no later than 14 days before the date of the payment that the debtor wishes to defer, and
- (c) must be accompanied by a statement of supporting reasons.

(3) A debt advice provider must consider and make a determination on an application no later than seven business days after the application is received.

(4) In deciding whether or not to grant an application, a debt advice provider must in particular consider—

- (a) whether or not the debtor has had a payment break in the 12 month period immediately preceding the date of that consideration,
- (b) whether or not there has been a material change in the debtor's circumstances or financial position that the debtor could not have reasonably foreseen which makes it likely that the debtor will not reasonably be able to make the payment on the scheduled date,
- (c) the debtor's history of making payments under the plan prior to the date of the application,
- (d) whether the effect of the payment break would be to extend the period of the plan to an extent or in circumstances (or both), which the debt advice provider considers unreasonable, and
- (e) whether the plan remains an appropriate debt solution for the debtor.

(5) A debt advice provider—

- (a) may make one extension to a payment break that they have granted if—
  - (i) the debt advice provider considers that it is appropriate to do so, and
  - (ii) the extended payment break does not exceed the longer of two months or two payments (as the case may be),
- (b) may only grant one application in any 12-month period of a final plan, and
- (c) must, in the case of a joint plan, apply any payment break granted to both joint debtors.

(6) When exercising their functions under this regulation, a debt advice provider must have regard to an up to date summary of the debtor's income and expenditure information using the Standard Financial Statement.

(7) Where the debt advice provider decides to apply or extend a payment break under this regulation the debt advice provider must notify the Secretary of State of that decision.

(8) Where the Secretary of State is notified under paragraph (7), the Secretary of State must, by the end of the following business day, send a copy of the debt advice provider's decision together with a statement of supporting reasons to—

- (a) the debtor,
- (b) the debt advice provider,

- (c) all creditors named in the plan,
- (d) the payment distributor for the plan.

(9) The decision has effect from the first business day after the day on which the Secretary of State sends the notification under paragraph (9).

### **Revocation of a plan – debtor application**

**42.**—(1) The debtor to whom a final plan relates (or in the case of joint debtors, either of them) may apply to the debt advice provider for the revocation of the plan on one or more of the grounds specified in paragraph (3).

(2) An application under this regulation may be made at any time but must be accompanied by a statement of supporting reasons.

(3) The grounds specified in this paragraph are that—

- (a) the debtor did not meet one or more of the eligibility criteria in regulation 18(1)(a) when the application for the plan was made,
- (b) the debtor no longer meets one or more of the eligibility criteria in regulation 18(1)(a) that had been met when the application for the plan was made,
- (c) the debtor is (or in the case of joint debtors, both of them are) now able, either directly or with the assistance of another person, to pay or repay in full each of the qualifying debts under the plan (and treating payments already made by the debtor under the plan as if they had not been reduced in accordance with regulation 56),
- (d) having obtained advice from their debt advice provider as to the consequences of revoking the plan for the debtor, the debtor wishes the plan to be revoked.

(4) Where a debt advice provider receives an application under paragraph (1) the debt advice provider must—

- (a) notify the Secretary of State without delay that they have received the notification, and
- (b) determine the application no later than 14 days after the date on which the application is received.

(5) Where the Secretary of State receives a notification under paragraph (4), the Secretary of State must, by the end of the following business day notify each of the creditors named in the plan that the application has been made.

### **Revocation of a plan - mandatory grounds**

**43.**—(1) A debt advice provider must revoke a plan in the circumstances specified in paragraph (2).

(2) The circumstances specified in this paragraph are—

- (a) the debt advice provider is informed of the death of the debtor (or in the case of joint debtors, of either of them),
- (b) the debt advice provider is satisfied, whether or not on an application by the debtor under regulation 42, that the debtor (or in the case of joint debtors, either of them) is now either subject to—
  - (i) a debt relief order, or
  - (ii) a bankruptcy order under section 263M of the Insolvency Act 1986(a),
- (c) the debt advice provider is satisfied on an application made by the debtor under regulation 42 that—
  - (i) the debtor is (or in the case of joint debtors, both of them are) now able, either directly or with the assistance of another person, to pay or repay in full each of the qualifying

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(a) Section 283M was inserted into the Insolvency Act 1986 by Schedule 18 to the Enterprise and Regulatory Reform Act 2013

debts under the plan within a reasonable period of time (and treating payments already made by the debtor under the plan as if they had not been reduced in accordance with regulation 56), and

- (ii) that as a consequence of being able to pay or repay those debts in full that a plan is no longer appropriate for the debtor,
- (d) the debt advice provider is satisfied that the grounds specified in regulation 42(3)(d) apply,
- (e) the debtor has, at any time, been served two final warning notices by the Secretary of State under regulation 47(4) and the debt advice provider considers that the debt advice provider would have grounds on which to request the Secretary of State to send the debtor a further final warning notice, or
- (f) an application made by a creditor under regulation 35(1) would remove all qualifying debts from the plan.

#### **Revocation of a plan – discretionary grounds**

**44.**—(1) A debt advice provider may revoke a plan in the following circumstances—

- (a) the debt advice provider is satisfied that the debtor did not meet one or more of the eligibility criteria in regulation 18(1)(a) when the application for the plan was made,
- (b) the debt advice provider is satisfied that the debtor no longer meets one or more of the eligibility criteria in regulation 18(1)(a) that had been met when the application for the plan was made for a reason other than that the debtor (or in the case of joint debtors, either of them) is now either subject to—
  - (i) a debt relief order, or
  - (ii) a bankruptcy order under section 263M of the Insolvency Act 1986,
- (c) the debtor has failed to comply with any of the debtor’s obligations under regulation 24,
- (d) the debtor has failed to agree a payment method with the debt advice provider and the payment distributor such that the plan cannot operate effectively,
- (e) the debtor is in arrears of payments under the plan that together amount to the value of two payments, or to the value of payments due by the debtor over a two-month period under the plan (whichever is lower),
- (f) the debt advice provider is satisfied that a plan is no longer appropriate for the debtor, or
- (g) the debt advice provider is satisfied that the debtor has made a false statement when making any application under these Regulations.

(2) References in this regulation “the debtor” are to be construed in relation to a joint plan as either joint debtor.

(3) This regulation is subject to regulations 46, 47 and 48.

#### **Revocation of a plan – procedure mandatory grounds**

**45.**—(1) Where a debt advice provider is required to revoke a plan under regulation 43 the debt advice provider must, by the end of the following business day, notify the Secretary of State of—

- (a) the revocation, and
- (b) the reasons for the revocation.

