HM Treasury

Statutory Debt Repayment Plan:
Consultation

May 2022

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ISBN: 978-1-911686-71-2 PU: 3197

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Chapter 1
Introduction

1.1 To help people in problem debt take control of their finances, the government is working to complete the implementation of the debt respite scheme, comprising of a breathing space and a statutory debt repayment plan (SDRP).

1.2 The first part of the scheme, breathing space, was implemented in May 2021. A breathing space creates temporary legal protections from creditor action for someone in problem debt, allowing them time and space to seek debt advice and consider an appropriate debt solution.

1.3 The second part of the scheme, the SDRP ('the plan') will be a new form of statutory debt solution, allowing for most of an individual's debts to be combined into a single plan and repaid over a manageable time period, with similar legal protections from creditor action as in breathing space.

1.4 The SDRP is intended to serve debtors not suited to existing statutory debt solutions, such as bankruptcy or Debt Relief Orders, and for whom non-statutory solutions such as Debt Management Plans (DMPs) offer insufficiently broad protections, leading to high rates of DMP failure and repeated debt advice that takes up valuable debt advice provider capacity. By addressing these issues, the government hopes the SDRP will provide debtors with a more robust and effective route out of problem debt, and improved returns for creditors, while minimising the administrative burden of the plan on all parties involved.

1.5 The SDRP regulations will apply in England and Wales, and SDRPs will be available to people who live in England and Wales. The regulations have therefore been developed with the support and engagement of the Welsh government.

1.6 Scotland already has its own debt respite scheme, the Debt Arrangement Scheme. Northern Ireland is considering its approach to a devolved debt respite scheme.

Broader government policy on consumer debt

1.7 The SDRP is one of a range of government policies designed to support those with problem debt get their finances back on track. At the heart of these policies is the ongoing funding for debt advice provision through the Money and Pensions Service (MaPS), which is continuing to be maintained at record levels in 2022-23.

1.8 Since summer 2021, MaPS have been undertaking a debt advice commissioning exercise to provide for the delivery of high-quality debt advice services in England over the coming years, and to ensure that these are available to all who need it. On 14 February 2022, MaPS provided an update to the sector and confirmed the overall funding levels for commissioning debt advice services in England for the next three financial years, as well as setting out the next steps for how that funding will be allocated.[1] Going forwards, MaPS will continue to work closely with the debt advice sector and other stakeholders to shape and implement their longer-term plans.

1.9 The personal insolvency framework is another important element of the government's policy response to problem debt, as it allows individuals in financial difficulties to gain control of their finances or start again through an individual voluntary arrangement, bankruptcy, or a debt relief order. The provision of debt relief orders were extended in June 2021 to support more vulnerable people to get out of problem debt. The government recognises that there have been significant changes in the personal debt and personal insolvency landscape over the years and the Insolvency Service has announced that it will issue a Call for Evidence on whether more fundamental reform is needed.

1.10 The government is also taking forwards wider initiatives to improve financial inclusion and to enable consumers to access affordable credit, including through a pilot No Interest Loan Scheme.

Consultation structure and next steps

1.11 The outline of the SDRP was consulted on in 2018[2] and a broad policy framework set out in the government's 2019 consultation response ("the 2019 response")[3]. This consultation does not reopen that framework, but builds upon it, to focus on the remaining policy and operational issues, alongside a detailed draft of regulations and a draft regulatory impact assessment. Its first seven chapters cover eligibility for and protections in a SDRP, as well as the lifecycle of a SDRP from start to end, and the funding and administration of the scheme.

1.12 Chapter 8 also considers some limited changes to breathing space, to improve the scheme based on the experience of the first year of its operation.

1.13 Chapter 9 sets out the key methodology, assumptions and outcomes of the consultation stage impact assessment for the SDRP, as well as the intended next steps for developing the final stage impact assessment.

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[1] *MaPS' update on debt advice commissioning – 14 February 2022*, available at: https://www.maps.org.uk/2022/02/14/update-on-debt-advice-commissioning-14-february/

[2] *Breathing space scheme: consultation on a policy proposal,* 29 October 2018, available at: https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal/breathing-space-scheme-consultation-on-a-policy-proposal

[3] *Breathing space scheme: response to policy proposal*, 17 June 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/_____17June_CLEAN_response.pdf.

1.14 The government encourages anyone with views on either part of the debt respite scheme to respond to the consultation.

1.15 Respondents may reply to all questions or just those parts that are relevant to their interest and expertise. The government will respond to the consultation in the usual way later this year, detailing where the policy has changed and setting out the rationale for any changes.

1.16 This consultation will inform the government's work to finalise the regulations. The government aims to lay the regulations by the end of 2022. The views expressed by respondents will also support the government's decision on the exact start date for the scheme, which will be specified in the regulations, and its ongoing work to build the necessary administrative and operational structures during the implementation period ahead of that start date.

1.17 The government envisages that, given the complexity of the scheme and the changes that all parties will need to make to comply with it, the implementation period for the scheme (i.e. the period between the regulations being laid and the SDRP scheme starting) will be at least 18 months. The government is keen to hear stakeholder views on how long the implementation period should be, in order to inform its final decision on when to start the SDRP scheme.

1.18 Box 1.A below illustrates the key stages of the SDRP at a high level. Further details on each of these stages are set out in the following chapters of this consultation document.

Box 1.A: Summary: Key stages of the SDRP

- Debtor seeks debt advice and applies for a SDRP
- Debt advice provider considers eligibility and submits notice of intention to initiate a plan to creditors
- Where necessary, creditors amend debt values and notify debt advice provider of additional debts
- Provisional plan is devised and submitted by the debt advice provider. Plan protections start. Creditors have the opportunity to object to the provisional plan
- Where necessary, the Insolvency Service conducts fair and reasonable assessment
- Plan starts and debtor makes payments as agreed
- Debt advice provider conducts annual and in-year reviews as required, making use of plan flexibilities where appropriate

- Where necessary, creditors are able to make further objections, including to apply to a debt advice provider or the court for a review
- Plan is completed and all debts extinguished, or plan ends early through revocation

Questions

Question 1: How long do you think the implementation period should be?

Question 2: Do you have any other comments on the issues raised in this introduction?

Chapter 2
Eligibility for a plan

2.1 This chapter explains the approach to eligibility for a plan. The government has designed the eligibility criteria for the plan to ensure it allows eligible individuals to enter the plan efficiently.

2.2 In its 2019 response, the government set out the main eligibility criteria that an individual residing in England or Wales would need to meet to be eligible. In order for an individual to be eligible for a plan:

- they must access Financial Conduct Authority (FCA) regulated debt advice (which can include advice from a commercial provider if fees are not charged in connection with the plan), or from a local authority exercising debt advice functions
- their debt advice provider must verify, using the Standard Financial Statement (SFS)[1], that they are unable or unlikely to be able to pay some or all of their debt as it falls due, but judge that they can pay their debts in full over a reasonable timeframe
- their debt advice provider must consider that a plan is an appropriate debt solution for them.

2.3 Since publishing the 2019 response, the government has further developed its proposals in terms of debtor eligibility, qualifying debt and plan eligibility. These developments are explained in the rest of this chapter.

Debtor eligibility

2.4 The 2019 response did not make any statements on joint plans, but these are permitted within the Debt Arrangement Scheme (DAS) in Scotland. The government intends that they should also be permitted within the scheme in England and Wales.

2.5 The Scottish DAS limits eligibility to couples, but the government intends that, in England and Wales, any two eligible people who share at least one debt (which need not be qualifying) should be able to apply for a joint plan that includes all their qualifying debts. Payments into these plans will be calculated using joint income and expenditure.

2.6 The government also intends that debtors will only be eligible for the SDRP if they have not been subject to another plan within the most recent 12

[1] The Standard Financial Statement is a tool published by the Money and Pensions Service which provides a universal income and expenditure statement and set of spending guidelines and guidance and other materials which may be used for the purposes of assisting a debtor to find a debt solution - https://sfs.moneyadviceservice.org.uk/en/what-is-the-standard-financial-statement

months. This is to safeguard against abuse of the protections through repeated usage.

2.7 Exceptions to this exclusion will be where a joint plan has been revoked due to the death of one of the debtors, or where a joint plan has been revoked because the other debtor no longer wishes to be in a plan, does not meet the eligibility criteria, or becomes subject to a DRO or bankruptcy order.

2.8 Debtors will also not be eligible for the SDRP if they are subject to a debt relief order, interim order, individual voluntary arrangement or are an undischarged bankrupt.

2.9 The government recognises that in view of this restriction, it will be important for the plan to be designed in a way that means debtors can be supported to remain on their plans as far as possible. As such, the government has built several flexibilities into the plan design which are discussed in Chapter 3.

Qualifying debt

2.10 As with breathing space, 'qualifying debt' in the SDRP will include as broad a range of debts and liabilities as possible to support people in problem debt. In particular, all debts and liabilities will be 'qualifying debt' in the SDRP, with the exception of a limited number that are defined in the regulations as 'mandatory non-eligible debt'. The list of mandatory non-eligible debts for the SDRP will largely mirror the current list for breathing space.

2.11 The government proposes that contributions due under an Income Payments Arrangement (IPA) or Income Payments Order (IPO) should be non-eligible debt. Such payments form part of a bankrupt's estate and may last for up to three years, and the debts that are in bankruptcy cannot be claimed anywhere other than the bankruptcy. The government believes it is inappropriate for the SDRP to supersede these arrangements and that debts incurred to creditors before bankruptcy should be paid before debts built up since the bankruptcy. Therefore, any outgoing payments for an IPA or IPO will be non-eligible debts. The government also plans to make these debts non-eligible debts within breathing space (see chapter 8).

2.12 At this stage, the government does not propose to treat payments due under any other form of payment arrangement or payment plan, whether statutory or voluntary in nature, as non-eligible debt. The policy intent is for as wide a range of debts as possible to be able to be included in the plan, and to allow individuals in problem debt to group all their debts into a single manageable repayment and benefit from the plan's protections. However, changing existing payment arrangements may be disruptive and create costs, particularly where those arrangements are already functioning well, or where they involve third parties (e.g. enforcement agents) in the collection of payments. The government invites views from respondents on this point.

2.13 As in breathing space, debts incurred outside of England and Wales, where courts in other countries have jurisdiction, may be qualifying, but the SDRP regulations cannot enforce compliance by those courts.

2.14 Although with breathing space a debtor must include all qualifying debt, with the SDRP they will have the option to decide, with their debt advice provider, to exclude some specific types of debt from a plan. These 'discretionary non-eligible debts' are:

- housing debt (i.e. rent and mortgage arrears)
- debts which have reached the legal time limit for creditor action, or which will reach that limit before the debt advice provider submits the notice of intention to initiate a plan (see paragraph 4.13).

2.15 Housing debt will be excludable because, as mentioned in the 2019 response, the likely longer period over which rent arrears will be paid in the plan could lead to a landlord not renewing an individual's tenancy. Similarly, if an individual had a mortgage and their mortgage arrears were not paid when they left the plan, this could put them at risk of repossession.

2.16 Debts which have reached or will reach their legal time limit for creditor action will be excludable because any communication about a plan could act as an acknowledgment of the debt. If these debts were not excludable, they would always have to be included and repaid via the plan, even where the creditor had already lost their right of action against the debtor. Debts which will reach such a limit after the notice of intention will need to be included in the plan.

2.17 The government intends for the SDRP to be as inclusive as possible with regards to the debts that can be included within it. The government therefore proposes that qualifying debts also extend to those that are owed at the point of an application being made, but that have not yet fallen due or not yet been quantified. In particular, the SDRP will allow for the inclusion of the following:

- Future debts: debts that are known and quantifiable at the time of the application for the plan and that will fall due for repayment during the period of a plan.
- Contingent debts: debts that are known at the time of the application for the plan but not quantifiable and that may fall due for repayment during the period of a plan.

