

Breathing space scheme: response to policy proposal

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Chapter 1

Introduction

- 1.1 The implementation of a breathing space and a statutory debt repayment plan was a 2017 manifesto commitment. Together, the government refers to the two elements as 'the scheme'.
- 1.2 Both elements of the scheme aim to give people in problem debt the opportunity to take control of their finances and place them on a sustainable footing.
- 1.3 Breathing space will give someone in problem debt the right to legal protections from creditor action while they receive debt advice in order to enter an appropriate debt solution.
- 1.4 The statutory debt repayment plan (the plan) will enable someone in problem debt to enter a statutory agreement to repay their debts to a manageable timetable. Individuals entering a plan would receive legal protections from creditor action for the duration of their plan.

Policy rationale

- 1.5 The implementation of breathing space will help individuals in two main ways.
- 1.6 First, the protections offered by breathing space will encourage people to access to debt advice. Research commissioned by the Money Advice Service (now the Money and Pensions Service) shows that once an individual seeks debt advice, they are less likely to sink into a cycle of debt, and their creditors receive higher repayments and spend less on recovery costs. However, not enough people who could benefit from debt advice currently access support, and many of those that do access debt advice would benefit from accessing it earlier on.
- 1.7 Second, by protecting debtors from creditor action, breathing space will allow debtors the time and space to fully engage with professional debt advisers to identify a positive and sustainable solution to their problem debt.
- 1.8 The plan will offer an alternative way of repaying their debts to debtors who are not suited to existing statutory debt solutions. By enabling debtors to repay their debt in full over a sustainable period of time, the plan offers a way to improve debtors' finances and improve returns to creditors.
- 1.9 The implementation of both breathing space and the plan will complement the government's wider work to support consumers who take on debt. This includes acting to prevent problem debt from occurring, and helping people to get out of problem debt should they experience it.

- 1.10 To prevent people falling into problem debt, the government has acted to effectively regulate the consumer credit sector, and make it easier to access high quality financial guidance.
- 1.11 First, the government transformed the regulation of the consumer credit sector through the transfer of regulation from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) in 2014. FCA rules require consumer credit firms to assess the customer's creditworthiness, including affordability before lending to them. In particular, the firm must be reasonably satisfied that the customer can afford the repayments and there will be no adverse impact on their overall financial situation.
- 1.12 Second, the government has also put in place support to help people make good financial decisions. In particular, the government established the new Money and Pensions Service (MAPS) in January 2019. MAPS has brought together three existing publicly-funded money and pensions guidance services in one new organisation to provide free-to-user support on all aspects of people's financial lives. MAPS also has a statutory duty to develop and coordinate a national strategy to improve the public's financial capability.
- 1.13 Alongside this preventative action, the government has taken steps to support people who have fallen into problem debt, including through providing access to high quality, free-to-user debt advice. Public funding for debt advice in England has risen to £55.8m in 2019/20. This will fund over 560,000 debt advice sessions in England – an increase of 85,000 compared to 2018/19.
- 1.14 The government published a consultation document setting out a policy proposal for the scheme on 29th October 2018. The consultation then closed on 29th January 2019. This consultation response sets out how the scheme will be designed and administered, alongside outlining the government's next steps on implementation.
- 1.15 The government received over 130 responses to the consultation from a wide range of stakeholders – including various creditors, debt advice agencies, and local authorities.

Consultation response structure

- 1.16 The consultation response has three sections. Chapters 2 and 3 set out information on the breathing space period. This includes eligibility criteria for breathing space, as well as details of the protections that would be offered to debtors. Chapters 4 and 5 focus on the plan and are structured in the same way. Chapter 6 of the document outlines the government's proposal for administration the scheme, including how funding for the scheme will work.

Next steps

- 1.17 Following the publication of this consultation response, the government will lay regulations on breathing space before the end of the year. The government then intends to implement breathing space in early 2021. The plan will be developed to a longer timetable.

Chapter 2

Eligibility for breathing space

- 2.1 Breathing space is a period of time during which an individual in problem debt is given respite from creditor action. This time is designed to give an individual the space to fully engage with debt advice and seek a sustainable solution to their debts.
- 2.2 This chapter sets out who will be eligible for breathing space. It also confirms how creditors will be informed when a debtor enters breathing space.

Eligibility criteria for breathing space

- 2.3 The government set out in the consultation that, to be eligible for breathing space, individuals would have to:
- access debt advice
 - be assessed as being in problem debt by a debt adviser
 - not have entered in breathing space in the previous 12 months
- 2.4 There would be one exception. Those receiving NHS mental health crisis treatment would not have to meet these criteria and would be able to use an alternative access mechanism to enter the scheme. More information on this alternative access mechanism can be found in Chapter 3, starting in paragraph 3.78.

Views of consultation respondents

- 2.5 Almost all respondents agreed that an individual should access debt advice and be assessed as being in problem debt in order to qualify for breathing space.
- 2.6 A number of respondents from creditor organisations suggested that the government should define what 'problem debt' is in the context of breathing space, to ensure consistency in the characteristics of those who enter the scheme. As outlined further in para 2.12, being in 'problem debt' for the purposes of breathing space will mean that a debtor is having difficulty paying their debts, and is in sufficient financial difficulty to have a realistic chance of entering a debt solution such as insolvency or a debt management plan.
- 2.7 There was some divergence of views over the requirement to have a 12-month window before an individual can re-enter breathing space. Many debt advice agencies and consumer organisations suggested that the 12-month limit should not apply at all, as some individuals may experience life

shocks and require the protections more than once in 12 months. However, other respondents – mainly from local authorities – suggested that the 12-month limit should be extended, as they were concerned that allowing individuals to repeatedly enter breathing space during a short period could lead to abuse of the protections.

- 2.8 Some consultation respondents also noted that a breathing space for individuals who hold debt jointly would be helpful, so that the other individual who holds the debt would not have enforcement action taken against them if one person was in breathing space. This provision would also ensure that breathing space would follow current practice in the equivalent Scottish Debt Arrangement Scheme.

Policy response

- 2.9 Having considered the views of consultation respondents, the government proposes the same eligibility criteria as set out in the consultation. This section provides further detail on how the criteria will operate in practice.
- 2.10 To enter breathing space, an individual will first have to access FCA-regulated debt advice, or advice from another organisation that qualifies for an exemption from FCA authorisation, such as a local authority. This could be done through different debt advice channels – online, telephone or face-to-face.
- 2.11 All debt advice agencies outlined in the previous paragraph will be able to offer breathing space. However, no debt advice agency will be able to charge the individual for related advice or entrance to breathing space.
- 2.12 Second, a debt advice agency will have to assess that an individual has a realistic chance of entering a formal debt solution, such as bankruptcy or an Individual Voluntary Arrangement, or a voluntary debt management plan and needs time in order to be able to do so.
- 2.13 As in the consultation, when completing this assessment, the debt advice agency will not have to complete a full Standard Financial Statement in order to enter a person into breathing space. Instead, the debt advice agency should retrieve enough information to confirm that a debtor has a realistic chance to enter a debt solution, as well as to identify the debtor's creditors.
- 2.14 A debt advice agency will not be able to enter someone into breathing space if they do not have a realistic chance of entering a debt solution during breathing space. Examples of such debtors include those who:
- would be advised to pursue options other than a debt solution – such as being given budgeting advice
 - clearly need to enter a formal insolvency solution, such as bankruptcy, and are in a position to do so immediately, including being able to pay the relevant fees
 - are already in insolvency solutions
- 2.15 The government agrees it is important that vulnerable groups can enter the protections at appropriate times, but wants to safeguard against abuse of

the scheme. To provide this balance, the government will retain the 12-month limit between an individual being able to access breathing space.

- 2.16 Following feedback that it could be helpful, the government is minded to include provision for couples with joint debts to enter breathing space together, if the debt advice agency made an assessment of their joint finances and felt they would both be eligible for breathing space, using the criteria above. This follows practice in the equivalent Scottish Debt Arrangement Scheme. Given the potential complexity of including couples in breathing space, the government will work with expert stakeholders over the coming months in order to refine how this could work in practice.

Objection mechanism

- 2.17 The government asked a question in its consultation on whether there should be a mechanism for creditors to object to a debtor entering breathing space.
- 2.18 There was a wide variety of responses to this question. Often, respondents from debt advice agencies and consumer organisations felt that there should be no objection mechanism, given this could reduce the attractiveness of breathing space, and would be unnecessary during the short period of breathing space. However, some creditor organisations felt that the inclusion of an efficient mechanism to object to an individual entering breathing space could reduce the risk of abuse of the protections.
- 2.19 Having considered the possible benefits of such a mechanism, alongside the views of consultation respondents, the government is not minded to include a formal objection mechanism for breathing space. This is because the inclusion of such a mechanism may not be workable during the short period of breathing space.

Administration and notification of breathing space

- 2.20 It is the government's intention that, following the individual being assessed as being eligible for breathing space, the process for entering someone into breathing space is straightforward. This will reduce the administrative impact of breathing space on debt advice agencies and creditors, and ensure that debtors who can benefit from the scheme are able to easily access it.
- 2.21 The government set out its intention that the Insolvency Service should be the central administrator of breathing space in its consultation. The main task for the scheme's administrator is to inform creditors that an individual has entered or exited breathing space. The government proposed that creditors would be proactively informed when their debtor enters breathing space. This will happen through an Insolvency Service-run portal.