(2) Where the Secretary of State receives a notification under paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the plan register,
- (b) send a notification of the revocation of the plan together with the reasons to—
  - (i) the debtor, or where the debtor is deceased, the debtor’s personal representatives,
  - (ii) the payment distributor for the plan, and

(iii) all creditors to whom payments are being made under the plan.

(3) A notification under paragraph 2(b) must include the date on which the revocation is due to have effect under regulation 48.

(4) A plan is revoked on the date that the entry is made on the plan register under paragraph (2)(a).

### **Revocation of a plan – procedure discretionary grounds**

**46.**—(1) Where a debt advice provider considers that any of the circumstances specified in regulation 44(1) is met and decides that revoking a plan is or may be appropriate, the debt advice provider must, by the end of the following business day, notify the Secretary of State of—

- (a) the debt advice provider’s decision that revocation is or may be appropriate,
- (b) the circumstances leading to that decision, and
- (c) if the debt advice provider considers that the debtor may be able to rectify the circumstances referred to in sub-paragraph (b) such that a conditional notice would be appropriate, the conditions that a debtor (or in the case of joint debtors, both of them), must meet no later than the date specified in the notification to the Secretary of State for the plan to remain in force.

(2) Where the Secretary of State receives a notification under paragraph (2) that does not include conditions provided under paragraph (1)(c), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the plan register, and
- (b) send a notification of revocation together with the reasons to—
  - (i) the debtor,
  - (ii) the payment distributor for the plan, and
  - (iii) all creditors to whom payments are being made under the plan.

(3) A notification under paragraph 2(b) must include the date on which the revocation is due to have effect under regulation 48.

(4) A plan is revoked on the date that the entry is made on the plan register under paragraph (2)(a).

(5) Subject to paragraph (6), where the Secretary of State receives a notification under paragraph (1) that includes conditions provided under paragraph (1)(c), the Secretary of State must, by the end of the following business day, send a conditional notice to —

- (i) the debtor,
- (ii) the payment distributor for the plan, and
- (iii) all creditors to whom payments are being made under the plan.

(6) Regulation 47(4) to (6) apply to a notification under paragraph (1) that includes conditions provided under paragraph (1)(c), if a debtor has, within the 12 months immediately preceding the date of the debt advice provider’s decision under paragraph (1), received—

- (a) a conditional notice, or
- (b) a final warning notice.

(7) In these Regulations, “conditional notice” means the notice issued by the Secretary of State under paragraph (5), that sets out the conditions that a debtor (or in the case of joint debtors, both of them) must meet by no later than the date specified in the notice, for a plan to remain in force.

### **Compliance with a conditional notice**

**47.**—(1) Where a debt advice provider considers that the debtor has complied with a conditional notice, they must notify the Secretary of State without delay and request that the Secretary of State sends the debtor confirmation that the plan is to remain in force.

(2) Where the Secretary of State receives a request under paragraph (1), the Secretary of State must, by the end of the following business day, send a notification that the plan is to remain in force together with the reasons for that decision to—

- (a) the debtor,
- (b) the payment distributor for the plan, and
- (c) all creditors to whom payments are being made under the plan.

(3) Where a debt advice provider considers that the debtor has not complied with a conditional notice, they must notify the Secretary of State and request that the Secretary of State sends the debtor a final warning notice that the plan is to be revoked on a date specified in the notice unless the conditions specified in the notification to the Secretary of State are met.

(4) Where the Secretary of State receives a request under paragraph (3), the Secretary of State must, by the end of the following business day, send a final warning notice together with supporting reasons to—

- (a) the debtor,
- (b) the payment distributor for the plan, and
- (c) all creditors to whom payments are being made under the plan.

(5) A notice issued under paragraph (4) must state—

- (a) that it is a final warning notice, and
- (b) that if the debtor does not meet the specified conditions, the plan will be revoked on the date specified in the notice.

(6) Where a debt advice provider considers that the debtor has not complied with a final warning notice they must notify the Secretary of State and request that the Secretary of State sends the debtor notification that the plan is revoked.

(7) A plan is revoked on the date specified in the final warning notice.

(8) Where the Secretary of State receives a notification under paragraph (6), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the plan register,
- (b) send a notification of revocation of the plan together with the reasons for that revocation to—
  - (i) the debtor,
  - (ii) the payment distributor for the plan, and
  - (iii) all creditors to whom payments are being made under the plan.

(9) A notification under paragraph 8(b) must include the date on which the revocation is due to have effect under regulation 48.

### **Effect of revocation**

**48.**—(1) Subject to paragraph (5), the revocation of a plan is to have no effect—

- (a) in the case of revocation where regulation 43(2)(a) applies, for 6 weeks after the date on which the plan is revoked; and
- (b) in any other case, for 14 days after the date on which the plan is revoked.

(2) A creditor must treat the balance of the debt owed to them by the debtor on the date that the revocation of the plan has effect, as if the payments already made by the debtor under the plan had not been reduced in accordance with regulation 56.

(3) This paragraph applies to a joint debtor whose joint plan has been revoked—

- (a) following an application for revocation by the other joint debtor on the grounds specified in regulation 42(3)(a), (b) or (d),
- (b) under regulation 43(2)(a) due to the other joint debtor's death, or

- (c) under regulation 43(2)(b) because the other joint debtor is now subject to a debt relief order or bankruptcy order.

(4) A joint debtor within paragraph (3) may apply, at any time, for a new plan in accordance with regulation 14.

(5) If a joint debtor within paragraph (3) applies for a new plan within the period of 21 days beginning with the day after the date on which the joint plan is revoked, the protections of the revoked plan under regulation 25 will continue to have effect until the creditor receives notification of the new provisional plan in accordance with regulation 23.

(6) If a joint debtor within paragraph (3)—

- (a) applies for a new plan after the end of the period of 21 days referred to in paragraph (4), or
- (b) does not apply for a new plan,

the protections of the revoked plan under regulation 25 will cease to have effect when the period of six weeks referred to in paragraph (1) expires.

### **Refusal of debtor application for revocation**

**49.**—(1) This regulation applies if a debt advice provider, having considered an application under regulation 42, determines that there are no grounds on which to revoke a plan.

(2) The debt advice provider must, by the end of the following business day, notify the Secretary of State of—

- (a) the decision not to revoke the plan, and
- (b) the reasons for their decision.

(3) Where the Secretary of State receives a notification under paragraph (2), the Secretary of State must, by the end of the following business day send a notification of the decision not to revoke the plan together with the reasons for that decision to—

- (a) the debtor,
- (b) all creditors to whom payments are being made under the plan.