2.18 For these to be qualifying, the debtor will need to be liable for them at the point that they make their application, and they must not be non-eligible for any other reason. So, for example, this might include a guarantee entered into before the plan starts but would not include an intention to take out a loan. Ongoing liabilities – bills that fall due during the plan – cannot be included as future or contingent debts.

2.19 To ensure that debt advisers can fully understand a debtor's financial position, the debtor will need to list any future or contingent debts on their application for a plan. While such debts will not be included in a plan from its outset, the debtor must inform their debt advice provider when they become quantified and/or fall due so they can then be included in the plan through a plan variation (see chapter 5 for more detail).

2.20 As in breathing space, any debt that is incurred after the start of a plan, for instance where bills have been missed during a plan or where additional credit is obtained, will not be qualifying debt and cannot be included in a plan.

Universal Credit

2.21 The government has previously stated that, though Universal Credit (UC) advances and third-party deductions will be included in breathing space and the SDRP, they would be included in the protections on a phased.[2] This decision was taken to ensure that IT changes required aligned with other requirements of the wider UC programme.

Breathing space

2.22 The safe delivery of the UC programme remains a critical priority for the government and it is noted that full migration of all claimants from legacy benefits is now not expected to conclude until the end of 2024. The government therefore proposes that UC advances and existing third-party deductions from UC be included within the scope of breathing space as soon as possible after the full delivery of the UC programme.

SDRP

2.23 The government has given further consideration to the treatment of UC in the SDRP.

2.24 As in breathing space, UC overpayments will be qualifying debts for the SDRP when the scheme starts. If a claimant ends their UC claim while they have an outstanding UC advance, the remaining amount is treated as an overpayment and as such will be eligible to be included in a SDRP.

2.25 Third parties will be unable to establish new third-party deductions from UC during a SDRP, from the point that the scheme launches. The treatment of existing third-party deductions from UC in the SDRP will mirror that for Breathing Space, i.e., they will be included in the scheme as soon as possible after the full delivery of the UC programme.

2.26 UC advances, including budgeting advances, are a vital mechanism for restructuring a claimant's overall UC entitlement and are an intrinsic part of the UC award. Advances support UC claimants with unexpected or emergency costs by providing an additional upfront payment of UC, with the following 12 to 24 monthly payments adjusted to reflect this. It is important that no changes are made which impact the stability and flexibility for UC claimants who need to access this support. Furthermore, recent changes allow new claim UC advances to be managed over a period of 24 months instead of 12, meaning the impact on the claimant's monthly UC award is halved.

[2] Paragraphs 3.16, 3.57 & 5.8 in *Breathing space scheme: response to policy proposal*, 17 June 2019, available here: https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal

2.27 Accordingly, even after the full delivery of the UC programme is complete, the government considers it appropriate that, where UC claims are ongoing, UC advances be managed outside of the scheme.

Priority debts

2.28 The 2019 response also set out that certain debts would be treated as priority debts (see further detail on the mechanism for this in chapter 4). In particular, the list of priority debts will include:

- rent or mortgage arrears on the debtor's primary residence
- debt owed to central or local government
- debt in relation to the supply of gas or electricity
- hire-purchase debt.

2.29 In addition to this, the government proposes that debt in relation to an agreement with an internet service provider or mobile phone network also be classified as priority debts.

Small debts

2.30 On balance, the government believes the fairest approach is to include all qualifying debts in plans regardless of their size. The government notes that some debts included in the plan may be small, and this may result in creditors receiving very low payments over a long period of time.

2.31 Creditors and debtors may prefer to clear these debts more quickly than would be possible in a plan, or not to include them in a plan at all. However, this approach may decrease the speed of repayment to creditors with larger debts.

2.32 The government is keen to understand respondents' views on the merits of enabling small debts to be excluded from plans.

Advising on a plan

2.33 As set out in the 2019 response, debt advice providers will be able to propose plans that last up to ten years. This is a result of debt advice provider feedback that some vulnerable debtors could benefit from a plan that lasts for this length of time.

2.34 However, the government would only expect debt advice providers to propose plans of more than seven years in exceptional circumstances. The government's scheme guidance, to be published in due course, will offer further detail on determining when a plan might extend beyond seven years.

2.35 Before submitting a plan, a debt advice provider will need to have assessed that it is an appropriate option for the debtor in question. The method of making this assessment (i.e. deciding which available solution or approach is in the best interests of the debtor) is not determined by the regulations. It is an integral part of the qualified debt advice provider's role, governed by rules made by the Financial Conduct Authority (FCA) about the provision of debt advice. These rules will continue to apply and debt advice providers will

need to make sure their advice delivery is compliant with both FCA rules and the SDRP regulations.

2.36 However, the regulations do specify that, before a debt advice provider would consider the SDRP to be appropriate for a debtor, they should consider:

- the amount of the debtor's qualifying debt (including any future or contingent debt)
- whether the debtor is already subject to a debt solution
- whether another debt solution may be more appropriate
- the debtor's income and expenditure
- the amount of non-eligible debt (mandatory and discretionary) that will need to be accounted for outside the plan
- whether the debtor has savings or assets that could be realised as an alternative.

Questions

Question 3: Do you agree with the approach to debtor eligibility?

Question 4: Do you agree to the approach to qualifying debt?

Question 5: Should debt already due to be repaid under a pre-existing payment arrangement or payment plan be treated as non-eligible debt?

Question 6: Should it be possible for debtors to exclude very small debts from a plan?

Question 7: If you think it should be possible to exclude very small debts, what amount of debt would you consider to be very small? Should excluding these debts be required, or optional? How should these debts be dealt with if they are excluded from a plan?

Question 8: Are there scenarios in which a debtor may occur incur additional debt during a plan without intending to (e.g. due to an administrative error by a creditor)? What might these scenarios be and how should debt incurred in these scenarios be treated?

Question 9: Do you have any further comments on or concerns about debtor eligibility for the SDRP?

Chapter 3

Protections in a plan

3.1 As with breathing space, the government will implement a plan with very strong protections for debtors, providing debtors with the space to make sustainable repayments to creditors over the period of the plan.

3.2 To achieve this, as set out in the 2019 response, the plan will:

- prevent debts spiralling by 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, including the options of short payment breaks as well as variations to plans.

3.3 In line with the 2019 response, to keep receiving these protections, the debtor will need to:

- make payments in accordance with the plan
- make any payments due for ongoing liabilities (see paragraph 5.19- 5.21)
- engage with the debt advice provider in such a way as the debt advice provider considers to be appropriate (including through participating in annual reviews).

3.4 Since publishing the 2019 response, the government has further developed its proposals on debtor protections, and these are explained in this chapter.

3.5 The government has also considered what additional protections and plan features are needed to ensure debtors find the SDRP appealing and workable, whilst ensuring creditors' rights are protected. The government's proposals on this are also set out in this chapter.

Protections from interest, charges and enforcement action

3.6 Debtor protections will apply throughout the period of the plan, starting from the day after creditors are sent the provisional plan (see chapter 4 for further detail on provisional plans). Starting protections from this point will ensure debtors are protected from enforcement whilst plans are being reviewed by creditors.

3.7 Prior to this, creditors will have received notice of an intention to initiate a plan (see paragraph 4.13). This notice will not start a plan, and does not

start the debtor's protections, but it will advise creditors that a plan is forthcoming and request information from them to support its development, including debt balances.

3.8 The government notes that there could be considerable complexity for all parties (including creditors) if interest, fees and charges continue to accrue between the notice of intention to initiate and the notification of a provisional plan. It also notes that any enforcement action started in this period would need to be halted without delay on notification of a provisional plan.

3.9 On this basis, the government's expectation is that, wherever feasible, creditors will voluntarily apply the protections during the development phase of the plan.

3.10 In terms of the protections that will apply: the government intends that these will largely mirror those set out within the 2019 response and within the breathing space scheme, with some differences.

3.11 In breathing space, individuals who hold debt jointly are protected from creditor action even if only one of them has a breathing space. By contrast, in SDRP, such debtors who are not in a plan will not automatically be protected; they will need to enter their own plan or a joint plan to receive protections. This reflects the difference between breathing space (a temporary respite period) and a plan (a long-term repayment plan requiring commitment by the debtor).

3.12 Additionally, while currently permitted within breathing space, creditors will need to take steps to ensure that pre-existing attachment of earnings orders in qualifying debts are suspended during a plan.

Flexibility in a plan

3.13 The 2019 response stated that debtors will be able to attain a one-month payment break within any given 12-month period, with the payment term of the individual's plan being extended to reflect the individual entering the payment break.

3.14 The government has subsequently further developed its proposals on payment breaks. In recognition of the fact that debtors may not make payments monthly, debtors will be able to apply for a payment break of one month or one payment. Payment breaks should only be requested due to a material change in the debtor's circumstances that could not have been reasonably foreseen. The government expects that foreseeable circumstances should be catered for through the initial affordability assessment and, where appropriate, by using the savings category in the SFS. The savings category is a small savings allowance within the SFS aimed at helping debtors to develop a savings behaviour and to increase their capacity to withstand income shocks in the duration of a debt solution.

3.15 Because payment breaks will usually be urgent, creditors will not be able to stop payment breaks from being approved. Creditors will, however, be able to use the review process to challenge the plan itself (see paragraph 5.44-5.52).

3.16 Debt advice providers will also be able to make one extension to an existing payment break if they consider it appropriate and necessary to do so. This should be used where the plan remains suitable for the debtor but where an income shock has affected the debtor's ability to repay in the short term. Providers may extend a break if the extended payment break does not exceed the longer of two calendar months or two payments.

3.17 To ensure payment breaks are only used where they are appropriate, the regulations will ensure that a debt advice provider must consider:

- whether the debtor has already had a payment break in that 12-month period
- the debtor's history of making payments under the plan
- whether the payment break would extend the plan to an extent which the debt advice provider considers unreasonable
- whether the plan remains an appropriate debt solution for the debtor.

3.18 The 2019 response also set out that debt advice providers will be able to vary plans to account for a change in debtors' circumstances after both annual and in-year reviews. This remains the case and more details on the variation process are provided in Chapter 5.

3.19 Variations can be used to bring about longer-term periods of reduced payments. However, variations may not be used to reduce payments to zero, and variations will be subject to creditor approval in certain circumstances.

3.20 Variations should be used not only where a debtor experiences a negative change in circumstances but also where they experience a positive one. Debtors will be required to inform their debt advice provider if there is a material change in their circumstances or financial position and the debt advice provider will need to conduct an in-year review in this scenario.

Additional protections and features

3.21 The government has also considered what additional protections and plan features are needed to ensure debtors find the SDRP appealing and workable, whilst ensuring creditors' rights are protected.

3.22 First, the government believes that individuals within the scheme will have a strong desire for confidentiality. Therefore, while the Insolvency Service will hold a register of people in an SDRP, the government intends that, as with the breathing space register, this will be a private register accessible only to debt advice providers, creditors and debtors themselves.[1] This will make the option of a plan more attractive to individuals and less open to exploitation by lead generators.

3.23 Second, the government also believes that, given the period across which plans may operate, debtors will need be able to access credit in some

[1] As in breathing space, the Insolvency Service, or a statutory office-holder appointed within the Insolvency Service will perform the relevant activities of the Secretary of State for Business, Energy and Industrial Strategy set out in these regulations. For ease, this document refers to the Insolvency Service throughout.

scenarios, for example emergency repairs to the debtor's home. Debtors will therefore be able to access credit whilst in their plans. However, they will:

- need to inform any potential creditors that they are the subject of a plan, to ensure that creditors can make informed decisions on lending in the absence of a public register
- be required to establish that their debt advice provider does not object if they wish to take out credit that would mean their total outstanding credit exceeds £500, with the scheme guidance setting out the types of scenarios where this may be appropriate
- not be able to have total outstanding credit at any given point in their plan that exceeds £2,000, to reduce the risk of debtors falling into unaffordable debt that compromises the plan
- not be able to include any new credit within the plan.