Views of consultation respondents – portal

- 2.22 Most respondents agreed that the Insolvency Service should operate the portal that would notify creditors of an individual's entrance into breathing space. Commonly, respondents suggested that the use of a central portal would help to reduce administrative burden on debt advice agencies and creditors.

- 2.23 Most respondents agreed with the proposed method of notifying creditors that a debtor has entered breathing space. A number of respondents noted the importance of the Insolvency Service's notification system integrating with the IT systems of creditors and debt advice agencies. They suggested that this would reduce administrative burden.
- 2.24 A number of creditors also noted the importance of the notification containing sufficient details (including the debtor's personal details, known creditors, and, if possible, account information) so that creditors can identify the individual.
- 2.25 Some respondents also raised questions about how the notification system would operate if a creditor has outsourced the collection of a debt to a debt collection agency or enforcement agent, and the debtor had not correctly identified that the collection of the debt had been outsourced.

Policy response – portal

- 2.26 Given the views of consultation respondents the Insolvency Service will operate a central portal which will notify creditors of an individual's entrance to or exit from breathing space.¹ The government also agrees that it is important that the notification contains sufficient details for creditors to easily identify debtors and that systems are integrated to reduce administrative burden. The government will work to ensure that, where possible, the portal includes these features.
- 2.27 The notification mechanism will work in the following way:
- 2.28 A debt advice agency will gather details of creditors directly from the individual. In order to ensure that this information is as full as possible, the government expects a debt advice agency to run a credit check to identify other creditors if they or the debtor feel this to be appropriate, as is current standard practice.
- 2.29 Next, a debt advice agency will place information about the debtor and their creditors onto the portal. The portal will then notify the named creditors that the individual is entering breathing space. If possible, this will be provided electronically. However, if a creditor is not able to receive electronic notification, they will be provided with alternative notification – such as a postal notification.
- 2.30 In the cases where the debt had been passed to a third party for collection, the original creditor will be notified of an individual's entrance to breathing space, and will be responsible for passing this information to the debt collection agency or enforcement agent. This is because debtors are most likely to know the details of the creditor they originally owed money to, rather than who is collecting it on their behalf.

¹ Government is currently considering whether, in law, the relevant activities (in relation to both breathing space and the plan) will be performed by the Secretary of State for Business, Energy and Industrial Strategy (acting through the Insolvency Service) or a statutory office-holder (who may be appointed from within the Insolvency Service). For ease, this document refers to the Insolvency Service throughout.

2.31 When an individual leaves breathing space, their creditors will be notified in the same way as they were notified when the individual entered breathing space.

Register of individuals in the scheme

2.32 In the equivalent Scottish scheme, and insolvency solutions, there is a register of the individuals in the protections of the scheme.

2.33 In the consultation, the government proposed that a similar register should operate in breathing space so that creditors could ensure they continue to comply with the requirements of breathing space.

2.34 The consultation proposed three different options for the design of this register:

- a fully public register available to all
- a register of individuals only accessible to certain parties, including an individuals' creditors and debt adviser
- a register only accessible to the Insolvency Service

Views of consultation respondents

2.35 The vast majority of respondents felt that a public register of individuals in the scheme would be inappropriate. Respondents often noted concerns that debtors could be put off from entering the scheme because of the public nature of the register, and noted the potential for inappropriate use of the register by lead-generation firms.

2.36 A number of respondents therefore suggested that there should be a semi-private register of all individuals in the scheme, which only creditors and debt advice agencies would be able to access.

Policy response

2.37 The government recognises the rationale behind this option of a semi-private register. However, given the potentially wide range of creditors who could have debtors in the protections of breathing space – from large financial services firms to small landlords – almost all potential creditors would be required to have access to the scheme's register under this proposal. The government therefore has similar concerns about privacy, and the unscrupulous use of the register by lead generators with this semi-private register.

2.38 To avoid the issues set out above, there will be a private register of individuals in the scheme. In addition to proactive notification when an individual enters breathing space, individual creditors will have access to a register of those individuals who owe them debts who are in breathing space and have been included in the portal. Creditors will not be able to access details of other debtors in breathing space through this register.

2.39 For example, if a bank had debtors in the scheme, they will be able to access information about their debtor – including their name, address and progress through breathing space. They would not be able to see the individuals' other creditors, or debtors of other creditors.

2.40 Debt advice agencies will also be able to access information about individuals who had been in breathing space in the preceding 12 months. This enables debt advice agencies to ensure that individuals who are ineligible for breathing space cannot access the protections.

Chapter 3

Protections of breathing space

- 3.1 The government will implement a breathing space with strong protections for debtors, fulfilling its manifesto commitment to pause interest, fees and charges, and enforcement action.
- 3.2 In summary, breathing space will:
- include almost all personal debts – including those owed to government – alongside business debts incurred by small sole traders
 - prevent debts from continuing to spiral by stopping the accrual of contractual interest, and default interest, fees and charges
 - pause almost all enforcement action
- 3.3 These wide-ranging protections will ensure that breathing space provides genuine respite to debtors to enable them to access debt advice and enter a sustainable debt solution.

Debts included

- 3.4 The government recognises the importance of ensuring that as many of an individual's debts as possible are included in breathing space. Without this, those who owe debts to an excluded creditor would not receive full respite from the pressures of enforcement action during breathing space.
- 3.5 The next two sections set out how personal and business debts will be treated in breathing space.

Personal debts included

- 3.6 The government proposed that the widest possible range of personal debts would be included in breathing space, following the protections of personal insolvency solutions such as bankruptcy.

Views of consultation respondents

- 3.7 Most respondents felt that as many of an individual's personal debts as possible should be included in breathing space. Some suggested that all personal debts should be included, even including those debts that are currently excluded from personal insolvency solutions. However, most respondents agreed with the government's proposal.
- 3.8 Respondents gave a variety of reasons for the inclusion of this very wide range of debts. Commonly, they noted that it would ensure breathing space was effective for individuals, because they would experience a genuine pause on creditor action. A number of debt advice agencies also noted that the

inclusion of public sector debts was vital to the policy's success. In addition, a number of respondents from creditor organisations felt it was important that no creditor received preference through having their debts excluded from breathing space.

- 3.9 Though most respondents supported the inclusion of as many debts as possible, some respondents – mainly from local authorities – suggested that some debts, including those owed to central and local government, should not be included in breathing space. They suggested that current forbearance practices were sufficient to protect individuals in problem debt without the introduction of breathing space.
- 3.10 Some respondents to the consultation raised questions about how council tax will be treated in breathing space. This is because the size and length of a council tax debt liability can vary depending on how far a local enforcement process has progressed. For example, someone who misses one monthly payment may be issued a demand notice to repay a single month's arrears. However, if they fail to make that repayment, the council may issue a notice requiring payment of the full year's bill.

Policy response

- 3.11 Though the government recognises that existing processes can be effective in isolation, individuals who enter breathing space are likely to have multiple debts. These individuals would especially benefit from breathing space, given entrance into the protections would give them a single point of contact with a debt advice agency, rather than needing to interact with and co-ordinate discussions with several different creditors.
- 3.12 The government therefore agrees with the majority of consultation respondents that including a wide range of debts is vital to the success of breathing space. Therefore, as proposed in the consultation, similar personal debts to those included in personal insolvency solutions such as bankruptcy will be included in breathing space.
- 3.13 Specifically, the protections will cover financial services debt, household bill arrears, and, importantly, arrears owed to central and local government. For local government, this means individuals will be protected from enforcement action on debts owed to local authorities – including council tax arrears.
- 3.14 Amongst other central government debts, it also includes stopping recovery action relating to personal debts owed to HMRC. It also means the inclusion of all debts owed to DWP either through benefit overpayments or from benefit advances – covering both legacy benefits and Universal Credit.
- 3.15 As with bankruptcy, a very small number of debts will be excluded from breathing space. All other debts will be included in the protections. As set out in the consultation, these excluded debts include:
- debts incurred as a result of fraudulent behaviour
 - fines imposed by a court, including criminal fines
 - confiscation orders

- child maintenance payments and debts that arise after an order made in family proceedings
 - social fund loans
 - student loans
 - personal injury liabilities
- 3.16 There is one key difference in the treatment of Universal Credit advances. Though Universal Credit advances will be included in breathing space, they will be included in the protections on a phased basis as early as possible following the start of the policy in early 2021. This is important in order to ensure that IT changes required align with other requirements of the wider Universal Credit programme. Likewise, third party deductions from Universal Credit will also be included in breathing space on a phased basis.
- 3.17 The government is working with Local Authorities to make the Council Tax collection system fairer and more efficient. In order to make breathing space as administratively simple as possible, the government proposes that the classification of council tax debt in breathing space will follow current practice.
- 3.18 This means that if an individual enters breathing space in arrears on monthly council tax payments before the full outstanding annual bill has been requested, only outstanding monthly arrears owed on the debt will be included in the protections. The individual would continue to face enforcement action if they did not pay their ongoing monthly bill for council tax, given that council tax is classed as an ‘ongoing liability’, explained in further detail below.
- 3.19 However, if the individual had been served with a notice requiring payment of the full remaining bill by the time they enter breathing space, the whole of the amount contained in that notice will be included in the protections of breathing space.

Business debts included

- 3.20 The government proposed in its consultation that sole traders with a turnover below the VAT threshold would be able to include business debts in breathing space. This is because unlike those running, for example, incorporated companies, sole traders are self-employed, and are personally liable for their business debts. The personal and business finances of small sole traders can also be intricately linked. The government was concerned that these individuals would not benefit from breathing space if this protection were not available, as they could still have enforcement action taken on debts incurred in their capacity as a sole trader.