### **Revocation of a plan – extension of limitation periods**

**50.**—(1) This regulation applies where—

- (a) a limitation time limit relates to a right of action in respect of a plan debt,
- (b) the plan is revoked in accordance with this Chapter, and
- (c) if not extended by this regulation, the limitation time limit would expire before the end of the period of eight weeks beginning with the day on which the revocation has effect under regulation 48.

(2) Where this regulation applies, the limitation time limit expires instead at the end of the period of eight weeks beginning with the day on which the revocation has effect under regulation 48.

(3) Where more than one limitation time limit applies in relation to a right of action in respect of the plan debt, the extension by paragraph (2) of one of those time limits does not affect those other time limits.

### **Revocation of a plan – extension of other deadlines**

**51.**—(1) This regulation applies where—

- (a) an enforcement time limit relates to the taking of enforcement action in respect of a plan debt by a creditor or an agent acting by or on behalf of a creditor,
- (b) the plan is revoked in accordance with this Chapter, and

- (c) if not extended by this regulation, the enforcement time limit would expire before the end of the period of eight weeks beginning with the day on which the revocation has effect under regulation 48.

(2) Where this regulation applies, the enforcement time limit expires instead at the end of the period of eight weeks beginning with the day on which the revocation has effect under regulation 48.

(3) Where more than one enforcement time limit applies in relation to a right of action in respect of the plan debt, the extension by paragraph (2) of one of those time limits does not affect those other time limits.

(4) In this regulation, “enforcement time limit” means a time limit—

- (a) by which a creditor or (as the case may be) an agent is legally obliged to take enforcement action in respect of a plan debt (or would be so obliged but for the existence of the plan in relation to the debt), and
- (b) which is not a limitation time limit relating to a right of action in respect of the debt.

### **Completion of a plan**

**52.** Where the Secretary of State receives a notification from a payment distributor under regulation 55(2)(j) that the final payment under the plan has been made, the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the plan register,
- (b) send a notification of the completion of the plan to—
  - (i) the debt advice provider,
  - (ii) the debtor, and
  - (iii) all creditors to whom payments have been made under the plan.

## **PART 3**

### **Payment Distributors**

#### **List of payment distributors**

**53.—**(1) The Secretary of State must maintain a list of debt advice providers who—

- (a) are subject to rules set out in the Financial Conduct Authority Client Asset Sourcebook, and
- (b) have indicated to the Secretary of State that they wish to act as a payment distributor under these Regulations.

(2) A debt advice provider included on the list maintained under paragraph (1) is eligible to act as the payment distributor in relation to a plan.

#### **Appointment of a payment distributor**

**54.—**(1) A debt advice provider who is included on the list maintained under regulation 53 must act as the payment distributor in relation to any provisional plan devised by the debt advice provider, unless the debt advice provider considers there is a conflict of interest making it inappropriate for the debt advice provider to act as the payment distributor.

(2) Where the debt advice provider is not required by paragraph (1) to act as the payment distributor in relation to a plan, the debt advice provider may appoint—

- (a) a person included on the list maintained under regulation 53, or
- (b) the Secretary of State,

to act as the payment distributor in relation to that plan.



(3) Arrangements for appointments under this regulation must include provision requiring the payment distributor to exercise the functions specified in regulation 55.

### **Functions of a payment distributor**

- 55.**—(1) A payment distributor must exercise the following functions—
- (a) obtain payment details of the creditors to whom payments are owed under a debtor’s final plan,
  - (b) distribute payments received from a debtor to creditors in accordance with the plan,
  - (c) notify the Secretary of State of each payment distributed to creditors in accordance with paragraph (b),
  - (d) return to the debtor, the balance of any amount paid by the debtor, in relation to payments under the plan that, for any reason, exceeds the amount required,
  - (e) provide payment and distribution reports in accordance with paragraph (2) to—
    - (i) the debtor,
    - (ii) the debtor’s debt advice provider, and
    - (iii) the Secretary of State,
  - (f) make payments in accordance with regulation 56,
  - (g) notify the debtor’s debt advice provider and the Secretary of State no later than five business days after the date the payment is received if a creditor or agent returns to the payment distributor a payment made to them under the plan,
  - (h) take such steps as may be necessary to give effect to—
    - (i) a payment break, as soon as reasonably practicable after being notified of the payment break by the Secretary of State under regulation 41(9),
    - (ii) a plan variation, as soon as reasonably practicable after receiving a copy of the plan as varied from the Secretary of State under regulation 37(5), 39(4) or 40(4).
  - (i) provide a report to the debt advice provider no later than five business days after the date on which the payment distributor is notified by the Secretary of State that a plan has been revoked under Chapter 7 of Part 2 of these Regulations,
  - (j) if all payments under the plan have been made, notify the debt advice provider and the Secretary of State of that fact before the end of the 5th business day following the day on which the last payment is made.
- (2) Payment and distribution reports under paragraph (1)(e)—
- (a) must be provided to the debtor no later than five business days after the debtor makes a request to the payment distributor for such a report,
  - (b) must be provided to the debtor’s debt advice provider and the Secretary of State—
    - (i) no later than five business days after the payment distributor has received the first payment under the plan from the debtor, and
    - (ii) no later than five business days after the debt advice provider or the Secretary of State (as the case may be) makes a request to the payment distributor for such a report;
  - (c) must include the following information as at the date of the report—
    - (i) the date on which the plan started,
    - (ii) the expected total duration of the plan,
    - (iii) the amount of time remaining until the expected completion of the plan,
    - (iv) the total amount of all payments already made to creditors under the plan,
    - (v) the total outstanding amount due to creditors under the plan, and
    - (vi) a breakdown of the paragraph (iv) and (v) amounts per creditor.
- (3) Payment notifications under paragraph (1)(c) must include—

- (a) the amount received from the debtor for that payment,
- (b) confirmation that the debtor's payment has been distributed to the debtor's creditors,
- (c) the totality of all payments made to creditors for that payment,
- (d) the amount of each payment to each creditor for that payment,
- (e) the date on which the payments were made to creditors for that payment, and
- (f) the payment method for each payment.

(4) The Secretary of State must notify a debtor's debt advice provider without delay if the Secretary of State—

- (a) does not receive a payment notification from the payment distributor under paragraph (1)(c) within five business days of the date a payment is due under the plan, or
- (b) otherwise becomes aware that the debtor is in arrears with an amount equal to or exceeding the value of two payments under the plan.

### **Funding**

**56.**—(1) Before distributing any amounts to creditors in accordance with a plan, a payment distributor must deduct 10 per cent of each payment received from the debtor (“the funding amount”).