3.24 Where a debtor obtains additional credit, they will need to make alternative payment arrangements to repay it outside of the plan. These alternative arrangements may have an impact on the level of available income that the debtor has for making payments into their plan. In such circumstances, a plan variation may be required, which will be subject to creditor approval in certain scenarios.

3.25 Third, the government also intends to require that creditors treat the plan as though their original agreement with the debtor in relation to the terms of repayment has been varied. Where a debtor makes repayments in a plan, these repayments will likely be less than those required under the original contracts. Additionally, a percentage of these repayments will be paid towards the administration of the plan before they are distributed to creditors (see paragraph 7.2-7.6). Nevertheless, the government intends that creditors must treat the amount they receive, as agreed under a plan, as full repayment of the debt. Following from this, by completing all payments under their plan, a debtor will therefore fully extinguish all liabilities that they owe in relation to the debts included in their plan.

3.26 The government expects that this approach will be reflected in how creditors report these payments to third parties, such as credit reference agencies (CRAs), who are responsible for the operation of the credit referencing system.

3.27 The regulations do not determine how SDRPs should be reflected on individuals' credit files. The government will continue to discuss the treatment of SDRPs with CRAs in the coming months and welcomes views from stakeholders about how this should work. The government recognises that clarity on how SDRPs will be treated in credit files will be an important factor for individuals and debt advice providers in assessing the appropriateness of a SDRP.

3.28 Finally, whilst the government hopes that debtors entering plans will remain on their plans until completion, it accepts there may be scenarios where a debtor wishes to exit the plan and find another way of dealing with their debts (for example entering self-negotiated arrangements with creditors). It

therefore proposes that debtors will be able to leave plans on this basis if they have obtained advice from their debt advice provider before they do so.

Questions

Question 10: Do you agree with the proposed protections of the plan?

Question 11: Do you agree with the proposed flexibilities provided for in payment breaks and plan variations?

Question 12: When a plan is varied, should there be a minimum value (above zero) to which payments can fall?

Question 13: Given the government's proposal to use a private register, do you agree that debtors should be required to disclose the fact they are in a plan to potential creditors? Or should creditors' own due diligence and processes regarding credit affordability and risk be relied on?

Question 14: Based on the draft regulations, how should SDRPs be reflected on a debtor's credit file?

Question 15: Do you have any further comments on or concerns about the protections and flexibilities provided by the SDRP?

Chapter 4
Starting a plan

4.1 This chapter sets out proposals for the steps that debtors, debt advice providers and creditors must take prior to the start of a plan.

4.2 The government proposes that this occurs in the following three stages:

- application for a plan
- devising a plan
- creditor consideration of a provisional plan.

4.3 Details of each of these stages are set out in this chapter.

Application for a plan

4.4 As set out in chapter 3, and in line with the 2019 response, before applying for a plan, a debtor must have obtained advice from a debt advice provider which addresses the suitability, conditions and consequences of a plan. This advice should cover whether the plan is appropriate, and whether another solution may be more appropriate.

4.5 Any advice given by FCA-regulated providers to debtors must be compliant with FCA rules.

4.6 A debtor's application for a plan must include relevant personal details, including their full name and date of birth, their usual residential address, and any other address that they believe may be connected to any debt that they owe. Further, the application must set out details of all the debts that the debtor owes at the point of their application, including any future or contingent debts (see paragraph 2.21-2.23) for more detail), and the details of the creditors to whom those debts are owed.

4.7 In order to ensure debtors are not put at risk by this, and mirroring the approach taken in breathing space, the government proposes that debtors be permitted to include, within their application for a plan, an application for their usual residential address not to be disclosed to creditors who would receive communications in relation to their plan. Debtors will be permitted to make such an application if they consider that disclosure of their usual address might reasonably be expected to lead to violence against them or against anyone living at their address.

4.8 Upon receipt of an application for a plan, debt advice providers will need to consider whether a debtor meets the eligibility criteria and conditions set out in chapter 2. As set out in the 2019 response, the debt advice provider will

be required to use the SFS to help determine this. Where a debtor has applied for the non-disclosure of their address, the debt advice provider must also consider this.

4.9 The debt advice provider must also establish which of the debtor's debts are qualifying, and of those, which are priority debts, as per the definition set out in paragraph 2.25-2.26. Where relevant and applicable, the debt advice provider must also agree with the debtor whether any debts should be treated as discretionary non-eligible debts.

4.10 The government also proposes that a debtor be permitted to withdraw their application at any point before the commencement of their plan if they change their mind.

4.11 Further, the government proposes that the debt advice provider be permitted to cancel an application before the plan starts if they determine that it would no longer be appropriate for the debtor, or if the debtor has failed to engage with them sufficiently to support the development of the plan.

Devising a plan

4.12 Building upon the 2019 response, the government proposes that after receiving an application for a plan from a debtor, debt advice providers must submit a 'notice of intention to initiate a plan' to the Insolvency Service if they consider that a debtor is eligible and a plan is an appropriate solution. This notice of intention to initiate must include the debtor's personal details as provided in their application, and, as far as they are known to the debt advice provider, the details of their qualifying debts. This proposal mirrors the approach taken in the DAS and will provide creditors with advance warning of plans and with the opportunity to agree their debt.

4.13 Each creditor included in the notice of intention to initiate a plan will receive notification of that from the Insolvency Service. This notice will set out the personal details of the debtor and the details of any debts owed to that creditor at the point of the debtor's application. Creditors will also be asked to voluntarily apply the protections of the SDRP at this point.

4.14 The sending of the notice of intention to initiate a plan will trigger a 21-day period within which creditors will be required to search for and notify the debt advice provider of additional debts owed to them by the debtor, as well as relevant details of those debts, and to correct any material errors in the debt values that have been included. This will help to ensure that debt advice providers are given the information they need to devise plans that are as accurate as possible.

4.15 However, to avoid unnecessary administrative burden for both creditors and debt advice providers, the government does not propose requiring creditors to confirm debt values where they are already correct. If a creditor does not notify the debt advice provider of an error, the debt value will be deemed to be correct.

4.16 Any creditor that has been incorrectly notified because they have sold on a debt, or because they are an agent acting on behalf of a creditor to which a

qualifying debt is owed must inform the debt advice provider of this, and of the details of the correct creditor. They must also inform the correct creditor of the notice of intention to initiate.

4.17 To further support the development of plans that are as accurate as possible and to account for scenarios in which creditors are unable to identify a debt they have been notified about, the government proposes that creditors should be able to inform debt advice providers if they cannot identify a debt during the 21-day period. Debt advice providers will then be required to take reasonable steps to establish whether or not the debt is owed by the debtor. If they cannot establish this, the debt can be omitted from the plan.

4.18 Payment distributors for plans will also receive the notice of intention to initiate a plan and will be required to obtain payment details of any creditors included. Further details on payment distributor responsibilities are set out in chapter 7 below.

4.19 In order to give debt advice providers sufficient time to devise plans, the government proposes that they be given a further 7 calendar days following the 21-day period to finalise and submit a provisional plan. During this time, they will be required to appropriately capture any amendments, additions or omissions that have been identified previously.

4.20 If a debt advice provider fails to submit the provisional plan by the end of this 7-day period, the Insolvency Service must cancel the notice of intention to initiate. The debt advice provider would be able to start the process again if they considered it appropriate to do so.

4.21 In developing and submitting a provisional plan, the debt advice provider must set out the following:

- the debtor's personal details, including full name, date of birth and address
- any other addresses the debtor has lived at that the debt advice provider believes may be linked to any of their debts
- the debtor's income and expenditure
- allocations to the debtor's savings
- allocations to the debtor's non-eligible debts
- the debtor's payments into the plan
- details of the debtor's qualifying debts (including their size whether they are priority debts) and the allocations made to them, using the mechanism set out below
- details of each of the creditors to which these qualifying debts are owed
- the proposed frequency and duration of payments, including expected dates for the first and last payments
- details of the debtor's existing assets and savings.

4.22 As set out in the 2019 response, the debt advice provider will be required to use the SFS and its guidelines to calculate the debtor's income and expenditure and determine their net available income. This will include any allocation of funds to the debtor's savings.

4.23 A debt advice provider will then set out necessary allocations to the debtor's non-eligible debts from their available income as calculated above. Following this, the government proposes that all remaining surplus income be paid into the plan.

Dividing payments between creditors

4.24 The government had previously proposed a provisional method for dividing payments between creditors. It suggested that a minimum of 5% of a debtor's payments be allocated to each debt, with any remainder split pro-rata between priority debts. However, the 2019 response committed to consider this policy further before finalising.

4.25 Further consideration has led to the conclusion that this suggested mechanism could lead to avoidable complexities and complications in plan development and operation. Notably, scenarios where a debtor owes more than 20 debts would not be accommodated without a bespoke approach. Further, allocating equal amounts to all non-priority debts could lead to multiple different repayment dates, thus creating additional administrative burden for debt advice providers and creditors due to the need for multiple plan variations that only serve to remove repaid debts.

4.26 The government therefore proposes an alternative mechanism for determining the allocation of payments whereby 30% of a debtor's payment (after the 10% administration fee has been deducted) be split pro-rata between priority debts based on their size, with the remaining 70% then split pro-rata between all debts, including those that are priority. This approach is considered simpler and fairer, maintaining the original intent of prioritising certain debts while also allowing for plans to easily accommodate more than 20 debts, and ensure that all debts receive proportionate payments determined by their relative size, an approach that mirrors other debt solutions.

4.27 To ensure this approach is being consistently carried out for all plans and in order to reduce the administrative burden on debt advice providers, the Insolvency Service's electronic system will calculate allocations to each creditor based on the mechanism set out above.

4.28 It is recognised that this approach would lead to priority debts reducing in relative size against non-priority debts as payments are made into a plan, since they will receive a greater proportional share of a debtor's payments. To avoid having to recalculate after each payment, the government proposes that the allocations calculated at the start of the plan should be fixed until a plan variation requires them to be changed. This will help create certainty in plans, with creditors able to clearly see how much they will receive and when the debts owed to them will be repaid through the plan.

Box 4.A: Example of how payments would be calculated

A debtor has £200 of available income to use to make repayments, as calculated using the SFS. They have £12,600 of qualifying debt, owed to five creditors:

- Debt A: £2,977
- Debt B: £825
- Debt C: £1,146
- Debt D: £6,361
- Debt E: £1,291

Debts A and B are priority debts. Debts C, D and E are non-priority.

£200 is paid by the debtor to the payment distributor each month. 10% (£20) is deducted for the scheme's administration fee and is split between the debt advice provider, the Insolvency Service and the payment distributor.

Of the remaining £180, 30% (£54) is distributed pro-rata between the priority debts based on their values in the notice of the provisional plan, meaning £42.28 is allocated to the repayment of debt A, and £11.72 to debt B.

The remaining £126 is split pro-rata between all debts in the plan, based on their values in the notice of the provisional plan. In total, the creditors to which each of these debts are owed will receive:

- Debt A: £72.05
- Debt B: £19.97
- Debt C: £11.46
- Debt D: £63.61
- Debt E: £12.91

Each of the above payments must be treated by creditors as though they have not been reduced by the 10% administration fee.

Based on the above, the two priority debts will be fully repaid after 3 years and 2 months and the debt advice provider will be required to vary the plan at this point to remove those debts.

After this point, the entirety of the debtor's payments will be split pro rata between the non-priority debts based on their outstanding values. Assuming the size of the debtor's payments remain unchanged at this point, the creditors to which debts C, D and E are owed will receive £23.45, £130.14, and £26.41 respectively. These debts will each be fully repaid after a further 2 years and 1 months, with the plan ending after 5 years and 3 months.