Views of consultation respondents

- 3.21 A majority of respondents felt that including the debts of sole traders with a turnover below the VAT threshold would provide appropriate protections for these individuals, given that their personal and business finances are often interlinked. However, a number of creditors felt that the provisions for sole

traders would be inappropriate because it could mean that unviable businesses continued to trade during breathing space.

Policy response

- 3.22 Having considered the views of consultation respondents, given that breathing space will not be as effective for small sole traders if their business debts are not included, the scheme's protections will cover the business debts of sole traders who have a turnover under the VAT threshold (currently set at £85,000). The government disagrees that this could prop up unviable businesses in the long term – the protections last for sixty days and sole traders will be expected to pay their ongoing liabilities.
- 3.23 As with personal debts, a wide range of business debts for this group will be eligible for breathing space, including business credit, business utility bills, and supply chain debts. Importantly, breathing space will also include all national and local taxes that can be owed by sole traders – including employer and employee NICs, PAYE and business rates, and VAT.
- 3.24 The government expects that it will be for a debt advice agency to verify that a sole trader's turnover is below the VAT threshold – for example, by looking through evidence of the individual's Self Assessment tax return, or their small trader accounts.

Breathing space when turnover is above VAT threshold

- 3.25 There will be some circumstances in which in addition to having personal debts, an individual has personal liability for business debts which are not eligible for inclusion in breathing space because the business has an income that is higher than the VAT threshold. In these circumstances, a differentiation needs to be made between an individual's personal and business debts.

Views of consultation respondents

- 3.26 A small number of consultation respondents suggested that the most appropriate way of distinguishing between personal and business debts would be for a debt advice agency to look at whether the credit the individual was offered was designed for personal or business use.

Policy response

- 3.27 The government agrees that this is the most pragmatic method of distinguishing between personal and business debts. In order to make this assessment, the debt advice agency will be guided by the initial purpose of the product.
- 3.28 The government expects that, in most scenarios, the purpose of the debt incurred by the individual will be clear cut.
- 3.29 For example, in financial services there is typically a clear distinction between credit cards or loans that are for personal use and those which can only be taken out by a business. Or in another example, council tax and personal taxes – such as Self Assessment tax debt – are always incurred as an individual. However, there are other arrears that can only be incurred in the

course of business trading – such as employer NICs, VAT or supply chain debts. These debts will be treated as a business debt.

- 3.30 There are occasions however when there is not a clear intent for whether the individual will use the credit on offer personally or for their business. For example, utility debts like water and electricity, can be owed by both individuals and businesses. In these cases, the debt advice agency should classify debts depending on who is named as owing the debt. If it is billed to the individual, that is a personal debt and if it is billed to the business that is a business debt.

Treatment of ongoing liabilities

- 3.31 The government did not propose to extend the same protections to an individual's 'ongoing liabilities'. The consultation proposed that the following bills would be classified as 'ongoing liabilities':
- payments on the principal and interest for secured debts on essential items such as mortgage payments, and hire purchase debts
 - rent
 - an insurance premium
 - taxes
 - water and sewerage charges
 - supply of electricity, gas, landline phone services
 - heating oil or solid fuel
- 3.32 The consultation proposed that individuals would not be protected from enforcement action on any debts included if they failed to pay these ongoing bills. The consultation also proposed that individuals would have to keep up payments on these bills to continue to be eligible for breathing space.

Views of consultation respondents

- 3.33 Most consultation respondents agreed that an individual should pay ongoing bills if they were able to, as this would ensure that breathing space is not simply a payment holiday. Most respondents also agreed that enforcement action could be taken against a debtor if they did not keep up payments on ongoing bills during breathing space.
- 3.34 However, both creditors and debt advice agencies raised concerns about a strict requirement for an individual to pay ongoing liabilities in order to remain eligible for breathing space. Respondents suggested that this condition could exclude the worst off from the scheme's protections.

Policy response

- 3.35 As set out in the consultation, if an individual falls into arrears on an ongoing liability whilst they are in breathing space, they will not be protected from enforcement action, or the charging of additional interest, fees and charges on these missed bill payments.

- 3.36 However, as set out by consultation respondents, the government recognises that the requirement to pay ongoing liabilities to remain eligible for breathing space could mean that some of the most vulnerable people do not benefit from the policy's protections. Therefore, debt advice agencies will have discretion to remove a person from breathing space because they did not pay their ongoing liabilities, rather than being required to do so.
- 3.37 The government expects a debt advice agency to remove a person from the protections if the person clearly has the means to pay their ongoing liabilities but has not. This means that the most vulnerable individuals will continue to be protected during breathing space, and debt advice agencies will have flexibility to decide what is appropriate considering the individual's circumstances.

Recovery, collections and enforcement action and interest, fees and charges

- 3.38 In addition to the wide range of debts included in breathing space, the government also proposes providing strong protections for debtors. This is important, so that breathing space offers a genuine period of respite for individuals in problem debt.
- 3.39 Breathing space will offer two broad types of protection: first, a pause on interest, and additional default fees and charges, and second, a pause on almost all creditor collections, recovery and enforcement action.

Interest, fees and charges

- 3.40 First, the government proposed that all contractual and default interest, and default fees and charges, would be prevented from accruing in breathing space.

Views of consultation respondents

- 3.41 Almost all respondents supported the pause on default fees and charges, with respondents often noting that this would prevent a debtor in genuine financial difficulty seeing their debts spiral whilst they are in breathing space.
- 3.42 Debt advice agencies and non-financial services creditors supported the freezing of interest. However, some financial services creditors felt the freezing of interest was too strong a protection and would add to the administrative burden of the scheme.

Policy response

- 3.43 The government recognises the views of both sets of consultation respondents. However, given that debtors who enter breathing space are likely to be in significant financial hardship, the government will provide that no contractual or default interest, or default fees and charges will be charged in respect of the debts included in breathing space.
- 3.44 In addition, as proposed in the consultation, creditors will not be able to retrospectively charge interest, or default fees and charges on these debts, should an individual leave breathing space without entering a debt solution.

Treatment of collections, recovery and enforcement action

- 3.45 Second, a breathing space will stop almost all creditor collections, recovery and enforcement action. This will give individuals in breathing space time to make an informed decision about how to deal with their debts.
- 3.46 The government proposed in its consultation that almost all creditor collections, recovery and enforcement action would be paused in breathing space. This included:
- a pause on creditor contact in relation to debt repayment
 - pausing the process of the debt pre-action protocol
 - preventing creditors from starting new court action
 - pausing almost all post-court enforcement action against a debtor

Views of consultation respondents

- 3.47 Respondents broadly supported the proposals outlined above. Some respondents suggested that the proposal contained in the consultation struck the right balance between debtor protections and undue administrative burden in the short period of breathing space.

Policy response

- 3.48 Given this support, the government will adopt the same overall approach as was proposed in the consultation. This section therefore provides more detail on how this will work.
- 3.49 To outline how creditor recovery and collections action would be affected, the government has split the typical process of creditor action into the separate steps outlined in the bullet points below. The subsequent paragraphs outline how each of these steps would be affected:
- A creditor would first make contact with a debtor in order to request the repayment of debt
 - If this contact does not lead to payment, a creditor may initiate court proceedings against an individual. In most circumstances, there are two stages to these court proceedings, once the creditor has fulfilled the pre-action protocol for debt claims:
 - First, a creditor can apply to the county court to claim money, goods or property owed by a person or business. The debtor receives the claim and is given a timeframe to respond – this could be to acknowledge the debt, file a defence or pay (or part pay) the debt. If the defendant does not respond to the claim or admits they owe the money but does not pay the court will issue a judgment against the debtor.
 - If the debtor does not comply with the court order, the creditor may then apply to the court to enforce it, for example by asking the court to issue a warrant of control (whereby enforcement agents, previously known as bailiffs, can be instructed to try to obtain the money owed or seize goods to that value.

Treatment of contact during breathing space

- 3.50 All contact with the debtor relating to the repayment of debts included in the scheme will be paused in breathing space. Ceasing contact with a debtor in this way is intended to ensure that the debtor is given time and space, so that they can have a single conversation with their debt adviser on the best solution to their debts.
- 3.51 However, contact with debtors in relation to ongoing liabilities, or in relation to debts and arrears excluded from breathing space will not be prohibited. Business as usual contact with the debtor, eg: marketing communications or giving factual updates on debt balances, or other contact unrelated to the enforcement of debt would also not be banned in breathing space. Additionally, contact which was actively prompted by the debtor will not be paused in breathing space, given that an individual will have requested the communication from their creditor.

Treatment of court action

- 3.52 Creditors will be prohibited from initiating any new court claims or action against a debtor because they had not made debt repayments.
- 3.53 However, as proposed in the consultation document, an application to court that had already been made will continue to judgment, given the administrative burden of stopping and then restarting court action to accommodate a relatively short period of time in breathing space.