(2) The payment distributor must make payments of—

- (a) 80 per cent of the funding amount to the debt advice provider, for the purposes of assisting with their costs in relation to the exercise of their functions under these Regulations, and
- (b) 10 per cent of the funding amount to the Secretary of State, for the purposes of assisting with the costs incurred by the Secretary of State in relation to the administration of the debt respite scheme established by these Regulations and the Breathing Space Regulations.

(3) The payment distributor must retain the remaining 10 per cent of the funding amount for the purposes of assisting with their costs in relation to the exercise of their functions under these Regulations.

### **Payment distributors – ceasing to act**

**57.**—(1) A payment distributor falling within regulation 11(a) who no longer wishes to be listed on the list of payment distributors maintained by the Secretary of State (whether or not they have applied to the Financial Conduct Authority for cancellation or variation of a Part 4A permission), must give notice of intention to be omitted from that list to—

- (a) the Secretary of State, and
- (b) the debt advice provider for each plan (if any) that the payment distributor is exercising functions in relation to at the date that notice is given.

(2) The notice given under paragraph (1) must include the date on which the payment distributor proposes that they are omitted from the list of payment distributors (the “effective date”).

(3) The effective date must be no less than 30 days after the date that notice was given to the Secretary of State under paragraph (1).

(4) Where notice is given under paragraph (1)—

- (a) the Secretary of State must remove the payment distributor from the list of payment distributors on the effective date, and
- (b) if the payment distributor who gave notice is appointed in relation to a plan—
  - (i) the debt advice provider must appoint a new payment distributor in accordance with the requirements of regulation 54 before the effective date, and

- (ii) the payment distributor must continue to exercise its functions in relation to that plan until the earlier of the effective date and the date the new payment distributor's appointment takes effect under paragraph (7).
- (5) Where a debt advice provider has appointed a new payment distributor under paragraph (4)(b)(i), the debt advice provider must notify the Secretary of State without delay.
- (6) Where the Secretary of State receives a notification under paragraph (5), the Secretary of State must, by the end of the following business day, send a notification of the new payment distributor's appointment to—
- (a) the debtor,
  - (b) the payment distributor who gave notice under paragraph (1),
  - (c) the new payment distributor, and
  - (d) all creditors to whom payments are being made under the plan.
- (7) The new payment distributor's appointment takes effect on the day after the date notification is given under paragraph (6).
- (8) Paragraph (9) applies where a payment distributor has received a decision notice from the Financial Conduct Authority in accordance with section 55Z of FSMA (cancellation of Part 4A permission: procedure) which has the effect that they would no longer meet the requirements of regulation 11(a) and the payment distributor—
- (a) does not intend to refer the matter to the Tribunal under section 55Z of FSMA; or
  - (b) has referred the matter under section 55Z of FSMA, the Tribunal upheld that decision and the payment distributor is no longer entitled to refer or otherwise appeal that decision notice (ignoring any possibility of an appeal out of time with permission).
- (9) Where this paragraph applies the payment distributor must make a notification that they no longer meet the requirements of regulation 11(a) and the date from which that is the case to —
- (a) the Secretary of State, and
  - (b) the debt advice provider for each plan (if any) that the payment distributor is exercising functions in relation to at the date that notice is given.
- (10) Where notice is given under paragraph (9)—
- (a) the Secretary of State must on the date that the notification is received remove the payment distributor from the list of payment distributors, and
  - (b) the debt advice provider must appoint a new payment distributor and the requirements of regulation 54(3), (4) and (5) apply.
- (11) A payment distributor who at the time that they cease to act is exercising functions in relation to a plan must cooperate with—
- (a) the debt advice provider for that plan, and
  - (b) the new payment distributor,  
to ensure that the collection and distribution of payments continues in accordance with the plan.
- (12) The duty in paragraph (11) includes a duty to provide such information as may be reasonably requested by the debt advice provider or the new payment distributor for the purposes of the maintaining the operation of the plan in accordance with these regulations.

### **Methods of payment**

**58.—**(1) A debtor must make a payment due under a plan by means of any payment method agreed by the debt advice provider and the payment distributor.

(2) A debtor may change the method of making payments under a plan at any time subject to obtaining the agreement of the debt advice provider and the payment distributor.

## PART 4

### Reviews and Appeals

#### CHAPTER 1

##### Fair and Reasonable Assessment

###### **Fair and reasonable assessment**

**59.**—(1) The Secretary of State must assess whether, in the opinion of the Secretary of State, it is in all the circumstances fair and reasonable—

- (a) where regulation 29(2) applies, for the provisional plan to have effect as the final plan, or
- (b) where regulation 39(2) applies, for the proposed plan variation to take effect,

and that assessment is referred to in these Regulations as a “fair and reasonable assessment”.

(2) The requirements of a fair and reasonable assessment are met for the purposes of this regulation and regulations 29, 30, 39 and 40 where, having undertaken that assessment, the Secretary of State decides that it is fair and reasonable for the provisional plan to have effect as the final plan or for the proposed plan variation to take effect (as the case may be).

(3) The Secretary of State may publish guidance setting out how the Secretary of State intends to exercise the function of undertaking fair and reasonable assessments under this regulation.

(4) The Secretary of State must send a notification that the fair and reasonable assessment is to be undertaken to—

- (a) the debt advice provider,
- (b) the debtor, and
- (c) in the case of—
  - (i) a provisional plan those creditors and agents to whom notification has been given of the provisional plan, or
  - (ii) in the case of a proposed plan variation—
    - (aa) those creditors to whom payments are being made under the plan, and
    - (bb) the payment distributor.

(5) In undertaking a fair and reasonable assessment the Secretary of State—

- (a) must in particular have regard to—
  - (i) the creditors statement in support of their objections,
  - (ii) the period of the plan and the frequency of payments under the plan,
  - (iii) the total amount of debt repayable under the plan, and
  - (iv) the guidance referred to in paragraph (3), and
- (b) may have regard to any other information that the Secretary of State considers appropriate.

(6) Subject to paragraph (8), the Secretary of State must undertake the assessment and confirm whether its requirements are met no later than 28 days after the date that the notification is sent.

(7) The Secretary of State may, if they consider it appropriate to do so, request additional information from—

- (a) the debtor (or in the case of joint debtors, either of them),
- (b) the debt advice provider,
- (c) any creditor.

(8) If the Secretary of State requests information under paragraph (7) the period of 28 days referred to in paragraph (6) is extended by 14 days.

### **Fair and reasonable assessment – review of assessment outcome**

**60.**—(1) A creditor who has made an objection under regulation 28 or 38, or a debtor (or in the case of joint debtors, either of them), who is dissatisfied with the outcome of a fair and reasonable assessment undertaken under regulation 59 may apply to the Secretary of State for a review of that assessment.