Creditor consideration of provisional plan

4.29 Following submission of a provisional plan to the Insolvency Service, notice of this will be distributed to all creditors included within it. Building upon the 2019 response, the government intends that each creditor receive the following information:

- a summary of the SFS, setting out the debtor's income and expenditure and savings allocation
- necessary details of the debtor's non-eligible debt, including the amount allocated to payments for that
- details of the qualifying debt owed by the debtor to that creditor, as well as the total size of the debtor's qualifying debt
- the size, frequency and duration of payments being made into the plan by the debtor
- the portion of those payments being allocated to that creditor for any qualifying debts owed to them
- details of the debtor's existing assets and savings.

4.30 As set out in paragraph 3.6, the protections of a plan will start the day after the Insolvency Service sends the provisional plan to creditors.

4.31 In line with the 2019 response, creditors will be given 14 calendar days to object to the notice of a provisional plan. The government proposes that creditors be permitted to object if they consider that any of the following apply:

- the provisional plan unfairly prejudices their interests
- the debtor is not eligible for a plan
- the information relied upon in development of the plan was inaccurate
- the debt advice provider's assessment of the debtor's income and expenditure departs, without good reason, from the spending guidelines set out in the SFS.

4.32 Building upon the 2019 response, and with the intent of reducing the administrative burden on both creditors and debt advice providers, the government proposes that if a creditor does not respond to a notice of a provisional plan, they will be deemed to have consented. This broadly mirrors the approach taken in the DAS.

4.33 Recognising that there may be scenarios in which the debt values included in a provisional plan remain incorrect, creditors will also be required to notify the Insolvency Service of any material inaccuracies in debt values during this 14-day period.

4.34 However, to ensure that debt advice providers are given sufficient opportunity to reassess the appropriateness of a plan where there are significant changes in debt value, the government proposes that, if the total debt value included in a provisional plan is increased by more than 10%

during this 14-day period, the plan be cancelled and the debt advice provider required to restart the process. This also helps to avoid scenarios in which a plan starts and then requires immediate variation as a result of material changes in debt value arising during this 14-day period.

4.35 Assuming this does not occur, and in line with the 2019 response, if less than 25% of creditors by debt value object, the plan will start. If 25% or more object, the plan will go to the Insolvency Service to conduct a fair and reasonable assessment. Further detail on the operation of the fair and reasonable assessment is set out below in chapter 7.

4.36 To ensure that the Insolvency Service have the information they need to conduct a fair and reasonable assessment, and to incentivise well-reasoned and legitimate objections, the government proposes that creditors be required to provide supporting evidence whenever they submit an objection.

4.37 If the Insolvency Service deems a plan to be fair and reasonable, it will commence. If a plan is deemed not to be fair and reasonable, it will be cancelled and the debt advice provider will consider whether or not to resubmit a reworked plan, taking account of the outcome of the fair and reasonable assessment.

Questions

Question 16: Do you agree with the approach to personal details, including the proposal not to require all previous addresses but only addresses likely to be linked to a plan debt?

Question 17 – *For debt advice providers:* What details do you consider necessary to be provided by creditors if they identify an additional debt to ensure that it can be appropriately identified and included in a plan?

Question 18: Is the proposed mechanism for allocating payments to creditors on a pro-rata basis by debt value suitable? Do you foresee any problems with how this will work?

Question 19: Is 30% a suitable proportion to allocate to priority debts? Should this be higher/lower?

Question 20: Do you consider that debtors should be given greater flexibility in deciding the size of the payments they make into their plans? If so, how should this flexibility be provided?

Question 21: Do you consider that debtors should be able to make additional payments into their plans outside of the regular payment frequency?

Question 22: What information do you consider needs be provided to creditors as part of a provisional plan?

Question 23: Are the grounds for objection that have been proposed suitable and sufficient?

Question 24: Do you have any further comments on or concerns about the processes set out in this chapter for developing and initiating a plan?

Chapter 5
During a plan

5.1 This chapter sets out proposed mechanisms and processes that will exist once a plan commences, as well as the obligations on and options available to debtors, creditors and debt advice providers.

5.2 These proposals have been designed to ensure that plans remain suitable and effective throughout their lifespan, establishing sufficient oversight and mandating appropriate engagement and compliance from those involved.

Annual and in-year reviews

5.3 As set out in the 2019 response, debt advice providers will be required to complete an annual review of a debtor's plan every 12 months to monitor the plan's progress and make decisions regarding its operation. In particular, debt advice providers will use reviews to consider whether:

- there have been any changes in the debtor's circumstances
- the debtor has complied with their obligations (set out in section 5.10-5.12)
- the plan remains an appropriate and suitable debt solution for the debtor
- a variation may be required and appropriate
- any of the grounds for revocation have been met

5.4 Furthermore, debtors will be able to request that their debt advice provider conducts an in-year review if they consider that there has been a material change in their circumstances or financial position. When this happens, the debt advice provider will be required to conduct a review within 21 calendar days.

5.5 Additional points at which in-year reviews must be conducted by debt advice providers will be set out later in this chapter. Beyond this, debt advice providers will also be given discretion to conduct in-year reviews as and when they deem appropriate to do so.

5.6 To reduce the level of administrative burden created by annual reviews, the government proposes that, if an in-year review is conducted, the next annual review need not be conducted until 12 months later, subject to any potential requirement to conduct another in-year review in the interim.

Payment break applications and implementation

5.7 Running in parallel to the annual and in-year review processes, as set out in paragraph 5.3-5.6, debtors will be able to access payment breaks throughout their plan, subject to need and the restrictions the government has proposed.

5.8 In order to enter a payment break, a debtor will be required to contact their debt advice provider to request the payment break. After confirming the debtor requires a payment break, the debt advice provider will implement it using the electronic system, and creditors will be notified of this, along with reasons for the payment break, by the Insolvency Service.

5.9 Similarly, where a debt advice provider considers it appropriate and necessary to extend a payment break, they must implement this using the electronic system and creditors will be notified by the Insolvency Service.

Debtor obligations

5.10 The 2019 response set out that, while in a plan, a debtor must comply with a number of obligations. In particular, they must:

- continue making payments as specified in the plan
- continue paying 'ongoing liabilities' to creditors
- provide relevant information to their debt advice provider, and engage with them regularly, as the debt advice provider deems necessary
- only have outstanding additional credit of more than £500 (up to a limit of £2,000) at any given point with the permission of their debt advice provider.

5.11 Building upon this, the government proposes that a debtor must inform their debt advice provider as soon as reasonably practicable if any of the following apply:

- there is a material change in their circumstances or financial position
- a qualifying future debt is now due for payment
- a qualifying contingent debt is now quantified and due for payment.

5.12 Further, a debtor must agree the payment method that they plan to use with their debt advice provider and the payment distributor for their plan. This must be agreed in advance of the first payment into the plan to ensure that payments can be made in accordance with the plan.

5.13 To give debtors sufficient time to prepare for their first payment into their plan, and in line with the approach taken in Scotland, the government proposes that debtors be given 42 days from the date on which their plan becomes final to make that first payment.

Treatment of additional credit

5.14 As set out in paragraph 5.10 above, debtors will only be permitted to have outstanding additional credit of more than £500 at any given point during their plan with the permission of their debt advice provider.

5.15 Drawing from the approach taken in the DAS, the government also proposes that debtors be prevented from having more than £2000 of outstanding additional credit at any given point during a plan. This is intended to prevent debtors from falling into unaffordable additional debt that could compromise their plans, while also recognising that, over the lifetime a plan, legitimate credit needs may occur.

5.16 The government also proposes requiring that debtors inform any prospective creditors about the fact that they are in a plan whenever they are seeking to obtain additional credit, regardless of the amount. This is to ensure that creditors are able to make fully informed decisions about providing credit to potential clients and follows from the proposal to use a private register for the SDRP (see further detail in paragraph 5.53-5.57).

5.17 However, to avoid making the process around obtaining additional credit during a plan overly restrictive, government does not propose setting out an explicit and exhaustive list of scenarios in which a debt advice provider can grant a debtor's request to exceed the £500 limit mentioned above. Instead, debt advice providers will be given discretion to decide when this is necessary and appropriate. The government intends to provide clear guidance to support this decision-making process in due course.

5.18 As set out in the 2019 response, failure to comply with the obligations set out above may lead to the revocation of a debtor's plan, subject to the process that debt advice providers must follow to action this. Further detail on the revocation process is set out in chapter 6.

Ongoing liabilities

5.19 Building on the 2019 response, the following regular payments will be classified as 'ongoing liabilities':

- payments on the principal and interest for a debtor's mortgage
- rent
- an insurance agreement
- taxes, duties and national insurance contributions
- local taxes
- water, electricity, gas, sewerage, heating oil or solid fuel bills
- internet services or mobile phone bills.

5.20 Arrears on these bills that exist at the point that a debtor applies for a plan may be qualifying debt and could be included in a plan. Even where this is the case, debtors must meet their ongoing liabilities as they fall due during the plan.

5.21 A plan is not a payment holiday, and ongoing liabilities are not qualifying debts, so if a debtor fails to make these (or any other) required payments during their plan they are not protected from enforcement action by their creditors.

Amending debt values

5.22 As set out in chapter 4, creditors will be required to correct what they consider to be material errors in debt values following the sending of the notice of intention to initiate a plan and the notice of a provisional plan. However, the government recognises that there may be legitimate scenarios in which creditors are unable to report necessary changes during these phases and need more time.

5.23 Therefore, in line with the approach taken in the DAS, the government proposes that creditors be given 120 calendar days following the start of a plan in which they are able to notify the Insolvency Service of amendments to debt values. Debt advice providers will be informed of any such notifications and will be required to confirm these with their client.

5.24 If these amendments are small, debt advice providers will be required to capture them at the next annual review through a plan variation, although they will be given the discretion to capture them sooner if they deem appropriate.

5.25 Recognising that large changes in debt values early in a plan may have a significant impact and may need to be captured sooner, the government proposes that, if such amendments lead to an increase in the total debt value of more than 10% by the end of the 120-day period, debt advice providers will be required to conduct an in-year review to capture that change. This mechanism will also take account of any changes to debt values that have been suggested by creditors during the approval phase.

5.26 The government recognises that there may be legitimate reasons why a creditor is unaware of or unable to flag a material error during this 120-day period. Mirroring the approach taken in the DAS, creditors may notify the debt advice provider of further amendments to debt values after 120 days and this will trigger a variation of the plan, but only if the debt advice provider is satisfied that there were exceptional circumstances justifying the creditor's failure to notify the error within 120 days and that a variation is appropriate.

Adding and removing debts

5.27 The government recognises that there are a number of circumstances in which qualifying debts could be omitted from a plan, including where a debtor has forgotten a debt, or where a creditor has been initially unable to identify the debt. Therefore, while debts incurred after the start of a plan will remain non-eligible and may not be added to a plan, the government proposes that debt advice providers should add certain debts that were owed before the plan started, using the review and variation process.

5.28 In particular, a debt advice provider must add any of the following omitted qualifying debts to a plan as and when they become aware of them:

- qualifying debts owed to creditors who have not been included in a plan
- qualifying debts that were included in a notice of intention to initiate a plan but that could not be identified by the creditor at the time
- qualifying debts not included in the notice of intention to initiate a plan but owed to creditors included in the plan that were not located by that creditor in their search for additional debt.

5.29 Further, recognising that a debtor's circumstances may change throughout their plan, the government proposes that they and their debt advice providers be permitted to change their minds and elect to include a discretionary non-eligible debt at a later date, through a plan variation. However, to limit uncertainty for creditors, the government proposes that debts that have been included in a plan cannot later be reclassified as discretionary non-eligible debt and removed from a plan.

5.30 Debt advice providers will also be required to add any qualifying future or contingent debts to a plan once they have been quantified and/or fallen due.

5.31 Debt advice providers will also be given the ability to remove debts from a plan in a number of circumstances, including where a debt has been separately paid off, or where a debt is mistakenly believed to be qualifying and is later established as being non-eligible.