Enforcement action

- 3.54 Where enforcement action has already been approved via a court's decision, there will be a requirement in almost all circumstances that such enforcement action is paused during breathing space. This will include pausing enforcement agent action. It also means that creditors are not able to begin any new enforcement action after a judgement. In addition, bankruptcy petitions will be paused, but not dismissed, during breathing space.
- 3.55 One exception to this rule will be that, as in the consultation, existing attachments of earnings orders will not be paused during breathing space, given the significant impact pausing and then restarting such orders could have on employers.
- 3.56 Some creditors do not require a court's permission to take enforcement action. This type of enforcement action – which does not require a court order – includes that which is taken by government bodies who can make attachments to individuals' earnings and benefits.
- 3.57 Government agencies will be required to pause reductions to benefits to recover debt, alongside third party deductions, during breathing space. For the same reasons outlined in para 3.16, third party deductions from Universal Credit, and Universal Credit advances will have a phased implementation to ensure that IT changes required align with the rollout of the wider Universal Credit programme.
- 3.58 Energy providers will also be prevented from forcibly installing new pre-payment meters, and from taking deductions to repay debt from pre-

payment meters if a meter had already been installed. Providers will also be prohibited from disconnecting debtors due to their debts, and landlords will be prevented from evicting debtors due to unpaid debts under section 8 of the Housing Act 1988.

Length of breathing space

- 3.59 As well as providing strong protections to debtors, breathing space will last for a period that allows an individual to work with a debt advice agency to identify and enter a debt solution.

Views of consultation respondents

- 3.60 Almost all consultation respondents welcomed the extension of the length of breathing space to sixty days, as set out in the consultation, with respondents often suggesting that this was a realistic length to enable an individual to seek debt advice and enter a sustainable debt solution. However, some respondents – mainly from debt advice agencies – suggested that it may be appropriate to extend the length of breathing space further, or to allow debt advice agencies discretion to do so.

Policy response

- 3.61 Given the views of consultation respondents, the government believes that sixty days is an appropriate period for breathing space to last to allow individuals to identify and access a debt solution, whilst the fixed period will provide certainty to creditors. The length of protections will therefore last for this amount of time.

Ongoing eligibility for sixty day breathing space

- 3.62 The government's consultation document proposed that individuals would have to access debt advice and pay ongoing liabilities to continue being eligible for breathing space.
- 3.63 The government also set out that the individual's debt advice agency would have to complete a check of an individual's breathing space at 30 days, to ensure that individuals were continuing to comply with the ongoing eligibility requirements of breathing space.

Views of consultation respondents

- 3.64 Almost all respondents agreed with the requirement to access debt advice during breathing space. Respondents often suggested that active engagement with debt advice would ensure that individuals fully benefitted from breathing space.
- 3.65 However, as set out in para 3.34, a number of respondents from the creditor and debt advice sectors questioned the requirement to continue paying ongoing liabilities in order to continue to be eligible for breathing space. A number of debt advice agencies were also concerned that the administration of the 30 day check could be burdensome.

Policy response

- 3.66 In light of the consultation responses received, the government has improved the design of the proposed scheme. Ongoing eligibility for the

breathing space scheme will now be assessed in line with the slightly amended approach outlined below.

- 3.67 The requirement to access further debt advice – either through making an appointment with an adviser, undertaking another session of advice, or actively engaging with a debt advice agency’s online tools – will still apply. Creditors will also continue to be able to take enforcement action when an individual does not pay their ongoing liabilities. However, as set out above in para 3.36, an individual’s debt advice agency will have discretion on whether to remove an individual from breathing space if they have received a creditor complaint about the individual not paying an ongoing bill.
- 3.68 Alongside these two requirements, the government recognises that it could be inappropriate for individual to take out further credit during breathing space, as an individual will use a breathing space to take expert advice and find a solution to their debts. However, the government also recognises that individuals could have short-term financial shocks, such as an essential household appliance breaking, and therefore could require further credit over the course of breathing space.
- 3.69 Given this, the government is minded to follow the same rules on taking out further credit as in Individual Voluntary Arrangements (IVAs). In an IVA, an individual is to request permission from their supervisor (or, in the case of breathing space, the debt advice agency) to borrow more than £500 in total from any commercial lender over the course of the IVA.
- 3.70 If a creditor disclosed to a debt advice agency that an individual had borrowed more than £500 in breathing space without this permission, the debt advice agency should remove the individual from breathing space.

Operation of the 30 day check in practice

- 3.71 Given debt advice agency and creditor feedback that the 30 day check outlined in para 3.63 could be administratively burdensome, the government recognises the importance of ensuring that it operates in a straightforward way.
- 3.72 Importantly, the government does not expect debt advice agencies to proactively carry out checks to ensure that the debtor has continued to pay their ongoing liabilities, or has not taken out more than £500 of credit without the permission of their debt advice agency. Instead, the debt advice agency will only have to confirm that the non-payment of ongoing liabilities, or borrowing of more than £500 without debt advice agency permission has not been reported by a creditor. The only other action that a debt advice agency will have to complete is to check whether an individual has engaged further with debt advice during the period of protection.
- 3.73 To summarise, in practice, the check will work in the following way:
- After 30 days of breathing space, a debt advice agency will be required to carry out a check on an individual’s breathing space to review whether the individual had complied with the scheme’s requirements.
 - The debt advice agency must then assess that the individual has continued to access debt advice. They will also be required to check that they have

not received creditor complaints about the individual, based on compliance with the eligibility criteria above.

- If a debt advice agency judges that the individual had continued to comply with the requirements of breathing space, they will not be required to take any further action.
- If a debt advice agency judged that an individual had not complied with the requirements for ongoing eligibility, they will place information that the individual is to be removed from breathing space onto the portal. The portal will then notify the creditor. The debt advice agency will also be required to contact the individual to inform them that they have been removed from breathing space.

Oversight role for creditor compliance

- 3.74 In the consultation, the government asked respondents whether there should be an oversight role to ensure creditor compliance with breathing space. The government also invited responses on how the oversight role should operate in practice.
- 3.75 Most respondents to the consultation felt that there should be a mechanism for monitoring and acting on creditor non-compliance in breathing space. A number of respondents felt that existing bodies who monitor compliance, such as the Insolvency Service, or regulators of creditors, should operate the compliance mechanism. A number of respondents pointed to equivalent compliance mechanisms in insolvency solutions, or to existing compliance mechanisms operated by regulators.

Policy response

- 3.76 Given the views of consultation respondents, the government is minded to include an oversight role for creditor compliance that reflects the current compliance mechanism in insolvency solutions.
- 3.77 For example, in bankruptcy, creditor compliance is monitored through the debtor flagging non-compliance to the creditor to their insolvency practitioner or debt advice agency. The Insolvency Practitioner or debt advice agency will then investigate the instance of non-compliance, and, if appropriate, remind the creditor to comply.
- 3.78 If the non-compliance persists, the Insolvency Practitioner or debt advice agency will then report the non-compliance to the Insolvency Service. The Insolvency Service can then send a series of reminders to the creditor for them to comply, as well as being able to report non-compliance to the creditor's regulator if relevant.
- 3.79 The government will continue to work with expert stakeholders on the design of this oversight role for creditor compliance over the next few months.

Breathing space for those in mental health crisis care

- 3.80 During the passage of the Financial Guidance and Claims Act, the Economic Secretary to the Treasury made a commitment that individuals receiving NHS

treatment for a mental health crisis, would benefit from an alternative access mechanism to breathing space.

- 3.81 The consultation set out some principles for how the access mechanism will work, reflecting the particular needs and circumstances of this group. It proposed that an individual in mental health crisis would not be required to make their own application for breathing space directly to a debt advice agency. It also set out that a debt advice agency will not be required to carry out the full initial assessment of the individual's finances.
- 3.82 A debt advice agency would instead give access to breathing space on the basis of evidence that the individual was receiving mental health crisis care. The evidence outlined above could be provided to a debt advice agency either by a mental health professional, or by a third party nominated by the patient.
- 3.83 Importantly, the government proposed that the frequency with which breathing space could be accessed via this mechanism would not be limited. This is given the likelihood that mental health conditions may recur or change over time, which could lead to a need for repeat crisis treatment. The government also proposes that the frequency of access would not be limited because of the challenges faced by individuals with mental health problems which may make it more difficult to enter a sustainable debt solution.
- 3.84 The government proposed that individuals who applied to the scheme under this mechanism would still be able to apply for a further breathing space through the main scheme if they had not used the main scheme in the previous twelve months. Equally, if a debtor had used the main scheme in the last twelve months this would not prevent them seeking to enter breathing space via the alternative mechanism while receiving mental health crisis care.

Views of consultation respondents

- 3.85 Respondents were supportive of there being an alternative access mechanism, often noting that given the unique circumstances of individuals in mental health crisis, it was important to provide a different way of accessing the protections. In addition, most respondents also felt that appropriate third parties should be able to use the professional assessment made by a mental health practitioner.

Policy response

- 3.86 Given consultation respondents indicated widespread support for the alternative access mechanism, the government has set out further detail on how it would work in practice below.
- 3.87 Approved Mental Health Professionals (AMHPs) will be the professional group able to produce an assessment that an individual is receiving mental health crisis care. This will be the evidence that debt advisers then use to determine someone's eligibility for breathing space. AMHPs are social workers, nurses, occupational therapists or clinical psychologists who have specific training in mental health and mental capacity law, are experienced in supporting people in crisis and are usually based in community, crisis or home treatment teams and approved by local authorities. AMHPs do not

include registered medical practitioners, i.e. doctors, including GPs. However, as per existing practice for other mental health assessments, these doctors will be able to refer someone to an AMHP.