- (2) An application under paragraph (1) must—
  - (a) be made no later than 14 days after the date on which the debtor or creditor is notified of the outcome of the assessment to be reviewed, and
  - (b) state the reasons for the application.
- (3) Where an application is made under paragraph (1), the Secretary of State —
  - (a) must send a notification that the review is to be undertaken to—
    - (i) the debt advice provider,
    - (ii) the debtor, and
    - (iii) in the case of a provisional plan those creditors and agents to whom notification has been given of the provisional plan,
    - (iv) in the case of a proposed plan variation—
      - (aa) those creditors to whom payments are being made under the plan,
      - (bb) the payment distributor.
  - (b) must review the information which was available to the Secretary of State when the assessment was undertaken; and
  - (c) may, if the circumstances specified in paragraph (4) apply, review information that was not available when the assessment was undertaken.
- (4) The circumstances specified in this paragraph are—
  - (a) there was a good reason that the information was not included in the creditor’s statement of supporting reasons,
  - (b) the new information is potentially relevant information, and
  - (c) it might reasonably be expected to have a material effect on the outcome of the assessment.
- (5) Following a review under paragraph (1) the Secretary of State must—
  - (a) confirm the outcome of the fair and reasonable assessment under review, or
  - (b) issue a new fair and reasonable assessment.
- (6) If the debtor or creditor remains dissatisfied with the outcome of the fair and reasonable assessment, the debtor or creditor (as the case may be), may make an application to the county court on one or both of the following grounds—
  - (a) the decision unfairly prejudices their interests,
  - (b) there is a material irregularity in the decision.
- (7) An application under paragraph (6) must be made no later than 28 days after the date on which the Secretary of State makes a decision under paragraph (5).
- (8) Where a court is satisfied that the Secretary of State’s decision is not in accordance with these Regulations the court may—
  - (a) confirm the Secretary of State’s decision,
  - (b) substitute the Secretary of State’s decision with it’s own conclusion, or
  - (c) direct the Secretary of State to make a undertake a new fair and reasonable assessment, and
  - (d) give such supplemental directions as it thinks fit.
- (9) The court must give notice of the court’s decision to—

- (a) the Secretary of State,
- (b) the debt advice provider, and
- (c) the debtor or creditor who made the application.

### **Fair and reasonable assessment – exercise of Secretary of State functions**

**61.** The Secretary of State’s functions under regulations 59 and 60 may be exercised by a person appointed to the office of adjudicator within the meaning of section 398A of the Insolvency Act 1986(a).

## CHAPTER 2

### Reviews of debt advice provider decisions

#### **Application for review of a debt advice provider decision**

**62.—**(1) Subject to paragraph (3), a debtor (or in the case of joint debtors, either of them) may apply to a debt advice provider for a review of any of the following decisions that may be made by a debt advice provider—

- (a) a decision under regulation 24 to object to the debtor obtaining additional credit,
- (b) a decision under regulation 36 not to vary a plan,
- (c) a decision under regulation 41 not to grant an application made by the debtor for a payment break,
- (d) a decision under regulation 42 not to grant an application made by the debtor for the revocation of a plan,
- (e) a decision under regulation 44 to revoke a plan without specifying any conditions under regulation 46(1)(c),
- (f) a decision to send a notification to the Secretary of State under regulation 46(1) that includes conditions provided under regulation 46(1)(c), and
- (g) a decision to request that the Secretary of State issues a final warning notice under regulation 47.

(2) Subject to paragraph (3), a creditor may apply to a debt advice provider for a review of any of the following decisions that may be made by a debt advice provider—

- (a) where the creditor has applied for a review under regulation 35 to request that some or all of the debts owed to them to be removed from the plan, a decision to keep those debts in the plan,
- (b) a decision to send a notification to the Secretary of State under regulation 46(1) that includes conditions provided under regulation 46(1)(c), and
- (c) a decision to request that the Secretary of State issues a final warning notice under regulation 47.

(3) A decision that has been subject to a fair and reasonable assessment under regulation 59 cannot be reviewed under this regulation.

(4) An application under paragraph (1) or (2) must—

- (a) be made no later than 14 days after the date on which the debtor or creditor is notified of the decision to be reviewed by the debt advice provider or by the Secretary of State (as the case may be), and
- (b) include a statement of supporting reasons.

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(a) Section 398A was inserted by section 71(1) of the Enterprise and Regulatory Reform Act 2013.

(5) A debt advice provider must conclude a review under this regulation no later than 21 days after the date on which the Secretary of State sends the notification under paragraph (6).

(6) Where an application is made under paragraph (1), the debt advice provider —

- (a) must review the information which was available to the debt advice provider when the decision was taken, and
- (b) may, if the circumstances specified in paragraph (7) apply, review information that was not available when the decision was taken.

(7) The circumstances specified in this paragraph are—

- (a) there was a good reason that the information was not included in the statement of supporting reasons provided under paragraph (4)(b),
- (b) the new information is potentially relevant information, and
- (c) it might reasonably be expected to have a material effect on the outcome of the review.

(8) Following a review under paragraph (1) or (2) the debt advice provider must—

- (a) confirm the decision under review, or make a new decision under regulation 24, 36, 41, 42, 46 or 47 (as the case may be), and
- (b) inform the debtor or creditor who applied for the review of its outcome.

### **Review of debt advice provider decision – application to court**

**63.**—(1) This regulation applies where—

- (a) a debtor or a creditor has made an application to a debt advice provider under regulation 62, and
- (b) the debt advice provider has upheld the decision under review (“the decision”).

(2) Where this regulation applies the debtor or creditor (as the case may be), may make an application to the county court on one of both of the following grounds—

- (a) the decision unfairly prejudices their interests,
- (b) there is a material irregularity in the decision.

(3) An application under paragraph (2) must—

- (a) be made no later than 14 days after the date on which the debtor or creditor is notified by the debt advice provider of the outcome of their review, and
- (b) state the reasons for the application.

(4) Where a court is satisfied as to either of the grounds in paragraph (2), the court may—

- (a) confirm the decision,
- (b) substitute the decision of the court for the decision of the debt advice provider, or
- (c) direct the debt advice provider to undertake a new review, and
- (d) give such supplemental directions as it thinks fit.

(5) The court must give notice of the court’s decision to—

- (a) the Secretary of State,
- (b) the debt advice provider, and
- (c) the debtor or creditor who made the application.