Writing off debts

5.32 The government does not propose precluding creditors from writing off debts owed to them that have been included in a plan, recognising that in some cases it may be in their interests to do so. If a creditor elects to do so, they will be able to use the creditor review process (further detail set out below) to inform the debt advice provider of this. They will be required to remove this debt from the plan if the creditor has confirmed that the debt has been written off. However, the SDRP is intended to be a full repayment solution, and at no point will creditors be required to write off debts during a plan.

Amending allocations to creditors

5.33 As set out in chapter 4, debt advice providers will be required to use the Insolvency Service's system to calculate fixed allocations to creditors based on debt sizes at the outset of a plan.

5.34 Recognising that in many cases a plan variation could have an impact on this calculation, for instance where debt values are amended, or where a debt is removed from a plan, the government proposes that allocations to creditors be recalculated whenever a variation is implemented, once again through use of the Insolvency Service's electronic system.

5.35 To avoid unnecessary complication, the government proposes that these calculations be based on outstanding debt values at the point of the variation. This ensures that all types of variations can be accommodated for within the same calculation process.

Creditor objections

5.36 The 2019 response set out a number of circumstances where creditors would be permitted to object to changes implemented during a plan, including where a plan variation decreases payments by more than 10%, or where a plan is extended beyond 10 years as a result of payment breaks or plan variations.

5.37 This position has been further considered to ensure that the objection process is proportionate and does not create excessive and unnecessary additional burden on debt advice providers and on creditors. The government therefore proposes the following changes and additions.

5.38 To reduce the potential administrative burden of marginal changes to plan durations, creditors won't automatically be able to object to variations that extend a plan beyond 10 years. Instead, they will only be able to object if a plan is extended beyond 10 years and 6 months. This allows flexibility for plans near the 10-year limit to be extended by a small amount without triggering the objection process, while also recognising that creditors need appropriate protection from plans being unreasonably extended.

5.39 Since payment breaks will usually be urgent, creditors will not be given the opportunity to object to their implementation or extension as this would not be practically possible within the time constraints of the payment break process.

5.40 Following on from other proposals on amendments to debt values, creditors will be given the opportunity to object to any plan variation that increases total debt value by more than 10%.

5.41 In its 2019 response, the government committed to considering a further objection mechanism for creditors. This is set out in more detail in the next section and supplements the changes above by providing creditors with additional routes to challenging changes that they deem to be unfair or inaccurate.

5.42 In line with the 2019 response, creditors will not be given the ability to object to plan variations that reduce payments by less than 10%, or that increase payments.

5.43 As with provisional plans, in circumstances where creditors are given the opportunity to object, if less than 25% of creditors by debt value object, the relevant change will be implemented. If 25% or more object, the change will go to the Insolvency Service for a fair and reasonable assessment. If a change is deemed to be fair and reasonable, it will be implemented. Otherwise, the change will be rejected, and the debt advice provider required to reconsider whether it is appropriate to submit a reworked proposal or assess whether the plan remains a suitable option

Creditor and debtor reviews

5.44 As mentioned above, in its 2019 response, the government committed to considering a further mechanism through which creditors would be able to challenge plans or changes made to them. Having considered this further, the government proposes that creditors be given the ability to formally

request a review of a plan or of a debt included within it under any of the following grounds:

- the plan unfairly prejudices the interests of the creditor
- the creditor has reason to believe that the debtor is not eligible for a plan or did not meet the eligibility criteria when the plan was created
- a debt included in the plan is non-eligible
- the creditor has reason to believe that the debtor has sufficient funds to pay for their debts as they fall due
- the creditor considers that the debtor has met any of the grounds for revocation detailed in chapter 6
- the creditor has written off or wishes to write off a debt that is included within a plan.

5.45 For instance, creditors would be able to use the review process to challenge where they consider plans have been extended too far as a result of the implementation of payment breaks, on the ground that this unfairly prejudices their interests.

5.46 Debt advice providers will conduct these reviews in the first instance with regards to the grounds under which they are requested and will be required to consider whether it is appropriate for a given debt or debts to be removed, or for the plan to be revoked. Such reviews must be conducted by the debt advice provider within 21 days of receiving the request.

5.47 Where a debt advice provider is content that a debt should be removed from the plan as a result of a creditor review request, they will be able to vary the plan to implement this. In particular, where a creditor has informed the debt advice provider that they intend to write off or have already written off a debt owed to them that is included in a plan, the debt advice provider must be satisfied that this is indeed the case before removing that debt from the plan.

5.48 A similar review mechanism exists in breathing space, allowing creditors to request reviews of breathing spaces or of debts included within them.

5.49 However, in order to mitigate against overuse of this review mechanism and to encourage legitimate and well-reasoned requests, the government proposes that each creditor only be permitted to request one review in any given 12-month period.

5.50 Building on this, government also proposes that both debtors and creditors be given the ability to request reviews of certain debt advice provider decisions that are made outside of the fair and reasonable assessment process. Specifically, debtors would be able to ask for a review if the debt advice provider has made a decision:

- to prevent a debtor from obtaining additional credit above the £500 limit
- not to vary a plan at the request of the debtor
- not to grant a payment break application

- not to revoke a plan at the request of the debtor
- to issue a notice of intention to revoke a plan or a final warning notice.

5.51 Creditors would be able to request reviews if the debt advice provider has made a decision:

- not to grant a creditor's request for a debt to be removed from a plan, or for the plan to be revoked
- to issue a notice of intention to revoke a plan or a final warning notice of revocation.

5.52 These reviews will also be conducted by debt advice providers in the first instance and they must do so within 21 days of receiving the request. If a creditor or debtor remains dissatisfied with the outcome of such a review, the government proposes that they be permitted to apply to the county court for further consideration. This also mirrors the approach taken in breathing space.

SDRP register

5.53 Breathing space uses a private register that is only accessible to relevant debt advice providers, debtors and creditors. The government has considered whether to follow the same approach in SDRP, or whether to implement a public register that is accessible to all, as is the case for statutory insolvency solutions and the DAS.

5.54 While there are arguments in favour of the transparency of a public register, the government proposes to follow the approach taken in breathing space and make the SDRP register private. This is intended to make plans more attractive to debtors who may have concerns about privacy, and limits the risk of debtors experiencing unsolicited contact from third parties during the period of their plan.

5.55 The Insolvency Service will hold and administer the SDRP register. The register will only hold the following information about the debtor:

- full name and any former name(s)
- date of birth
- usual residential address (subject to non-disclosure of that address – see paragraph 4.7)
- the trading name or names and address of any business carried on by the debtor
- the name and business address of the debtor's debt advice provider.

5.56 Plans will be added to the SDRP register within one business day of being formally approved, whether that is because the threshold for creditor objection following submission of a provisional plan has not been met, or because the plan has been deemed to be fair and reasonable by the Insolvency Service. A plan will be considered as 'live' and will have effect as the final plan from the point that it is added to the register.

5.57 The Insolvency Service will update the register if and when a plan is revoked or completed, changing its status accordingly. A plan will be formally considered to be revoked or completed on the date that the register is updated to reflect this. Information regarding revoked and information regarding completed plans will be held on the register for 12 months before being deleted.

Questions

Question 25: Do you consider that the proposed mechanism for implementing payment breaks is appropriate?

Question 26: Is the creditor review mechanism a sufficient route for creditors to challenge plans they deem to be unfair, unsuitable or inaccurate?

Question 27: Do you consider that the additional creditor and debtor review processes are appropriate and sufficient? If not, in what ways do you think they could be amended?

Question 28: Do you agree with the proposal to have a private register?

Question 29: Do you have any further comments on or concerns about the processes that have been proposed to operate during a plan?

Chapter 6
Ending a plan

6.1 This chapter discusses how plans can end, and what a debt advice provider is expected to consider when ending a plan.

6.2 The chapter covers:

- when a plan is completed
- when a plan is not completed
- the effects of a revocation.

When a plan is completed

6.3 The government proposes that a plan is completed once all agreed payments scheduled under the plan have been made by the debtor to the payment distributor and distributed to the creditors named in the plan (minus the 10% funding which will be distributed to the debt advice provider, payment distributor and scheme administrator).

6.4 The payment distributor will be required to notify the Insolvency Service of the plan's completion within five working days after the final payment. The Insolvency Service will then update the register and issue a notice of completion to the debt advice provider, debtor and all creditors the following working day. This will ensure that all parties involved in the plan are aware that the plan has come to an end, and the debts in the plan are extinguished.

6.5 The payment distributor will be required to return to the debtor any funds still held once the notice of completion has been sent to the Insolvency Service.

When a plan is not completed

6.6 Building on the 2019 consultation response, the government proposes two pathways for ending a plan early. A mandatory revocation, where the debt advice provider will have to revoke a plan immediately, or a discretionary revocation, for which the debt advice provider can first use the conditional notice process detailed below to encourage the debtor to comply.

6.7 The 2019 response set out that a debtor's failure to comply with the obligations and conditions of the SDRP would result in removal from the plan. Further, where a debtor has not complied with their obligations, the debt advice provider will be able to issue a conditional notice that will give the debtor a period of time to comply with their obligations.

6.8 If the debtor fails to comply with a conditional notice, they will be sent a final warning notice by the debt advice provider. If they fail to comply with the conditions set out in a final warning notice, the plan will be revoked at the date provided in the notice.

6.9 If a debtor successfully meets the conditions set out in either a conditional notice, or a final warning notice, the revocation process will end and the plan will continue.

6.10 Further detail and expansion on this process has been set out under the discretionary revocation section below.

Mandatory revocation

6.11 The government proposes that debt advice providers be required to revoke a plan in any of the following circumstances:

- The debtor has died. The government proposes that a plan shall end on the day after the debtor's death. Once the debt advice provider becomes aware of the death, the debt advice provider must notify the Insolvency Service, who will in turn notify the creditors of the date that the plan ended. All outstanding debt at the point where the plan has ended shall become a liability on the debtor's estate, as is common practice when an individual in debt passes away. This also mirrors the approach taken in breathing space.
- The debt advice provider is notified or becomes aware that the debtor has successfully applied for bankruptcy or a debt relief order whilst in a plan, thus resulting in the debtor becoming ineligible. This mirrors the approach taken in the DAS.
- All qualifying debts owed by the debtor have been removed from the plan (e.g. due to decisions by the debt advice provider, by the court, or following creditor review requests).
- The debtor has, at any time, received two final warning notices and the debt advice provider subsequently considers that a further final warning notice is appropriate (see further detail below).

6.12 In addition to this, the government proposes that debtors be given the ability to request that their debt advice provider revoke their plan in the following circumstances:

- The debtor is now subject to bankruptcy or debt relief order.
- The debtor is (or in the case of a joint plan, both joint debtors are) now able, either directly or with the assistance of another person, to pay or repay in full each of the qualifying debts under their plan. As above, the debt advice provider must be confident that the debtor is able to repay their debts, and have a firm understanding of when this will occur. They should only do this if the debtor has provided sufficient evidence to support their claim.
- The debtor otherwise wishes for the plan to be revoked. This is in recognition of the fact that debtors are able to force the revocation of their plans through voluntary non-compliance and reflects the

government's preference to provide a formal route for revocation instead. However, to ensure that debtors completely understand the implications of this, and to avoid circumstances in which they are influenced into making such an application against their best interests, they must first receive advice from their debt advice provider.

6.13 Where a debtor applies for revocation under any of the grounds above and the debt advice provider is satisfied that said ground has been met, they must proceed with revoking the plan.

6.14 If a debtor has met any of the grounds for mandatory revocation, whether that be through the debtor's application or otherwise, the debt advice provider must inform the Insolvency Service of this. As in circumstances where a plan is completed, the Insolvency Service will then make an entry on the register and send a notification of the revocation to the debtor, the payment distributor and all creditors included within the plan. This notification will also set out the reasons for the revocation.