- 3.88 An AMHP's assessment will provide evidence that the individual is in receipt of mental health crisis treatment, with the definition of this treatment set out in regulations, and guidance provided to AMHPs to ensure this is consistently applied. Regulations will set out what information must be included in this assessment, for example information to identify the debtor and a confirmation that they are receiving mental health crisis care. The government will work to make this a straightforward and low burden process for AMHPs, including by developing a standard form to use for assessments as part of professional guidance on the scheme.
- 3.89 Existing processes and referral structures available to AMHPs should be used to communicate the assessment to a debt adviser. AMHPs may also be able to liaise with a third party nominated by the patient to share this information.
- 3.90 Sensitive personal information about the individual's mental health and their receipt of medical treatment – as well as their financial situation – will be shared when entering the alternative mechanism. If an individual has mental capacity, then they will be able to give explicit consent to the sharing of their confidential health data. If they lack capacity, then there are existing routes for sharing data via substituted consent (e.g. from a power of attorney) or on the basis of a "best interests" test under the Mental Capacity Act 2005.
- 3.91 An individual who enters breathing space through this route will have all the protections of the main scheme. These need to be applied in a way which is sensitive to the situation of someone who is experiencing a mental health crisis. For example, someone in crisis care might find it harder to meet their ongoing financial liabilities. The debt adviser may not have been able to assess whether meeting these liabilities is a realistic prospect because they are not required to complete the full financial assessment for these debtors. These are the kinds of factor we expect a debt adviser to consider in exercising their discretion to allow an individual to continue in breathing space if they become aware that they are not meeting ongoing liabilities.
- 3.92 The government will also limit the reasons that breathing space can be ended for someone who has accessed it through this mechanism. First, debt advisers will not end breathing space because an individual has borrowed more than £500 without appropriate permission. This is because excessive spending can be a symptom of some mental health conditions and we do not want to end the protections because of the very mental health crisis that has led to someone entering breathing space in the first place. Second, breathing space cannot be ended because someone in mental health crisis treatment has not engaged with debt advice given we do not expect that it will always be possible or in the individuals interests for them to engage with debt advice during a crisis.
- 3.93 The protections for this group will not be fixed at 60 days but will continue for however long the individual's crisis care lasts. At the end of their crisis care the Approved Mental Health Professional will also need to notify the

original debt advice agency, who is responsible for updating the portal. After care ends, mental health breathing space will continue for a set period of 30 days. This will allow a person leaving treatment to adjust to the transition without starting to receive communications from their creditors straightaway and to take the additional time they may need to consider their finances and whether they want to engage with debt advice and work towards a debt solution. If this is the case, then they can apply to the main scheme. This means that these individuals could have breathing space which lasts for a maximum of the length of their crisis care, plus 30 days, then plus 60 days for the main scheme.

Chapter 4

Eligibility for the statutory debt repayment plan

- 4.1 In addition to implementing a breathing space, the government's manifesto committed to implementing a statutory debt repayment plan (the plan).
- 4.2 The plan will enable an individual in problem debt to enter into a formal agreement with their creditors to repay all of their debts over a manageable time period, whilst receiving protections from creditor action for the duration of their plan. As set out earlier in para 1.17, the plan will be implemented to a longer time period than breathing space.
- 4.3 The following chapters set out a detailed policy response, which will enable creditors and debt advice agencies to prepare for the implementation of the plan. The government will set out further details of the plan's implementation in due course.

Eligibility for the plan

- 4.4 Much like breathing space, the government has designed the eligibility criteria for the plan to ensure that it allows eligible individuals to enter the protections of the plan efficiently.
- 4.5 In its consultation, the government set out that there would be three criteria than an individual would have to meet in order to be eligible for entrance to the plan:
- they must access debt advice
 - they must be assessed as able to repay their debts in full over a reasonable timeframe (set out in the consultation as being an average of seven years, and no longer than ten)
 - their creditors must have agreed to the terms of the plan, or the Insolvency Service must rule that the plan proposed by their debt advice agency was fair and reasonable, so that creditors are obliged to comply with it

Views of consultation respondents

- 4.6 Most respondents agreed with the first two requirements for entrance to the plan: to access debt advice, and be assessed by a debt advice agency as being able to repay their debts over the timeframe of a plan. Often, respondents suggested that FCA-regulated debt advice being the gateway to the plan would help to reduce instances of individuals mis-using the protections.

- 4.7 Most respondents also agreed that creditors should have to agree to the terms of a proposed plan. A number of respondents from creditor organisations suggested that this provision would ensure that plans would be fair to creditors.
- 4.8 However, a number of respondents did not consider that the proposed timeframe was appropriate.
- 4.9 Some debt advice agencies suggested that plans should be able to last for more than ten years if a debt advice agency felt that that the plan would still be the most appropriate solution for the debtor. Often, respondents from these organisations noted that creditors would still receive full repayment of debt, no matter what time period creditors received these repayments over.
- 4.10 However, a number of respondents, mainly from creditor organisations, suggested that a plan which lasted for more than the maximum ten year period set out in the consultation would be too long. Indeed, some respondents from creditor organisations suggested that an individual would be likely to be more suited to an insolvency solution, such as an Individual Voluntary Arrangement, if they were even unable to pay their debts in a shorter timeframe than seven years. These respondents also noted that it could be unfair to some creditors if they received repayments over a particularly extended time period.

Policy response

- 4.11 The government noted the views of consultation respondents, and, as a result of these responses, the government is keen that the eligibility criteria for the plan provide a balance between allowing suitable debtors to enter the protections of the plan, and ensuring that creditors are repaid over a reasonable timeframe.
- 4.12 The government will allow debt advice agencies to propose plans with time lengths of more than seven years. This is given debt advice agency feedback that some vulnerable debtors, who may have low incomes, could benefit from a plan that lasts for a longer period than seven years.
- 4.13 However, the government recognises that if there were significant numbers of plans with a longer timeframe than seven years this could unfairly impact creditors. Because of this, the government expects debt advice agencies to only enter individuals into plans that are scheduled to run for more than seven years in exceptional circumstances. As proposed in the consultation, debt advice agencies will not be able to propose plans that extended for a longer period than ten years.
- 4.14 Given that consultation respondents broadly supported the other eligibility requirements, the government confirms the same eligibility criteria will apply as set out in the consultation.
- 4.15 First, an individual will have to access FCA-regulated debt advice, or advice from another organisation that qualifies for an exemption from FCA authorisation, such as a local authority in order to enter the plan. Individuals can access this advice through any debt advice channel – online, telephone or face-to-face. Much like breathing space, commercial debt advice

organisations will be able to offer access to the plan, but will not be able to charge individuals to enter the plan, other than through the funding arrangement outlined in Chapter 6. Commercial debt advice agencies will also not be able to charge for advice to enter the plan.

- 4.16 Second, the individual's debt advice agency will have to verify through the Standard Financial Statement that an individual is not able to pay their debts at the present time, but will be able to pay debts over a reasonable timeframe (for most individuals within seven years), as well as confirm that the plan was the most appropriate debt solution for the individual.
- 4.17 Third, creditors will have to accept a proposed plan, or the Insolvency Service must rule that that the proposed plan was fair and reasonable for it to begin.

Method of proposing the plan

- 4.18 After an individual accesses debt advice, a debt advice agency will be required to complete a Standard Financial Statement in order to assess the individual's eligibility for a plan. If, following this process, the debt advice agency felt that an individual is most suited to enter a plan, they will be able to put together a proposal for the plan, which will be sent to creditors via the portal.
- 4.19 This proposal will set out the payments to be made to each creditor each month, and how long the plan will last. This will be based on the surplus income identified through the Standard Financial Statement. The debt advice agency will also provide detailed information about the individual – such as their account numbers and level of debt, as well as personal details such as the individual's name, address and age – in order to enable the creditor to identify their debtor. Once complete, the proposal will be sent to creditors via the portal for approval.
- 4.20 As is usual practice, before sending a plan to creditors for approval, the government expects that debt advice agencies ensure that information in the proposal is accurate – including the level of debt that an individual owes. However, the government does not intend to require debt advice agencies to formally confirm the amount of debt an individual owes with the individual's creditors before putting the proposal to the person's creditors, as this could cause unnecessary administrative burden.

Objection mechanism and Fair and Reasonable Test

- 4.21 The government proposed in the consultation that there would be an objection mechanism to allow creditors to object to a proposed plan. The consultation proposed that creditors would have set criteria to be able to object to a plan, and would have 14 days to be able to register objections following its proposal.
- 4.22 The government proposed that if fewer than 25% of an individual's creditors by debt value objected to the plan, it would commence, and all of an individual's creditors would be bound by the plan. However, if more than 25% of the individual's creditors were to object to the plan, the Insolvency Service would carry out a fair and reasonable assessment, in which it would

judge whether the plan should go ahead based on certain factors, which are outlined below in para 4.26.

Views of consultation respondents

- 4.23 Most respondents agreed with the criteria for creditors objecting to the plan, and agreed that 25% of creditors by value of debt was a suitable threshold for a plan to be referred for a fair and reasonable assessment.
- 4.24 Some respondents felt that the 14 day time limit for creditors to object to the plan could be too short. Some of these respondents suggested that creditors may not have the resources to be able to respond to the proposal of a plan within a 14 day timeframe. However, a number of other respondents – mainly from debt advice agencies and consumer groups – supported the 14 day timeframe, as they felt that the timeframe struck the right balance between allowing individuals to enter the plans swiftly, whilst giving creditors sufficient time to object.
- 4.25 Respondents also mainly agreed with the design of the Fair and Reasonable Test, with some commenting that the design of the Test built on existing practice in the equivalent Scottish scheme.