## PART 5

### Administration

#### **Electronic system maintained by the Secretary of State**

- 64.**—(1) The Secretary of State must maintain an electronic system for the purpose of—
- (a) giving and receiving communications and notifications in connection with plans,
  - (b) maintaining the list of payment distributors referred to in regulation 53,
  - (c) maintaining a register of the information specified in regulation 66,
  - (d) calculating the payments to creditors to be included in a provisional plan under regulation 22,
  - (e) calculating the payments to creditors to be included in a plan as it is proposed to be varied in accordance with regulation 36, and
  - (f) calculating the funding amount and the amount of the payments referred to in regulation 56(2) and (3).
- (2) In calculating payments under paragraph (1)(d) or (e), provision must be made for the electronic system to —
- (a) identify 10 per cent of each proposed payment as the funding amount, and
  - (b) where the plan includes priority debt, of the remaining amount of each such payment—
    - (i) allocate 30 per cent for the purpose only of repayment of a priority debt, and
    - (ii) allocate 70 per cent for the purpose of repayment of qualifying debt of any type (including priority debt).
- (3) Allocations under paragraph (2)(b) must be made on a pro rata basis based on the most recent available value of each debt—
- (a) for a calculation under paragraph (1)(d), on the date that the provisional plan was submitted to the Secretary of State under regulation 23(1), or
  - (b) for a calculation under paragraph (1)(e), on the date the proposed variation is submitted to the Secretary of State under regulation 37(1).
- (4) The Secretary of State may where the Secretary of State considers it appropriate to do so—
- (a) send and receive communications in connection with plans by means of the electronic system, and
  - (b) upload to the electronic system communications received from a creditor by another means.
- (5) The Secretary of State must delete from the plan register all information concerning a plan where twelve months have elapsed from the date on which the plan is cancelled, revoked or completed under these Regulations.
- (6) References in this regulation to “the funding amount” are to be construed in accordance with regulation 56.

#### **Access to information held on the electronic system**

- 65.**—(1) Subject to paragraph (2), the following persons are entitled to information concerning or relevant to a debtor which is contained on the electronic system for the purposes of regulation 64(1)(a)—
- (a) the Secretary of State,
  - (b) the debt advice provider who is exercising functions in relation to the debtor’s plan under these Regulations,
  - (c) the debtor,



- (d) those creditors who are at the time of seeking access to information named on the plan, and
  - (e) the payment distributor appointed under these Regulations who is exercising payment distribution functions in relation to the plan.
- (2) A creditor is not entitled to information about—
- (a) any other creditor of the debtor,
  - (b) any plan debt owed by the debtor to any other creditor, or
  - (c) the debtor’s usual residential address where regulation 69 applies.
- (3) A creditor may, for the purposes of complying with these Regulations, disclose information concerning or relevant to a debtor by means of the electronic system.
- (4) The Secretary of State must make the list referred to in regulation 64(1)(b) available to debt advice providers.
- (5) The following persons are entitled to information contained on the electronic system for the purposes of regulations and (d)—
- (a) the Secretary of State, and
  - (b) the payment distributor who is appointed under these Regulations who is exercising payment distribution functions in relation to the plan.

#### **Information on plan register**

- 66.**—(1) The plan register must record the following information about a plan—
- (a) the date that the plan commenced; and
  - (b) if the plan has been revoked or completed the date of that revocation or completion (as the case may be).
- (2) The plan register must record only the following information about the debtor—
- (a) the debtor’s full name and any former name,
  - (b) the debtor’s date of birth,
  - (c) subject to regulation 69, the debtor’s usual residential address,
  - (d) the trading name or names and address of any business carried on by the debtor, and
  - (e) the name and business address of the debtor’s debt advice provider.

#### **Notifications provided to and by the Secretary of State**

- 67.**—(1) Any information provided by a debt advice provider or payment distributor to the Secretary of State under these Regulations must be given by means of the electronic system maintained by the Secretary of State in accordance with regulation 64.
- (2) Any notification by the Secretary of State to a person under these Regulations must be given by one of the following methods—
- (a) transmitting it by means of electronic communication,
  - (b) leaving it at the person’s address, or
  - (c) posting it to that address.
- (3) Unless the contrary is shown a notification will be deemed to have been received on the following days—
- (a) on the day the electronic communication was sent by the Secretary of State,
  - (b) on the day that the notification was left at the person’s address, or
  - (c) at the end of the period of four business days beginning with the day on which the notification was posted by the Secretary of State.

(4) The Secretary of State may provide notification by means of electronic communication if the person to whom it has to be provided—

- (a) has indicated to the debt advice provider or the Secretary of State (and has not withdrawn the indication) that they are willing to receive notification by those means, and
- (b) has provided, to the debt advice provider or the Secretary of State for this purpose, an e-mail address or other electronic identification.

(5) An e-mail address or other electronic identification provided to the debt advice provider or the Secretary of State for receiving notifications is sufficient indication for the purpose of paragraph (5)(a).

(6) In this regulation “address” means the registered office, registered principal address or any address provided to the debt advice provider or the Secretary of State for receiving notifications.

### **Electronic system malfunction**

**68.**—(1) In the event of any malfunction or error in the operation of the electronic system, the Secretary of State must inform debt advice providers, payment distributors and creditors, that information, communications and notifications may be provided under these Regulations to the Secretary of State in such a form as the Secretary of State will specify.

(2) In the event of any malfunction or error in the operation of the electronic system, where the Secretary of State is required to send notifications under these Regulations, the Secretary of State is required to send the notifications as soon as is reasonably possible.

## **PART 6**

### **Miscellaneous**

#### **Non-disclosure of a debtor’s usual residential address**

**69.**—(1) In the circumstances specified in this regulation, the Secretary of State must not include a debtor’s usual residential address—

- (a) in any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
- (b) in any notification sent to creditors or agents under these Regulations.

(2) A debtor may make an application to a debt advice provider under this regulation for non-disclosure of the debtor’s usual residential address.

(3) An application for non-disclosure of a debtor’s usual residential address must contain—

- (a) a statement of the grounds on which the application is made,
- (b) evidence which supports the statement of the grounds on which the application is made.

(4) The grounds for non-disclosure of a debtor’s usual residential address are that disclosure of the debtor’s usual residential address might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor’s family.

(5) A debt advice provider must consider any application for non-disclosure of a debtor’s usual residential address and determine whether the address should be disclosed.

(6) Within 7 days beginning with the day on which a determination by a debt advice provider under paragraph (5) is made, the debt advice provider must notify the outcome of the determination to the debtor or the person who made an application for a plan on the debtor’s behalf.