Discretionary revocation

6.15 Outside of the mandatory revocation process, the government proposes that debt advice providers be given the discretion and ability to revoke a plan if:

- the debt advice provider is satisfied that the debtor does not meet the eligibility criteria as set out in chapter 2
- the debtor has failed to comply with any of their obligations (as set out in 5.10-5.12)
- the debtor has not provided sufficient payment details to the payment distributor to enable the plan to operate effectively
- the debtor is in arrears of payment under the plan that together amount to a value of payments for two calendar month or two payments (whichever is less)
- the debt advice provider considers that the plan is no longer appropriate solution for a debtor
- the debtor has made a false statement when making any application.

6.16 If a debt advice provider considers it appropriate and necessary to revoke a plan in such circumstances, they must then determine whether it is appropriate and applicable to attach conditions to a revocation notice and to give the debtor the opportunity to comply with these.

6.17 Where it is not appropriate to attach conditions, for instance because it is not possible for the debtor to rectify whatever it is that has caused them to meet the grounds for discretionary revocation, the government proposes that the debt advice provider revoke the plan immediately, in the same way they would for a mandatory revocation.

6.18 However, where conditions can be applied, the debt advice provider must issue a conditional notice that sets these out, as well as the date by which the debtor is required to comply. Failure to meet these conditions in time will lead to a final warning notice being issued that retains the same

conditions and sets out the date on which the plan will be revoked if the debtor continues to not to comply.

6.19 If the debt advice provider considers that the debtor has not complied with a final warning notice, they must inform the Insolvency Service of this. The Insolvency Service will then cause an entry to be made on the register and send notice of the revocation to the debtor, the payment distributor and all creditors included within the plan.

6.20 However, if the debtor complies with a conditional notice or a final warning notice before their respective deadlines are met, then the revocation process will end and the relevant revocation notice withdrawn. The debtor will then continue with their plan as before.

6.21 As set out in the 2019 response, the government recognises that there should be a limit to the number of times that an individual can use this mechanism to stop the revocation process. Without a limit, this mechanism could be used to alternate between compliance and non-compliance during a plan. This is why the government has proposed that if a debtor has, at any point, received two final warning notices, and their debt advice provider subsequently deems it appropriate to issue another final warning notice, the plan must be revoked (see paragraph 6.11).

6.22 To further strengthen this, in circumstances where the debtor has received and subsequently complied with a conditional notice or a final warning notice at any point in the previous 12 months, and the debt advice provider deems necessary to issue another conditional notice, they must instead proceed immediately to issuing a final warning notice. If the debtor fails to comply with the conditions set out in this final warning in time, the plan must be revoked.

6.23 As the SDRP will allow different payment frequencies and recognising that the circumstances under which plans may need to be revoked may vary significantly, the government proposes that debt advice providers be given discretion to determine how long the debtor has to comply with a conditional or final warning notice.

6.24 The government intends to use scheme guidance to provide further information on discretionary revocations and the processes set out above.

Effect of a revocation

6.25 Following a revocation, creditors will be able to restart enforcement action and apply interest, fees or charges to their outstanding debt, but only after a set period of time dependent on the grounds for revocation. The government proposes to mirror the timeframes in the DAS as follows:

- Where an individual plan is revoked because the debtor has died, enforcement can resume six weeks from the date the plan was revoked.
- Where a joint plan is revoked following the death or revocation application of one of the debtors, enforcement may only resume six weeks following the date of revocation and the other debtor will be permitted to apply for a new SDRP. This will enable the other debtor to

seek debt advice in their own name without the fear of a creditor taking action in the interim. If such a joint debtor applies for a new plan within 21 days starting from the day after their plan is revoked, the protections of the revoked plan will continue to have effect until the new provisional plan is submitted.

- Where the revocation was due to the debtor's bankruptcy, creditors can reapply any interest, fees and charges to the debt after 14 calendar days have elapsed from the date of revocation, up to the date of the bankruptcy. Where applicable, this debt will now be included in the bankruptcy. The client's details will be recorded on the Individual Insolvency Register when they are bankrupt.
- Where the revocation was due to three final warning notices or any other ground for revocation was met, enforcement action and the application of interest, fees and charges can resume 14 calendar days from the date the plan was revoked.

6.26 Creditors must treat payments received up until the date of revocation as full payments. They must not pursue the 10% of payments that were deducted for administration during the plan. The plan requires administration even if it ends prematurely.

6.27 In most circumstances, a debtor whose plan is revoked must not make an application for a new plan within the 12 months following the date on which their plan is revoked. As set out above, the only exception to this is where a joint plan is revoked following the death or an application for revocation by one of the joint debtors, in which case the other debtor will be able to reapply for a new plan without delay.

Questions

Question 30: Do you agree with the proposed grounds for both mandatory and discretionary revocations? Are there any grounds for revocation that you consider have not been captured?

Question 31: Do you agree with the proposed approach to discretionary revocations in scenarios where conditions cannot be applied?

Question 32: Do you consider that the proposed methods for limiting abuse of the revocation process are sufficient and appropriate?

Question 33: Do you consider that the proposed limitations to reapplication for plans are suitable?

Question 34: Do you have any further comments on or concerns about the ways that plans are ended?

Chapter 7
Funding and administration

7.1 This chapter sets out the arrangements for the funding and administration of the plan, including:

- the method for allocating funds from debtor repayments
- the Insolvency Service's role as scheme administrator, including its approach to the fair and reasonable assessment and the role it will play in payment distribution.

Funding

7.2 The 2019 response set out the government's proposed approach to funding the debt respite scheme. 10% of a debtor's repayments would be allocated to fund activity in the scheme, divided as follows:

- 8% to the debt advice provider that advises the debtor on their plan
- 1% to the payment distributor, for distributing payments in the plan
- 1% to the Insolvency Service, for the administration of the Debt Respite Scheme (i.e. both breathing space and SDRP).

7.3 Where a debt advice provider also acts as a payment distributor, they will receive a total of 9% of a debtor's repayments.

7.4 The total percentage allocated to fund the scheme, and the percentages allocated to the three distinct activities in the scheme, will be kept under review in the early years of the plan to ensure it remains appropriate.

7.5 The Government recognises that its proposed approach differs from the approach taken in the DAS, where an amount equal to 22% of a debtor's payments is allocated to fund the scheme. The Government's view is that the larger eligible population for the SDRP scheme in England and Wales should mean that the scheme can be funded with a lower percentage of debtor repayments, maximising the return to creditors in the scheme.

7.6 The Government also acknowledges concerns that the 10% allocated to administration is lower than the percentage that debt advice providers may receive in existing FairShare arrangements[1] with creditors. However, a much broader range of debts to a wider set of creditors can be included in SDRPs, and the failure rate is anticipated to be lower, which should make the

[1] Fair Share is a voluntary agreement where creditors pay back a fixed percentage of repayments they receive to debt advice providers, to help to fund the debt advice providers' work.

funding available to debt advice providers who offer SDRPs higher and more stable over time.

The electronic system and register

7.7 As in breathing space, the Insolvency Service will maintain an electronic system that supports the administration of plans. The electronic system will be used by debt advice providers to enter details of plans they administer, to communicate with the Insolvency Service and other creditors about those plans, and to monitor the performance of those plans over time.

7.8 The Insolvency Service has begun a process of engaging with stakeholders and user research to determine how the electronic system and register should function, which will continue throughout the design and development of the electronic system.

7.9 The government intends that the electronic system will have the functionality to share plan related information between the debt advice provider and creditors. This will support the timely exchange of information.

7.10 As set out in chapter 5, the Insolvency Service will maintain a register of individuals in a plan and their relevant details. Individuals will be added to the register when their plan starts, with the status of their plan updated as necessary if it is completed or revoked.

7.11 All information about a plan must be deleted from the register 12 months after it has been completed or revoked.

7.12 The register will only be accessible to debt advice providers, creditors, and debtors themselves. In accordance with data protection legislation, debtors will be able to request the information the Insolvency Service holds about them at any time, and the data the Insolvency Service holds will be subject to the relevant data protection regulations and standards.

7.13 Although it is possible to enter a SDRP without first having a breathing space, the government expects that it is likely that breathing space debtors will consider a SDRP. The government will seek to ensure as seamless as possible a journey from breathing space to SDRP, aiming to minimise duplication of efforts to enter information by debt advice providers or creditors when individuals in a breathing space enter an SDRP.

Fair and reasonable assessments

7.14 The Insolvency Service will be responsible for completing a fair and reasonable assessment where at least 25% of creditors by debt value object to a provisional plan or plan variation. The government's 2019 response set out the factors that the Insolvency Service may take into consideration during this process, which include:

- creditors' reasons and evidence for objecting to the proposed SDRP or plan variation
- views of the debt advice provider
- the proportion of creditors objecting to the SDRP.

7.15 The government's 2019 response also set out how the Insolvency Service, whilst considering the above factors, will have discretion when making its assessments. This is because the experience of problem debt can differ significantly from person to person. This is aligned to the approach taken by the DAS, and the discretion afforded to the Financial Ombudsman Service in the way in which it considers financial services complaints.

7.16 A fair and reasonable assessment can be triggered during the process of creditor approval for an individual's provisional SDRP or for certain variations of that plan after it has commenced. If at least 25% of creditors by debt value object to the plan or variation, then the Insolvency Service will carry out the assessment.

7.17 Building upon the government's 2019 response, it is proposed that creditors will be required to provide evidence to support any objection they make to a plan or variation, which will ultimately be used by the Insolvency Service to make a decision if a fair and reasonable assessment is triggered.

7.18 Before the launch of SDRP, the Insolvency Service will publish a framework for assessments that will act as guidance for assessing creditor objections during the fair and reasonable assessment process. This guidance will be used by the Insolvency Service to complete fair and reasonable assessments, alongside the supporting evidence provided by creditors and the relevant details of the plan, including its duration and the total debt being repaid within it.

Payment distribution

7.19 Payment distributors will be responsible for sending payments to creditors on behalf of debtors. As set out in the government's response to the Breathing Space Scheme consultation in June 2019, two types of payment distributor (PD) will be permitted to offer this service in a plan:

- a debt advice provider with the relevant FCA permissions (debt counselling and debt adjusting) and is subject to the FCA's rules on handling client money), or
- the Insolvency Service.

7.20 Debt advice providers with the relevant FCA permissions who indicate to the Insolvency Service that they wish to be a PD will act for plans they advise on, unless to do so would create a conflict of interest.

7.21 The Insolvency Service, as part of its scheme administrator role, will maintain a list of all debt advice providers who are prepared to act as PD. This will include an indication of those debt advice providers who are prepared to act as a PD for other providers' plans and will be accessible by those other providers. Where the service provided differs materially (e.g. providers offer a wider range of payment methods) the Insolvency Service anticipates that the list will make these differences easy for debt advice providers to understand.

7.22 To ensure adequate consumer and creditor protection during the lifetime of plans, the government will expect PDs to adhere to high standards that

already govern this type of service, augmented by additional measures to support this scheme.

7.23 All PDs will be required to report information about the plans they act for to the Insolvency Service through the electronic system. The electronic system must be able to provide information to debtors, debt advice providers and creditors about plans. The Insolvency Service will work with stakeholders throughout the design and development phases of the electronic system, taking into account the capabilities of potential PDs when considering how reporting on plan payments should work.

7.24 Before the scheme starts, the Insolvency Service will expect all PDs to sign up to standard terms and conditions for reporting to access and use the electronic system. Full details will be published by the Insolvency Service in due course, but, as a minimum, it is proposed that they will include:

- setting out how and when PDs must report payment information to the Insolvency Service
- the process by which a PD may cease to perform that role, including where a PD fails to meet the requirements set out in the regulations.