Policy response

- 4.26 Given the support of consultation respondents, the objection mechanism outlined in the consultation will be used for the plan. This will mean that creditors will be able to object to plans on the following basis:
- inaccuracies in an individual's standard financial statement
 - the proposed level of payments to creditors
 - the period over which the plan will operate
- 4.27 The government also recognises the divergence of views that respondents had about the timeframe that creditors will have in order to be able to object to plans. The time limit for creditors to object to the plan will remain at 14 days. The government's policy intent is to allow debtors to enter the plan quickly, whilst also ensuring that creditors are given an appropriate timeframe to object to the plan. On this basis, the government believes that 14 days is an appropriate time frame for objections to be made.

Operation of the Fair and Reasonable Test

- 4.28 Given consultation respondents' support for the design of the proposed Fair and Reasonable Test, the Insolvency Service will be responsible for completing a Fair and Reasonable Test if more than 25% of creditors by debt value objected to the plan.¹

¹ As mentioned at paragraph [2.26] above, for ease, this document refers to the Insolvency Service throughout, but government is currently considering whether, in law, the relevant activities will be performed by the Secretary of State for Business, Energy and Industrial Strategy (acting through the Insolvency Service) or a statutory office-holder (who may be appointed from within the Insolvency Service).

- 4.29 In completing its assessment, the Insolvency Service will assess whether the proposed plan was fair and reasonable to both creditors and the debtor proposing the plan, taking into account factors including:
- creditors' reasons for objection to the proposed plan
 - views of the debt advice agency
 - the proportion of creditors objecting to the plan
- 4.30 Though the Insolvency Service will have to take into account the above factors, it will have discretion when making its assessments. The Insolvency Service will have this flexibility because experience of problem debt can vary significantly from person-to-person. Overly-prescriptive criteria, such as there being a list of standard reasons for plans to be accepted or rejected by the Insolvency Service, are unlikely to be able to take these varied experiences into account. This discretionary approach also mirrors the approach to similar assessments in the Scottish Debt Arrangement Scheme, and to the discretion afforded to the Financial Ombudsman Service in the way in which it considers financial services complaints.
- 4.31 However, the government recognises the importance of ensuring that creditors and debt advice agencies understand the process of the Insolvency Service's operation of the Fair and Reasonable Test. In order to assist creditors in assessing whether a plan was likely to be fair and reasonable under the Insolvency Service's test, the Insolvency Service will publish guidance as to how it will apply the test.
- 4.32 As proposed in the consultation, if the Insolvency Service judged that the proposed plan was fair and reasonable, the plan will commence immediately, without further opportunity for creditor objection, and all creditors will then be bound by the plan.
- 4.33 However, if a plan were judged not to be fair and reasonable, the proposal will be rejected, and the plan referred back to their debt advice agency. The debt advice agency will still then be able to propose a revised plan, should they believe this was the best solution for the debtor.

Further objection mechanism

- 4.34 The government also asked whether it would be appropriate to include a further objection mechanism once a Fair and Reasonable Test had been completed.
- 4.35 There were a divergent range of views offered from consultation respondents. Most of the time, debt advice agencies felt that there would be no need for an objection mechanism, given that the plan would have already been judged to be fair and reasonable by the Insolvency Service. However, a number of creditors felt that there should be the ability for a creditor to object to the plan after the fair and reasonable test. A number of creditors felt that this would reduce instances of abuse of the protections of the plan.
- 4.36 Given the extended timeframe that creditors would receive repayments over as a result of the plan, and the inclusion of a further objection mechanism in other statutory debt solutions, the government is minded to include a

further mechanism for creditors to object to the creation of the plan. The government will consult with expert stakeholders on the issue in the coming months, and provide further details on the objection mechanism in due course.

Chapter 5

Protections for the statutory debt repayment plan

5.1 As with breathing space, the government wants to implement a plan with very strong protections for debtors. These protections will provide space to make sustainable repayments to their creditors over the period of the plan.

5.2 In order to achieve this, the plan will:

- include the same very wide range of debts as breathing space
- prevent debts spiralling through stopping the accrual of all types of interest, as well as default fees and charges
- stop or pause recovery, collections and enforcement action taken against a debtor
- have flexibilities to ensure that plans are sustainable over the plan's lifetime

Debts included in the plan

5.3 Much like breathing space, the government recognises the importance of ensuring that as many debts as possible are included in the plan, as this will give a common standard of protection for individuals in problem debt.

5.4 The government proposed that the widest possible range of personal debts and business debts for small sole traders would be covered by the plan. In order to do this, the government proposed that the debts included in the plan would follow the debts included in insolvency solutions such as bankruptcy.

Views of consultation respondents

5.5 As with breathing space, respondents to the consultation often noted the importance of including the widest range of debts in the plan as possible. Specifically, a number of stakeholders noted the importance of including priority debts, including those owed to government. These respondents felt that including these debts would provide genuine protection for debtors, and ensure that there is a level playing field for creditors. However, some creditors felt that debts owed to their organisations in their sector should not be included in the plan. Often these creditors suggested that the existing forbearance that they provide is adequate.

Policy response

5.6 Given the wide-ranging support for the inclusion of as many debts as possible, the same personal debts will be included in the plan as breathing space with one exception explained in paragraph 5.7 below. These are set

out in paras 3.12-3.15, and mean that individuals will be protected from enforcement action on a very wide range of debts, including financial services debt, household bills, and, importantly, arrears owed to central and local government.

- 5.7 In addition, as proposed in the consultation document, housing debt (i.e rent payments and mortgage arrears) will be excludable from the plan based on an assessment by the debt advice agency and the debtor, given the likely longer period over which rent arrears will be paid in the plan could lead a landlord to not renew an individual's tenancy. Similarly, if an individual had a mortgage, their mortgage arrears were not paid and they left the plan, this could put them at risk of repossession.
- 5.8 The same approach to the recovery of Universal Credit advances and council tax arrears outlined in para 3.16-3.19 will also apply to any such debts that are included in the plan. Additionally, as in insolvency solutions, the arrears of hire purchase debts will be included in the plan for payment. However, as is existing practice, the government will expect debt advice agencies to advise debtors to reduce spending on non-essential hire purchase products. Business debts will also be treated in the same way as in breathing space (set out in the section 'business debts included' in Chapter 3).

Collections, recovery and enforcement action, and interest, fees and charges

- 5.9 In addition to including a wide range of debts, individuals who enter the plan will also benefit from very strong protections – including freezing all contractual and default interest, alongside the prevention of all enforcement action against a debtor on the debts included in the plan.

Interest, fees and charges

- 5.10 The government proposed in its consultation that all contractual and default interest, as well as default fees and charges, would be prevented from accruing on the debts included in an individual's plan.

Views of consultation respondents and policy response

- 5.11 Almost all respondents to the consultation agreed that interest, and default fees and charges should not be charged on the debts included in the plan.
- 5.12 The government agrees. To ensure that a person's debts do not spiral during the plan, the plan will prevent the accrual of all interest, as well as default fees and charges for the duration of the plan.

Collections, recovery and enforcement action

- 5.13 In its consultation, the government set out that collections, recovery and enforcement action on debts included within the plan would be stopped once a plan begins. The proposed stop on this creditor action included stopping contact by creditors in relation to debt repayment (though as in breathing space creditors would still be able to make business as usual contact), the initiation of new court action, and stopping all further enforcement action.

Views of consultation respondents

- 5.14 Most respondents to the consultation supported the government's proposals on enforcement action. Some respondents questioned whether existing enforcement action would also be stopped in the plan.

Policy response

- 5.15 Given respondents' support for the government's approach for stopping enforcement action, the government proposes following the same approach as in the consultation. The following sections set out further detail on how creditor action would be treated in the plan.

Treatment of contact during the plan

- 5.16 All contact with the debtor relating to the repayment of a debts included in the scheme will be paused in breathing space. Ceasing contact with a debtor in this way is intended to ensure that the debtor is given time and space, so that they can have a single conversation with their debt adviser on the best solution to their debts.
- 5.17 However, as with breathing space, contact with debtors in relation to ongoing liabilities, or in relation to debts and arrears excluded from breathing space will not be prohibited. Business as usual contact with the debtor, eg: marketing communications or giving factual updates on debt balances, or other contact unrelated to the enforcement of debt would also not be banned in breathing space. Additionally, contact which was actively prompted by the debtor will not be paused in breathing space, given that an individual will have requested the communication from their creditor.

Treatment of court action in the plan

- 5.18 As with breathing space, creditors will also be prohibited from initiating any new court action against a debtor as a result of the debtor not making debt repayments.

Enforcement action

- 5.19 As well as stopping all court-approved enforcement action that is already stopped in breathing space, existing attachments of earnings will also be stopped during the plan, given that a plan is a much longer lasting solution than breathing space, and that creditors will be repaid any debts they will have received under these attachments.
- 5.20 In addition, all enforcement action that can be taken by creditors who do not require a court's permission to take action against a debtor – such as most enforcement action taken by government agencies – will also be stopped during the plan.
- 5.21 In particular, this means that all reductions to benefits to recover debts included in the plan – whether for third party deductions of benefits, or to recover benefit overpayments or DWP advances – will be stopped during the course of the plan. For the reasons set out in para 3.16, this protection will be implemented in a phased way in Universal Credit.
- 5.22 In addition, as in breathing space, energy providers will be prevented from forcibly installing new pre-payment meters, and from taking deductions

from the meter if a meter has already been installed. Utility providers will also be prevented from disconnecting debtors, and landlords will be prevented from evicting tenants due to unpaid rent arrears under section 8 of the Housing Act 1988 if rent debt was included in the plan.