(7) If a debt advice provider determines that the grounds specified in paragraph (4) apply, when providing information to the Secretary of State in accordance with these Regulations, the debt

advice provider must notify the Secretary of State that the debtor's usual residential address must not be included in—

- (a) any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
- (b) any notification sent to creditors or agents under these Regulations.

(8) Where an application under this regulation is unsuccessful, a notification under paragraph (6) must inform the debtor, of their right to apply for permission to appeal to a county court under paragraph (9).

(9) Where an application under this regulation is unsuccessful, a debtor, may apply for permission to appeal to a county court against the determination before the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6).

(10) Where an application is made to a debt advice provider under this regulation, the debt advice provider may not take any of the steps specified in regulation 19(1) until the earliest of—

- (a) the day on which the debt advice provider determines that the address should not be disclosed,
- (b) where the application is unsuccessful, but no appeal proceedings are brought under paragraph (9), the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6), or any appeal proceedings relating to the application under this regulation have concluded.

#### **Death of debtor during plan period**

**70.** Where a debtor dies during the plan period, the debt advice provider must notify the Secretary of State of the death as soon as reasonably practicable after being informed or otherwise becoming aware of it.

#### **Selling or transferring debts**

**71.—**(1) This regulation applies where a creditor (“the first creditor”), after receiving a notification under these Regulations sells or otherwise transfers a qualifying debt to another creditor (“the second creditor”).

(2) The first creditor must—

- (a) notify the second creditor of the debt advice provider's intention to devise a plan, of the provisional plan or of the final plan (as the case may be), and
- (b) provide contact details of the second creditor to the debtor's debt advice provider.

(3) Where a debt advice provider receives contact details of the second creditor in accordance with paragraph (2)(b) the debt advice provider must obtain confirmation from the second creditor that they are owed the qualifying debt referred to in paragraph (1).

(4) Where the second creditor has provided the confirmation required under paragraph (3), the debt advice provider must, by the end of the following business day, provide the contact details of the second creditor to the Secretary of State.

(5) Where the Secretary of State receives contact details of the second creditor in accordance with paragraph (3), the Secretary of State must, by the end of the following business day, send a notice of the intention to initiate the plan, the provisional plan or the final plan (as the case may be), to that creditor.

(6) Nothing in this regulation extends any time period for a creditor to make an objection under regulation 28 or 38.

#### **Disclosure of information**

**72.—**(1) This regulation applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under these Regulations.

(2) A duty or power to which this regulation applies does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(3) In this regulation, “data protection legislation” has the meaning given in section 3(9) of the Data Protection Act 2018(a).

### **Contact between a creditor or agent and debtor during a plan**

**73.**—(1) During a plan neither a creditor nor the creditor’s agent must contact a debtor (including by means of the electronic system maintained by the Secretary of State in accordance with regulation 64), in relation to the enforcement of a plan debt, including to demand payment or as a precursor to starting any legal proceedings against the debtor in connection with the plan debt, save as provided for in paragraph (2).

(2) This regulation does not prevent a creditor or an agent during a plan from contacting or engaging with—

- (a) a debtor’s debt advice provider regarding a plan debt or a debt solution in respect of the debtor,
- (b) a debtor—
  - (i) for purposes unrelated to a plan debt including in relation to ongoing liabilities, discretionary non-eligible debt or mandatory non-eligible debt,
  - (ii) at the debtor’s request regarding a plan debt or a debt solution,
  - (iii) in response to a query or complaint raised by the debtor,
  - (iv) in relation to any action or legal proceedings in a court or tribunal permitted under regulation 74, or
  - (v) if the creditor or agent is otherwise required to do so under—
    - (aa) the Consumer Credit Act 1974(b), or
    - (bb) any rules made under Part 9A of FSMA(c).

### **Existing legal proceedings at the start of a plan**

**74.**—(1) Where—

- (a) a creditor receives a notification under regulation 23 of a provisional plan in relation to debt owed to the creditor, and
- (b) the creditor has a bankruptcy petition or any other action or proceeding in any court or tribunal pending in relation to that debt,

then the creditor must notify the court or tribunal of the provisional plan as soon as reasonably practicable.

(2) For the purpose of paragraph (1), references to a court or tribunal do not include the Traffic Enforcement Centre.

(3) After a court or tribunal has received a notification in accordance with paragraph (1) or is otherwise made aware that a plan is in force—

- (a) the court must deal with any bankruptcy petition in relation to a plan debt by—
  - (i) dismissing the petition, if it is at any time satisfied that the conditions in section 271(3) of the Insolvency Act 1986 are met or that under the provisional plan or final plan, the

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(a) 2018 c. 12. Section 3(9) is amended by S.I. 2019/419, Schedule 2, paragraph 4(3) but that amendment is not yet in force.

(b) 1974 c. 39.

(c) 2000 c. 8. Section 137A was substituted by section 24 of the Financial Services Act 2012 (c. 21), section 24(1) and amended by S.I. 2018/1115, regulation 7(6).

debtor is likely to be able to repay all the debts in respect of which the petition was presented to the reasonable satisfaction of the petitioning creditors, or

(ii) staying the bankruptcy proceedings until the plan is cancelled, revoked, or completed and

(b) the court or tribunal must deal with any other action or proceeding in relation to a plan debt in accordance with paragraphs (4) to (8).

(4) Subject to paragraph (6), any action or proceeding (other than a bankruptcy petition) in any court or tribunal pending at the start of a plan in relation to a plan debt may continue during the period of the plan until the court or tribunal makes an order or judgment in conclusion of such action or proceeding.

(5) Where a debtor makes an admission before or during the period of a plan in connection with an action or other proceeding relating to a plan debt, a creditor who is a party to the action or proceeding may enter judgment in that action or proceeding during the period of the plan if they would otherwise be entitled to do so.

(6) Subject to paragraph (8), during the period of a plan a court or tribunal must take all necessary steps to ensure that any action or proceeding to enforce a court order or judgment concerning a plan debt does not progress while the plan is in force.

(7) For the purpose of paragraph (6), the progression of an action or proceeding includes (but is not limited to)—

- (a) holding a hearing other than a hearing to assess the quantum of a damages award,
- (b) making or serving an order or warrant, writ of control, writ of execution or judgment summons, and
- (c) instructing an enforcement agent to serve an order, warrant, writ of control, writ of execution or judgment summons.

(8) This regulation does not prevent a court or tribunal from sending notices or correspondence to a debtor in relation to an action or proceeding.