7.25 Where they agree to partner, the government also anticipates that debt advice providers and PDs will enter into agreements setting out the requirements of a payment distributor over the course of the plan. The form of these agreements is not determined by the regulations, but the government expects that they should be based on compliance with the payment distribution requirements set out in the regulations, including:

- reporting regularly to debt advice providers and the Insolvency Service, and to respond to queries from the administrator, debt advice provider, creditors, and debtors
- maintaining effective complaints handling processes, in the event of any complaint about their service by a debtor or a debt advice provider
- providing a process for exiting the agreement, including in scenarios where the PD is no longer able to provide the service, or where the debt advice provider is dissatisfied with the level of service provided by the PD.

Payment distributor oversight

7.26 In addition to the rights and responsibilities that will be established by the agreements discussed above, PDs regulated by the FCA must already have a procedure in place for resolving disputes with their customers.

7.27 If a debtor is dissatisfied with the service they receive from an FCA-authorised PD, complaints can be escalated to the Financial Ombudsman Service.

7.28 Systematic non-compliance with the regulations by an FCA-authorised PD is likely to be of interest to the FCA. It may call into question whether a firm is meeting specific rules in the FCA's Handbook (in particular, the Client Assets Sourcebook), the suitability requirements set out in the FCA's Threshold

Conditions, or breaching one of the FCA's principles (e.g. Principle 6, treating customers fairly).

7.29 In the case of complaints about payment distribution by the Insolvency Service, the Insolvency Service will have a complaints procedure, the details of which will be published in due course. The Insolvency Service works within an assurance framework agreed by its Board. This framework provides prudent and effective governance and a system of internal controls which enable risks to be identified, assessed and managed. The Board reports to the Department for Business, Energy and Industrial Strategy on its stewardship. The Board is independently chaired and ensures the ongoing effectiveness and the high standards of regularity and propriety expected of an Executive Agency.

7.30 The government notes that this arrangement differs from the approach taken in the DAS, where PD supervision is carried out by the Accountant in Bankruptcy. The government's view is that setting appropriate entry requirements, ensuring all parties know the level of service that can be expected, and have clear routes for escalating issues as they arise is sufficient to ensure high standards of payment distribution in the scheme.

Questions

Question 35: Do you agree with the proposed approach to funding?

Question 36: Do you have any views on how the electronic system, register, or fair and reasonable assessments should work?

Question 37: Do you agree with the proposed approach to payment distribution, and the oversight of payment distribution?

Question 38: How and when do you think payment details of creditors should be provided to or obtained by payment distributors?

Question 39: Do you have any further comments on or concerns about the funding and administration of the SDRP?

Chapter 8
Breathing space

8.1 Breathing space has been available to debtors since May 2021. The government is satisfied that the processes that underpin breathing space are functioning as intended but is keen to ensure it works as well as possible for all parties involved.

8.2 The government proposes to use the SDRP regulations to make limited amendments to the breathing space regulations ('the 2020 regulations')[1]. The most substantive of these are outlined within this chapter.

8.3 These changes broadly group into three categories:

- treatment of different debts and liabilities
- protections against enforcement
- issues of process.

8.4 The government has received informal feedback on how the scheme might be adapted to better meet the needs of debtors, advice providers and/or creditors. While extensive changes to the policy are not envisaged at this early stage, the government is open to receiving evidence-based proposals on improvements and invites respondents to the consultation to submit these for consideration.

Treatment of different debts and liabilities

8.5 In the 2020 regulations, regulation 5(1) defines a qualifying debt as "any debt or liability other than non-eligible debt". A recent High Court case[2] ruled that for the purpose of breathing space, a debt is a 'liquidated sum that is due and owing' at the time of the application.

8.6 The government intends to amend the 2020 regulations to ensure that the definition of a qualifying debt reflects the original policy intent. The government wants the scheme to include as wide a range of debts as possible, to ensure debtors are not disadvantaged by circumstances beyond their control at the start of a plan.

8.7 As such, the government plans to amend the definition of qualifying debt within the 2020 regulations to expressly allow for future and contingent

[1] Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations, SI 2020/1311 available at: https://www.legislation.gov.uk/uksi/2020/1311/contents/made

[2] *Axnoller Events Ltd V Brake* [2021] EWHC 2308 (Ch), available at: https://www.bailii.org/ew/cases/EWHC/Ch/2021/2308.html

debts to be included within a breathing space, as with the SDRP (see paragraph 2.21-2.23).

8.8 The government also proposes further changes to the 2020 regulations by:

- amending regulation 5 to clarify that a non-eligible debt cannot become a qualifying debt just because a judgment is obtained on it
- amending regulation 5 to include liabilities in relation to income payments orders and income payment arrangements within the definition of 'non-eligible debt', in line with their planned treatment within SDRP
- adding internet service and mobile phone network provision to the list of ongoing liabilities, in recognition of the fact that these are modern essentials where non-repayment could impede a debtor's ability to operate in daily life.

Protections against enforcement

8.9 While enforcement regulations will largely remain the same, several changes will be made with the intention of increasing protections to debtors.

8.10 Regulation 7 will be amended to protect debtors from being served with a notice to take possession of a dwelling-house let to a debtor on ground 1 in Schedule 2 of the Housing Act 1985(c) or to take possession of a dwelling-house let to a debtor having served such a notice. This will ensure that debtors renting properties from local authorities receive the same protection from eviction as those renting from private landlords.

8.11 The definition of agent within regulation 12(6) will be amended to include a public authority (e.g. Department for Work and Pensions). This amendment will render regulation 7(11) unnecessary so this provision is deleted.

Issues of process

8.12 The government proposes a number of amendments to clarify issues that have emerged since May 2020, including:

- explicitly confirming that creditors can disclose information that is relevant to the breathing space to debt advice providers via the electronic system
- confirming the requirements on creditors in the event debt is sold within the moratorium period
- amending the definition of debt advice provider to make clear that local authorities are only required to consider breathing space applications where they do give debt advice.

Questions

Question 40: Are you supportive of the proposed changes to the 2020 regulations?

Question 41: Are there any other changes to the 2020 regulations that would result in (a) greater eligibility and/or applications for the scheme (b) better debtor outcomes?

Question 42: Are there any other changes to the 2020 regulations that you believe, and can evidence, would significantly lower the administrative resource required to make or deal with applications for breathing space, for debt advice providers and/ or creditors?

Question 43: Do you have any further comments on or concerns about the breathing space regulations and the amendments being proposed?

Chapter 9

Impact assessment

9.1 This chapter sets out and explains some of the key assumptions made in the consultation stage impact assessment and the significant changes from the previous iteration included in the wider Financial Services Act 2021 impact assessment, published in October 2020.[1] The government is keen to test these assumptions with stakeholders and seek any further evidence that might be available to strengthen and refine it.

Debt advice supply and demand

9.2 Since the previous iteration of the SDRP impact assessment, the impact of Covid-19 on debt advice supply and demand has become clearer and it has been necessary to rework the modelling and assumptions arising from this in relation to debt advice supply and demand. In particular, the anticipated increase in debt advice demand that was expected to arise as a result of the pandemic has not yet materialised.

9.3 As the impact assessment sets out, it is assumed that demand has been suppressed as a result of the relief and forbearance measures implemented by the government and by creditors during the pandemic. This suppressed demand is provisionally assumed to re-materialise over 2022-23, leading to a short-term increase in demand over baseline levels expected pre-pandemic in that year.

9.4 This assumption is derived from conservative preliminary forecasts provided by MaPS and does not take account of any potential impacts that current cost-of-living increases may have on demand for debt advice. It is therefore possible that the impact assessment's current forecasts underestimate the level of demand that will be seen in 2022-23.

9.5 Formal medium and long-term demand forecasts are not currently available and, in their absence, it has been assumed that demand will gradually reduce to baseline levels over the three years following 2022-23.

9.6 This assumption also contains a great deal of uncertainty and does not currently take account of any potential longer-term impact of the cost-of-living increases on demand. The government intends to continue developing and revising these assumptions as greater certainty on future levels of demand is obtained.

[1] *Financial Services Bill 2020 Impact Assessment*, October 2020, available at: https://publications.parliament.uk/pa/bills/cbill/58-01/0200/FS%20Bill%20Impact%20Assessment%20-%20October%202020%20-%20201020.pdf

9.7 As mentioned in paragraph 1.8, MaPS' debt advice commissioning exercise is still ongoing, meaning that the full details of future levels of debt advice supply are yet to be determined. However, while dependent on the outcome of that exercise, the impact assessment makes provisional estimates of the level of supply between 2021-22 and 2024-25 based on available information. These estimates will continue to be reviewed and updated as and when greater certainty is gained on future levels of supply.

9.8 The impact assessment assumes that supply of advice will then remain in line with demand from 2025-26 onwards, increasing at a gradual rate of 2% each year. This is lower than historic increases in debt advice supply and reflects an assumption that demand will become the limiting constraint.

Caseload

9.9 The impact assessment continues to assume that the SDRP caseload is comprised entirely of people who would have entered into DMPs in the counterfactual. This is expected to be an underestimate given it is also likely that the SDRP caseload will include those who would otherwise have entered into insolvency or another debt solution, or not had a formal solution at all.

9.10 The impact assessment makes a number of assumptions about the expected propensity of the SDRP as a debt solution, primarily based on evidence provided by debt advice providers and MaPS. Many of these assumptions are based on those used in previous iterations of the impact assessment but with updated figures, including the proportion of people seeking debt advice who are eligible for a debt solution, and the proportions of those who are recommended and subsequently enter into a DMP.

9.11 The impact assessment makes adjustments based on the proportions of DMPs that can be completed within 10 years and on the percentage of Scottish clients who are recommended a Debt Payment Plan (the closest comparator to the SDRP in Scotland) but instead choose to enter a DMP.

9.12 However, drawing upon experience of breathing space, the revised impact assessment also introduces the following additional adjustments in relation to recommendation likelihood and transition time.

9.13 Firstly, a comparison of the historic recommendation percentages of DPPs and DMPs in Scotland has been used to estimate the percentage of people eligible for a SDRP that would still be recommended a DMP, recognising the expectation that, even if someone is eligible for a SDRP, a DMP might still be preferable given its increased flexibility.

9.14 Secondly, a preliminary transition adjustment has also been overlaid, assuming that there will be a period in which debt advice providers will familiarise themselves with its features and the circumstances in which it is a suitable solution. Currently, the entry rates into SDRPs are assumed to reach a steady state after three years.

Benefits

9.15 The previous iterations of the impact assessment for the SDRP, calculated benefits using estimations of the number of plans ending in a given year. In

this version the annual benefits to each party have been calculated using the estimated lifetime benefits of plans starting in a given year, their expected lifespans, and the estimated distribution of those benefits. The government considers this to be a more accurate reflection of the benefits as it fully captures assumptions about success and failure rates of plans.

9.16 The monetised benefits to debtors are based on the assumed benefit of debt advice, and the increased success rates of SDRPs. While debtors are expected to receive the lowest level of monetised benefit, they are also expected to receive a substantial level of non-monetised benefit, much higher than that of debt advice providers and creditors. This includes improved mental wellbeing, lower dependence on state-subsidised housing, lower risk of eviction or repossession, more positive education and employment outcomes and lower risk of familial breakdown, amongst others. The anticipated higher success rates of SDRPs in comparison to DMPs is also expected to lead to greater levels of financial stability amongst debtors who access the scheme, generating wider economic benefits as a result of increased spending power.

9.17 The key monetised benefits for creditors are based primarily on the increased recovery rates in SDRP arising from increased success and repayment rates relative to counterfactual DMPs. SDRPs are also expected to yield larger benefits for creditors compared to insolvency solutions. The overall benefits to creditors are therefore expected to increase when once SDRPs that would have been insolvency solutions in the counterfactual are captured in the caseload estimates.

9.18 Similarly, the majority of the benefits to debt advice providers arise from the increased success and repayment rates of SDRPs relative to DMPs. While this is reduced slightly by the expectation of a lower income proportion for debt advice providers in SDRPs, this reduction is outweighed by significant increase in overall repayment in SDRPs in comparison to counterfactual DMPs. The impact assessment also monetises the benefits of reduced repeat advice arising from higher success rates of SDRPs.