Flexibilities of the plan

- 5.23 The plan would therefore offer strong protections for debtors. In order to ensure that plans continue to be sustainable over the potentially lengthy time period of an individual's plan, debtors would also benefit from a series of flexibilities in the plan.
- 5.24 The government proposed three key flexibilities. Certain debts would be prioritised for repayment in breathing space, debtors would be able to change their payments into a plan through participating in annual reviews of the plan, and they would be able to enter a six month payment break during the plan if they experienced a severe shock to their income.

Prioritisation of debt

- 5.25 First, the government proposed that housing debts, alongside arrears owed to government, gas and electricity providers, and hire purchase providers would be prioritised for repayment in the plan.
- 5.26 The consultation proposed that each creditor would receive a minimum payment of 5% of an individual's monthly debt payments, with any additional monthly payments being distributed equally between an individual's priority creditors on a pro-rata basis according to the size of debt owed. Following the full repayment of priority debts, the debtor's monthly plan repayments would be distributed pro-rata between all remaining creditors.

Views of consultation respondents

- 5.27 Most consultation respondents agreed that some debts should be prioritised within the plan. Most respondents also agreed with the proposed list of debts to be prioritised in the plan.
- 5.28 In addition, a number of respondents agreed with the proposed method of prioritising debts in breathing space. However, some respondents raised concerns. In particular, a small number of debt advice agencies suggested that there should be an element of debt advice agency discretion as to the debts to prioritise. A small number of other respondents suggested different models for prioritising debts – such as there being a requirement to pay off priority debts in two years. Some consultation questions also raised concerns about what would happen if an individual had more than 20 debts and entered the plan, as the consultation set out that each creditor would receive a minimum of 5% of repayments that an individual made in their plan.

Policy response

- 5.29 Given the broad support received from consultation respondents, some debts will be prioritised for payment in the plan. This prioritisation will occur because of the potential for serious detriment should an individual exit the plan early and priority debts remain unpaid. This detriment could arise

because of the formal enforcement action, such as instructing enforcement agents, that can be taken on priority debts.

- 5.30 In light of the support of respondents to the consultation, the following debts will be prioritised in the plan:
- housing debts (e.g. rent and mortgage arrears if they are included in the plan)
 - debts owed to central and local government
 - gas and electricity debt
 - hire purchase debt
- 5.31 Having confirmed that there will be prioritisation of debts, alongside details of the debts that be prioritised for repayment in the plan, the government will continue to work with debt advice agencies and creditor organisations to further refine the method of prioritising debts in the plan, given its complexity. The government will set out its final position on this issue in due course.

Variations and payment breaks

- 5.32 The consultation also proposed that a debt advice agency would be required to complete an annual review of an individual's plan, as is existing practice in current voluntary debt management plans. It was proposed that, following an annual review, a debt advice agency would then propose adjustments to an individual's plan repayments in order to reflect changes to the individual's financial position.
- 5.33 The government then proposed that, if the review resulted in a higher than 10% increase or decrease in an individual's payments into their plan, creditors would be able to object to the proposed change. If more than 25% of an individual's creditors objected to the proposed change, it would be put to a Fair and Reasonable Test, to be completed by the Insolvency Service.
- 5.34 Alongside this, the consultation also proposed that debtors would also be able to request a six-month payment break should they have a severe drop in income.

Views of consultation respondents

- 5.35 Most respondents to the consultation agreed that there should be flexibilities in the design of the plan. Most often, respondents noted that these flexibilities would ensure that plans continued to be sustainable, which, in turn, would increase creditor returns.
- 5.36 Almost all respondents agreed that there should be reviews of a person's plan at least annually. Indeed, a number of respondents felt that there should be the ability for debtors to more frequently request reviews of their payments, should their income change before their next annual review. There was a divergence of views on whether these individuals would be required to seek a review in this circumstance, or whether it should be at the debtor's discretion.

- 5.37 However, a number of respondents disagreed with the thresholds proposed in the consultation for creditors to have the opportunity to be able to object to the proposal for a variation to an individual's plan. Respondents often noted that, given that an individual's monthly plan payment may be relatively low, this objection process could often be triggered by even very small (less than £10) shifts in monthly income. Respondents suggested that this could be particularly administratively burdensome.
- 5.38 A number of respondents also disagreed with the design of the payment break. Most often, creditor organisations suggested that the six month payment break was too long a period of time to receive no debt repayments from individuals.
- 5.39 Some respondents – mainly from debt advice agencies – preferred there to be shorter, more frequent payment breaks, suggesting that this would ensure the continued sustainability of individuals' plans. Some respondents suggested that the government look to follow the payment break rules currently used in Individual Voluntary Arrangements (IVAs), where, if an individual is faced with an unforeseen reduction in income or expense, an IVA supervisor is able grant a payment break, or a period of reduced payments, of up to nine months.
- 5.40 Most respondents did not feel that further flexibilities would be appropriate.

Policy response

- 5.41 In accordance with the majority of respondents' views, a debt advice agency will be required to complete an annual review with a debtor in order to ensure that the plan continued to be the most suitable solution for the debtor. The debt advice agency will also use this annual review to propose changes to an individual's plan payments if the person had experienced a rise or fall in surplus income.
- 5.42 In addition, the government also agrees with consultation respondents that individuals should be able to request reviews of their plan in-year. A debtor will therefore be able to request a review of their plan in year if their financial circumstances changed in-year.
- 5.43 If a review resulted in there being a change in their proposed plan payments, the debt advice agency will inform creditors of the change.
- 5.44 Given the views of consultation respondents, if an individual's payments into the plan rose, there will be no objection mechanism for creditors in the plan, given that individuals will be required to put all additional surplus income into their plan. This follows recent changes in the Scottish Debt Arrangement Scheme, and will ensure that administrative burden in the plan is limited as much as possible.
- 5.45 However, the method for objection proposed in the consultation document, and outlined in further detail in paragraphs 4.21-4.27 will apply when an individual's payments into the plan reduce overall by 10% or more. This will ensure that contributions to the plan continue to be fair to creditors.
- 5.46 In addition, the government recognises the limitations of the proposal of a six month payment break, as set out by respondents to the consultation.

Aligning with changes in the equivalent Scottish scheme, the government proposes that individuals will be able to enter a month-long payment break once in every 12 months, in order to be able to deal with short-term shocks in income.

- 5.47 In order to enter a month-long payment break, an individual will be required to contact their debt advice agency to request the payment break. After confirming the individual required entrance to the payment break, the debt advice agency will then notify creditors of the month-long break in payments through the portal. If individuals were to enter this short term payment break, the payment term of the individual's plan will be extended for a month to reflect the individual entering the payment break.
- 5.48 However, the government recognises that there could be some cases where an individual could experience a prolonged reduction in income and will therefore be unable to make usual payments to their plan. In this scenario, the government expects an individual to contact their debt advice agency to conduct a review of their plan and its payments, as well as carry out an assessment that the plan remained the most appropriate solution for the debtor.
- 5.49 If a debt advice agency chose to propose an alteration to an individual's payments in this scenario, creditors will be able to object to reductions to payments in the usual way in this scenario.
- 5.50 The government expects an individual's debt advice agency to review the reduced payments after a reasonable period to ensure that this protection is not mis-used.

Variation or payment breaks taking plans over ten years

- 5.51 Variations or breaks in payments in plans could mean that the plan extended over a ten year timeframe.
- 5.52 The government does not propose that individuals will automatically be removed from plans if a variation or payment break took the plan over a ten year time period. Instead, if a variation or payment break took the plan over ten years, the proposed change will automatically be put to creditors for approval. If more than 25% of creditors objected to the proposal, the plan will be referred to the Insolvency Service to perform a Fair and Reasonable Test.

Requirements for ongoing eligibility

- 5.53 To continue to be eligible for the protections of the plan, the government proposed three key criteria individuals must fulfil. They were:
- to continue making payments specified within the plan
 - to continue paying ongoing liabilities to creditors within the plan
 - to provide information to their debt adviser, and engage with them regularly and as necessary
- 5.54 The consultation also set out proposals for how individuals would be removed from the plan should they not comply with these criteria.

5.55 The consultation proposed that, after an individual did not pay debts for a calendar month, they would be given a month's notice to comply by their debt advice agency. If the debtor did not then comply with the plan's rules after this notice, they would be sent a final notice by the debt advice agency. If they did not comply with a month of being sent this notice, they would be removed from the plan.

Views of consultation respondents

5.56 Most respondents agreed with the requirements for ongoing eligibility.

5.57 Some creditors were concerned, however, that it would take too long for an individual to be removed from the plan after they stopped complying with the requirements of the plan. However, some debt advice agencies felt that they should have discretion to not remove an individual if they had a clear explanation for why they had not complied with the ongoing eligibility criteria for the plan.

Policy response

5.58 Given the support of most consultation respondents, the government outlines the same eligibility criteria for the plan as was set out in the consultation, outlined in para 5.53.

5.59 In addition to these eligibility criteria, the government recognises it could be inappropriate for an individual to take out substantial extra amounts of credit over the plan, as they would then have less disposable income to put towards payments to their plan. However, as in breathing space, the government recognises that there could be some occasions – such as the breakdown of an essential household appliance – where it will be necessary for an individual to take out credit during their plan.

5.60 Because of this, the government is minded to follow rules on taking out further credit found in Individual Voluntary Arrangements (IVAs). In IVAs, a debtor is only able to take out credit of more than £500 with the permission of their supervisor (or, in the case of the plan, the debt advice agency).

5.61 The government recognises the views of both sets of respondents to the consultation. In order to provide a balance between ensuring that debtors are not unnecessarily removed from the plan with ensuring fairness to creditors, the removal of a debtor from the plan will broadly work in the same way as in proposed in the consultation.

5.62 If a debtor in the plan did not comply with the eligibility requirements for more than one month, they will be given a month's notice by their debt adviser to comply with the scheme's rules.

5.63 If the debtor does not comply after being sent this notice, they will be given a final notice to comply. If they did not comply within a month of being sent this notice, they will be removed from the plan, with creditors notified of their removal.

5.64 The process of removing a debtor from the plan will reset if they either began to comply with the requirements of the plan, or agreed a variation or break to their payment plan.

- 5.65 The government also recognises that there should be a limit to the number of times that an individual can use this mechanism, as without this it could be abused. The government will confirm the precise details of this limit in due course, after thorough work with debt advice agencies and creditors.

Oversight role for creditor compliance

- 5.66 The government asked respondents whether there should be an oversight role to ensure creditor compliance with the plan, and how this should operate.
- 5.67 As with breathing space, most respondents felt there should be a mechanism for monitoring and acting on creditor non-compliance in the plan. Many respondents said that existing bodies who monitor compliance, such as the Insolvency Service, or regulators of creditors, should operate this compliance mechanism. As with breathing space, many respondents pointed to equivalent compliance mechanisms in insolvency solutions, or to existing compliance mechanisms operated by regulators.

Policy response

- 5.68 Given the views of consultation respondents, the government is minded to include an oversight role for creditor compliance that reflects the current compliance mechanism in insolvency solutions, as with breathing space. The government will develop the precise details of this mechanism with expert stakeholders over the coming months.

Chapter 6

Funding and administration of the scheme

- 6.1 This chapter sets out how the funding of the scheme would operate, and offers further information about how the scheme would be recorded on an individual's credit file, and its territorial scope.

Funding

- 6.2 The government asked consultation respondents whether the plan should be funded through taking a share of debtor's repayments, as is current practice in the Scottish Debt Arrangement Scheme and voluntary debt management plans. The government set out that, if the plan were funded in the same way as the Debt Arrangement Scheme is currently, the debt advice agency that performs a payment distribution function would receive 8% of repayments, and the organisation providing administrative oversight for the scheme as a whole – in this case the Insolvency Service – would receive 2% of repayments.
- 6.3 The government also asked a question on how payments should be distributed in the plan, and whether payment distribution should be completed by either debt advice agencies or the Insolvency Service.
- 6.4 The consultation proposed that there would not be a specific new funding stream for the administration of breathing space for debt advice agencies, given the types of activity required here are similar to the advice and support advisers currently provide to debtors.

Views of consultation respondents

- 6.5 Most respondents agreed that the plan should be funded through taking a share of debtors' monthly payments. However, a number of debt advice agencies felt that reflecting the current levels of funding in the Debt Arrangement Scheme as outlined above in para 6.2 in the plan would provide insufficient funding to debt advice agencies.
- 6.6 A small number of respondents to the consultation disagreed with organisations being funded by taking a share of debtor repayments, and instead suggested other methods – such as the ongoing administration of the plan being paid for from existing levy funding for free-to-client debt advice agencies.
- 6.7 Respondents were split on how payment distribution should be completed in the plan. Broadly, debt advice agencies and creditors who currently participate in voluntary debt management plans felt that debt advice agencies with appropriate handling client money permissions should distribute payments in the plan. Other respondents, often from creditor

organisations who do not currently participate in debt management plans, felt that the Insolvency Service should be the sole payment distributor.

- 6.8 However, a number of respondents proposed a hybrid model for payment distribution. Often, these consultation respondents proposed that those debt advice agencies who have the relevant FCA permissions for handling client money, as well as the Insolvency Service, should be able to distribute payments in the plan.

Policy response

- 6.9 Given the support of consultation respondents, the government confirms that organisations in the scheme will be funded by taking a share of debtor repayments in the plan. It also confirms that there will be no specific new funding stream for administering breathing space for debt advisers.
- 6.10 On payment distribution, the government recognises the benefits of each of the three options outlined by consultation respondents. However, in order to ensure that a wide variety of debt advice agencies are able to administer the plan, a hybrid model of payment distribution will operate.
- 6.11 Under this model, debt advice agencies with the relevant FCA handling client money permissions will be able to offer payment distribution for the plan, as well as the Insolvency Service. In practice, the government expects all debt advice agencies with the relevant permissions to distribute payments for the plans that they administer, given that this will be the most administratively simple way of operating the plan.
- 6.12 If a debt advice agency did not have these permissions, they will still be able to provide ongoing advice and administration in an individual's plan and could nominate a payment distributor to distribute payments for the plan. This could be another debt advice agency with the required handling client money permissions, or alternatively, they could choose the Insolvency Service.
- 6.13 This splitting out of the ongoing administration activity from the payment distribution activity will ensure that all debt advice agencies – including those who do not currently have the relevant FCA handling client money permissions – are able to offer plans to debtors, rather than just those who currently have the relevant permissions.

Responsibilities of administration and the payment distribution

- 6.14 Based on this, there will be a clear split between the activity of administering the plan, and payment distribution.
- 6.15 Administration will only be done by debt advice agencies and this work will include activities such as setting up an individual's plan, completing annual reviews, and providing details of monthly repayments to be made to each of the debtor's creditors. This activity will also include responsibility for removing an individual from a plan if they fail to comply with the requirements of the plan.
- 6.16 Payment distribution will be done by either a debt advice agency or the Insolvency Service. The organisation will distribute a debtor's monthly

payments to creditors, as specified by the debt advice agency administering the plan. The payment distributor will also be responsible for liaising with creditors if there were difficulties with providing payment to the correct creditor.

- 6.17 Importantly, where a plan's administration is completed by a different organisation to the payment distributor, debtors will only have contact with the debt advice agency that administers the plan. Having this single point of contact throughout the course of their plan is important in order to reduce confusion for debtors.

Level of funding for the plan

- 6.18 The government recognises that the organisations offering administration and payment distribution for plans require a sustainable and predictable funding stream. The government recognises that some debt advice agencies felt that funding levels should increase from current levels. However, in order to provide fairness to creditors, funding for the plan will roughly reflect current overall levels received through Fair Share contributions. 10% of a debtor's monthly payments will therefore be provided to the organisations that operate the plan.
- 6.19 This 10% share of repayments for each plan will be split between the three activities undertaken in the following way:
- 8% of repayments will be provided for ongoing administration of an individual's plan. This funding will be available to FCA-regulated debt advice agencies.
 - 1% of repayments will be provided for payment distribution. This funding will be available to debt advice agencies with the relevant FCA handling client money permissions, or to the Insolvency Service.
 - 1% of repayments will be provided to the Insolvency Service for providing administrative oversight of the scheme as a whole.
- 6.20 Setting contributions at this level will ensure that plans remain sustainable to operate for debt advice agencies, whilst providing fairness to creditors, who overall will continue to provide a similar level of contribution as in existing debt management plans. In particular, the large share of payments for ongoing administration reflects the significant burden involved in the ongoing advice and client handling activities required as part of this role. After the early years of the scheme, the government will review whether these funding levels remain appropriate.
- 6.21 Debt advice organisations will not be able to charge debtors fees for delivering any aspect of the plan. The government believes the funding levels set out above are sufficient to deliver a plan, and charging debtors would reduce the funding available for them to pay off their debts, lengthening the period of the plan.

Credit Reference Agency check

- 6.22 The government set out in its consultation that it would continue to work with Credit Reference Agencies in order to develop an appropriate and

workable solution to how breathing space and the plan would be reported on someone's credit file.

Views of consultation respondents

- 6.23 A number of respondents – mainly from consumer groups – felt that the breathing space and the plan should be reflected on an individual's credit file in a way which is less damaging to their credit rating than current insolvency solutions are. These respondents also often felt that a breathing space should not be included on an individual's credit file for the usual six year period, given that an individual would enter and then leave breathing space over a relatively short period.
- 6.24 However, a small number of respondents from creditor organisations felt that, given that individuals were not likely to pay debts during breathing space, and the plan would extend payments over a potentially substantially longer period, the credit file should reflect the fact that an individual had missed their expected payments in either breathing space or the plan.

Policy response

- 6.25 Given the complexity of this area, informed by respondents to the consultation, the government will work with Credit Reference Agencies and other interested parties on how breathing space and the plan will interact with an individual's credit file over the coming months.

Territorial extent of the scheme

- 6.26 Almost all respondents supported the territorial extent of the scheme proposed in the consultation, given the benefits the scheme could have to debtors. Therefore, breathing space and the plan, administered by the Insolvency Service, will operate in England and Wales when it is introduced. The government recognises the importance of working closely with the Welsh government on the implementation of the scheme, and will continue to do so in the coming months.
- 6.27 Given the potential benefits to debtors, and the existing Debt Arrangement Scheme in Scotland, the government will also continue to work with the Department for Communities and Department for the Economy in Northern Ireland to consider the introduction of an equivalent scheme in Northern Ireland.

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