(9) After an application for a plan has been withdrawn under regulation 15 or cancelled under regulation 16, or a plan has been revoked in accordance with Chapter 5 of Part 2 of these Regulations—

- (a) if a bankruptcy petition was stayed under paragraph (3)(a)(ii), the stay may be lifted by the court, and
- (b) any other action or proceeding to enforce a court order or judgment concerning a plan debt may be resumed by the relevant court or tribunal.

(10) After a plan has been completed in accordance with regulation 52—

- (a) any bankruptcy petition stayed under paragraph (3)(a)(ii) and any other action or proceeding dealt with in accordance with paragraph (3)(b) must be cancelled or dismissed by the relevant court or tribunal,
- (b) any action or proceeding still pending in relation to a plan debt must be withdrawn by the creditor who started it within five business days of the date the creditor was notified of the plan's completion, and
- (c) any unenforced judgment or order issued by a court or tribunal regarding a plan debt before completion of the plan must be cancelled or satisfied (as appropriate) by that court or tribunal.

(11) This regulation is subject to regulation 25.

## PART 7

### Amendment of the Breathing Space Regulations

#### Amendment of the Breathing Space Regulations

**75.**—(1) The Breathing Space Regulations are amended in accordance with paragraphs (2) to (15).

(2) In regulation 1(9) (citation, commencement, extent and application), after “domiciled” insert “in England and Wales”.

(3) In regulation 2(1) (interpretation), at the appropriate place insert—

“contingent debt” is to be construed in accordance with regulation 5(3)(c)(ii);”, and

“future debt” is to be construed in accordance with regulation 5(3)(c)(i);”.

(4) In regulation 2(1) in the definition of “ongoing liabilities”—

(a) at the end of paragraph (e) omit “or”,

(b) at the end of paragraph (f) insert—

“; or

(g) an agreement with an internet service provider or mobile phone network;”.

(5) In regulation 3 (meaning of debt advice provider), in paragraph (1)(b), after “authority” insert “carrying on any activity of the kind falling within article 39E of that Order”.

(6) In regulation 4(3) (debt advice provider fees and referrals), after “referral of a debtor” insert “after the start of a moratorium”.

(7) In regulation 5 (qualifying debt)—

(a) in paragraph (3)(a)(ii), after “a court judgment,” insert “other than in respect of non-eligible debt;”;

(b) after paragraph (3)(b) insert—

“(c) any debt or liability other than an ongoing liability that was—

(i) known and quantifiable at the date of the application for a moratorium and which becomes due for payment during the period of the moratorium (“future debt”), or

(ii) known but not quantifiable at the date of the application for a moratorium and is quantified and becomes due for payment during the period of the moratorium (“contingent debt”).”;

(c) in paragraph (4)(d) omit the words from “except” to the end;

(d) after paragraph (4)(l) insert—

“(m) any liability in respect of—

(i) an income payments order under section 310 of the Insolvency Act 1986; or

(ii) an income payments agreement under section 310A of the Insolvency Act 1986(a).”.

(8) In regulation 7 (effect of a moratorium)—

(a) after paragraph (7)(i) insert—

“(ia) serve a notice to take possession of a dwelling-house let to a debtor on ground 1 in Schedule 2 to the Housing Act 1985(b) or take possession of a dwelling-house let to a debtor having served such a notice;”;

(b) in paragraph (7)(k)(ii), for “181(2)” substitute “181(1)”;

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(a) Section 310A was inserted by section 260 of the Enterprise Act 2002 (c. 40).

(b) 1985 c. 68.

- (c) in paragraph (7)(k)(iii), for “187(2)” substitute “187(1)”;
  - (d) omit paragraph (11).
- (9) In regulation 10 (existing legal proceedings at the start of a moratorium)—
- (a) after paragraph (1) insert—
    - “(1A) For the purpose of paragraph (1), references to a court or tribunal do not include the Traffic Enforcement Centre.”;
  - (b) in paragraph (6)(i), after “hearing” insert “other than a hearing to assess the quantum of a damages award.”.
- (10) In regulation 11(2)(a) (contact between creditor or agent and debtor during a moratorium), after “the debtor,” insert “including by means of the electronic system maintained by the Secretary of State in accordance with regulation 35(1).”.
- (11) In regulation 12(6) (agent appointed by debtor)—
- (a) at the end of paragraph (b) omit “or”;
  - (b) at the end of paragraph (c) insert—
    - “; or
    - (d) a public authority.”.
- (12) After regulation 14 insert—

**“Assignment of debt during a moratorium**

**14A.**—(1) This regulation applies where a creditor (“the first creditor”), after receiving a notification of the start of a moratorium under these Regulations, sells or otherwise transfers a moratorium debt to another person (“the second creditor”).

(2) Where this regulation applies, the first creditor must—

- (a) notify the second creditor of the moratorium, and
- (b) provide contact details of the second creditor to the debtor’s debt advice provider.

(3) Where a debt advice provider receives contact details of the second creditor in accordance with paragraph (2)(b) the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.

(4) Where the Secretary of State receives a notification from a debt advice provider in accordance with paragraph (3), the Secretary of State must, by the end of the following business day, provide a notification of the moratorium to the second creditor.”.

- (13) In regulation 35 (electronic system maintained by the Secretary of State), after paragraph (6) insert—

“(7) A creditor may, for the purposes of complying with these Regulations, disclose information that concerns or is relevant to a debtor by means of the electronic system.”.

## PART 8

### Supplemental

**Review of regulatory provision**

**76.**—(1) The Treasury must from time to time—

- (a) carry out a review of Parts 1 to 6 of these Regulations, and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before [xx xx 2029].
- (3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015<sup>(a)</sup> requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signatory text

Address	Parliamentary Under Secretary of State	<i>Name</i>
Date		Department

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations make provision for statutory debt repayment plans (“plans”), available to eligible debtors domiciled in or ordinarily resident in England and Wales. These plans form part of the debt respite scheme established under section 7 of the Financial Guidance and Claims Act 2018 (c. 10). The other part of that scheme is set out in the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium)(England and Wales) Regulations 2020 S.I. 2020/1311. Part 7 of these Regulations makes amendments to that SI.

Part 1 makes general provision and in particular sets out definitions of debt that may be included in a plan.

Part 2 makes provision for the application process, a debt advice provider to indicate that they intend to put a plan in place for a debtor and the process for developing and finalising a plan. It also provides for review, variations and revocation of the plan and restrictions on creditor action during the course of a plan

Part 3 makes provision about payment distributors who will collect payment from the debtor and administer payments to creditors.

Part 4 makes provision for appeals and reviews.

Part 5 makes provision for the administration of this aspect of the debt respite scheme.

Part 6 makes miscellaneous provision and Part 8 makes provision for review of the regulatory provisions

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) 2015 c. 26.