9.19 The monetised benefits to debtors are based on the assumed benefit of debt advice, and the increased success rates of SDRPs. While debtors are expected to receive the lowest level of monetised benefit, they are also expected to receive a substantial level of non-monetised benefit, much higher than that of debt advice providers and creditors. This includes improved mental wellbeing, lower dependence on state-subsidised housing, lower risk of eviction or repossession, more positive education and employment outcomes and lower risk of familial breakdown, amongst others. The anticipated higher success rates of SDRPs in comparison to DMPs is also expected to lead to greater levels of financial stability amongst debtors who access the scheme, generating wider economic benefits as a result of increased spending power.

Costs

9.20 As with benefits, the costs of the SDRP to creditors and debt advice providers is calculated from the lifetime costs of plans starting in any given year, their expected lifespans, and the estimated distribution of those costs.

9.21 The costs to creditors monetised in the impact assessment arise from the expected increase in creditor contribution to SDRPs relative to DMPs. The impact assessment shows that this cost is significantly outweighed by the marginal benefit of SDRPs arising from their increased success and repayment rates.

9.22 For debt advice providers, the cost of receiving a lower proportion of repayments in SDRPs relative to DMPs is already taken account of as part of the calculations for benefits. However, there are also further costs arising from the expectation that SDRPs will have higher administration costs than DMPs, and from the need for longer administration due to their higher success rates, which this iteration of the impact assessment attempts to estimate.

9.23 Given the wide range of debt advice provider and creditor stakeholders, all of whom will have different requirements with regards to the SDRP and their compliance with and administration of it, the government has not attempted to monetise the systems, familiarisation or dissemination costs of the scheme to these stakeholders. The government would welcome views from those stakeholders on these costs as part of this consultation, using the draft regulations that have been shared to support that.

9.24 For the time being, the estimated benefits and costs have been combined and a 20% optimism bias has been overlaid to generate a provisional estimate of the net benefits to debtors, creditors, and debt advice providers. This yields that the net benefits to each of these three parties between 2024-25 and 2033-34 will be £9.6 million, £1,566.7 million and £28.7 million respectively.

Breathing space

9.25 The breathing space impact assessment set out a number of assumptions and forecasts for the caseloads for the scheme. Actual caseloads since the launch of the scheme have been significantly lower than expected. Against previous expectations, demand for debt advice during the Covid-19 pandemic has remained subdued, something that is likely to affect demand on breathing space.

9.26 However, government continues to forecast that demand for debt advice will increase over the coming months and therefore expects the breathing space caseload is likely to increase too. There remains significant uncertainty over the path of this demand and this impact assessment has not attempted to revise forecasts for breathing space caseload over the coming years.

9.27 The lower take-up observed in breathing space relative to the government's initial forecasts are not expected to have a significant impact on the caseloads of the SDRP.It is a distinct debt solution that can be accessed without accessing breathing space, and as such demand for it is expected to be more closely related to demand for DMPs.

Questions

For debt advice agencies:

Question 44: For those eligible for both a SDRP and a DMP, would you expect to still recommend a DMP in any circumstances? If yes, what proportion of those eligible for both solutions would you expect to still recommend a DMP?

Question 45: Would you recommend SDRPs to those who would otherwise enter insolvency (e.g. DRO, bankruptcy, IVA)? If yes, what proportion of those clients would you instead expect to recommend a SDRP?

Question 46: Would you recommend SDRPs to those who are currently not recommended either a DMP or an insolvency solution (e.g. those entering into informal solutions)? If yes, what proportion of those clients would you instead expect to recommend a SDRP?

Question 47: For each of the above, why would you expect to recommend or not recommend a SDRP over the alternative solution (DMP, insolvency or informal solution)?

Question 48: Is the assumption that the SDRP caseload will be reduced by 50%, 30% and 10% in its first three years respectively due to a period of transition a reasonable estimate? How long would you expect the scheme to take to reach a steady state and what impact would you expect this transition phase to have on the scheme?

Question 49: What proportion of an individual's debt would you expect to be repaid in a successful SDRP? How frequently would you expect voluntary debt write-off to occur and to what degree?

Question 50: If you expect the level of repayment to be different in SDRPs compared to DMPs, what impact would you expect that to have on your clients in SDRPs?

Question 51: For those who do not complete their DMP and subsequently enter another solution, to what degree is their repayment reduced, if at all?

Question 52: Is it reasonable to assume that the benefit to a debtor from a debt repayment solution is proportionate to the amount of repayment that the solution delivers? For instance, would a SDRP that yields 50% repayment be half as beneficial to a debtor as one that yields full repayment?

Question 53: How beneficial to your clients do you expect the protections of the SDRP to be?

Question 54: How much would you expect it to cost to familiarise yourself with the scheme, and to train debt advice providers within your agency?

Question 55: If you expect to develop and implement new systems to administer SDRPs, can you estimate what the upfront and ongoing costs of this might be?

Question 56: Would you expect the ongoing administration costs of SDRPs to be higher than that of DMPs? How much would you expect it to cost to set up and maintain a SDRP?

Question 57: Would you expect to act as a payment distributor for SDRPs you administer? If so, what additional systems or administrative costs do you anticipate as a result?

Question 58: Would you expect the SDRP to have any further impacts, positive or negative, on those with protected characteristics that have not been identified by the impact assessment?

Question 59: Do you agree with the assumption that the impacts of Covid-19 on consumer debt levels and on debt advice demand will have receded by the time the SDRP launches? If not, which impacts do you expect to remain and to what degree?

For creditors:

Question 60: How much do you currently contribute to pay for the administration of DMPs that you are involved in?

Question 61: How much would you expect it to cost to familiarise yourself with the scheme, and to further disseminate that understanding as necessary?

Question 62: If you expect to develop and implement new systems to administer SDRPs, can you estimate what this might cost?

Question 63: What level of income do you currently receive from those in DMPs as a result of interest, charges or fees being applied to the debts that they are repaying?

For all:

Question 64: Do you have any further comments on the consultation stage impact assessment or what is included within it?

Chapter 10
Summary of questions

Chapter 1

Question 1: How long do you think the implementation period should be?

Question 2: Do you have any other comments on the issues raised in this introduction?

Chapter 2

Question 3: Do you agree with the approach to debtor eligibility?

Question 4: Do you agree to the approach to qualifying debt?

Question 5: Should debt already due to be repaid under a pre-existing payment arrangement or payment plan be treated as non-eligible debt?

Question 6: Should it be possible for debtors to exclude very small debts from a plan?

Question 7: If you think it should be possible to exclude very small debts, what amount of debt would you consider to be very small? Should excluding these debts be required, or optional? How should these debts be dealt with if they are excluded from a plan?

Question 8: Are there scenarios in which a debtor may occur incur additional debt during a plan without intending to (e.g. due to an administrative error by a creditor)? What might these scenarios be and how should debt incurred in these scenarios be treated?

Question 9: Do you have any further comments on or concerns about debtor eligibility for the SDRP?

Chapter 3

Question 10: Do you agree with the proposed protections of the plan?

Question 11: Do you agree with the proposed flexibilities provided for in payment breaks and plan variations?

Question 12: When a plan is varied, should there be a minimum value (above zero) to which payments can fall?

Question 13: Given the government's proposal to use a private register, do you agree that debtors should be required to disclose the fact they are in a plan to potential creditors? Or should creditors' own due diligence and processes regarding credit affordability and risk be relied on?

Question 14: Based on the draft regulations, how should SDRPs be reflected on a debtor's credit file?

Question 15: Do you have any further comments on or concerns about the protections and flexibilities provided by the SDRP?

Chapter 4

Question 16: Do you agree with the approach to personal details, including the proposal not to require all previous addresses but only addresses likely to be linked to a plan debt?

Question 17 – *For debt advice providers*: What details do you consider necessary to be provided by creditors if they identify an additional debt to ensure that it can be appropriately identified and included in a plan?

Question 18: Is the proposed mechanism for allocating payments to creditors on a pro-rata basis by debt value suitable? Do you foresee any problems with how this will work?

Question 19: Is 30% a suitable proportion to allocate to priority debts? Should this be higher/lower?

Question 20: Do you consider that debtors should be given greater flexibility in deciding the size of the payments they make into their plans? If so, how should this flexibility be provided?

Question 21: Do you consider that debtors should be able to make additional payments into their plans outside of the regular payment frequency?

Question 22: Do you consider that the information proposed to be provided to creditors is suitable and sufficient? If not, why?

Question 23: Are the grounds for objection that have been proposed suitable and sufficient?

Question 24: Do you have any further comments on or concerns about the processes set out in this chapter for developing and initiating a plan?

Chapter 5

Question 25: Do you consider that the proposed mechanism for implementing payment breaks is appropriate?

Question 26: Is the creditor review mechanism a sufficient route for creditors to challenge plans they deem to be unfair, unsuitable or inaccurate?

Question 27: Do you consider that the additional creditor and debtor review processes are appropriate and sufficient? If not, in what ways do you think they could be amended?

Question 28: Do you agree with the proposal to have a private register?

Question 29: Do you have any further comments on or concerns about the processes that have been proposed to operate during a plan?

Chapter 6

Question 30: Do you agree with the proposed grounds for both mandatory and discretionary revocations? Are there any grounds for revocation that you consider have not been captured?

Question 31: Do you agree with the proposed approach to discretionary revocations in scenarios where conditions cannot be applied?

Question 32: Do you consider that the proposed methods for limiting abuse of the revocation process are sufficient and appropriate?

Question 33: Do you consider that the proposed limitations to reapplication for plans are suitable?

Question 34: Do you have any further comments on or concerns about the ways that plans are ended?

Chapter 7

Question 35: Do you agree with the proposed approach to funding?

Question 36: Do you have any views on how the electronic system, register, or fair and reasonable assessments should work?

Question 37: Do you agree with the proposed approach to payment distribution, and the oversight of payment distribution?

Question 38: How and when do you think payment details of creditors should be provided to or obtained by payment distributors?

Question 39: Do you have any further comments on or concerns about the funding and administration of the SDRP?

Chapter 8

Question 40: Are you supportive of the proposed changes to the 2020 regulations?

Question 41: Are there any other changes to the 2020 regulations that would result in (a) greater eligibility and/or applications for the scheme (b) better debtor outcomes?

Question 42: Are there any other changes to the 2020 regulations that you believe, and can evidence, would significantly lower the administrative resource required to

make or deal with applications for breathing space, for debt advice providers and/or creditors?

Question 43: Do you have any further comments on or concerns about the breathing space regulations and the amendments being proposed?

Chapter 9

For debt advice agencies:

Question 44: For those eligible for both a SDRP and a DMP, would you expect to still recommend a DMP in any circumstances? If yes, what proportion of those eligible for both solutions would you expect to still recommend a DMP?

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Statutory Debt Repayment Plan: Consultation - Processing of Personal Data

This notice sets out how HM Treasury will use your personal data for the purposes of the 'Statutory Debt Repayment Plan: Consultation' and explains your rights under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA).

1. Your data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

2. The data we collect (Data Categories)

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

3. Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation, the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

4. Special categories data

Although not being requested, it is possible that special category data may be processed if such data is volunteered by the respondent.

5. Legal basis for processing special category data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

6. Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about the Government's draft Statutory Debt Repayment Plan regulations, consultation stage impact assessment, and policy proposals.

7. Who we share your responses with

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained

in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: https://www.gov.uk/government/organisations

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

8. How long we will hold your data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

9. Your Rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another. [Some data subject rights will be restricted in certain circumstances, please contact DPU for further guidance].

How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
1 Horse Guards Road
London
SW1A 2HQ

dsar@hmtreasury.gov.uk

10. COMPLAINTS

If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

0303 123 1113

casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk