



BRIEFING PAPER

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Breathing space for individuals in problem debt

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Summary

In recent years, debt charities have called on the government to give all those in problem debt a “breathing space” when seeking regulated debt advice. They have argued variously that where people in financial difficulty “do the right thing” and engage with their creditors, make affordable offers of payment and maintain regular payments, they should be protected from debt enforcement.

The implementation of a statutory breathing space and debt repayment plan was a 2017 manifesto commitment. The aim being to give people in problem debt the opportunity to take control of their finances and put them on a sustainable footing. The Treasury’s “[Breathing space: call for evidence](#)” ran from 14 October 2017 to 16 January 2018.

On 29 October 2018, alongside the Autumn Budget, the Treasury published a [consultation](#) on its policy proposal. In its [response](#), published on 19 June 2019, the Treasury confirmed that it would be taking forward its proposal and outlined how “the scheme” would be designed, funded and administered.

Individuals in serious debt would be given a breathing space of **60 days** [provided](#) they agree to seek help from a professional debt adviser. During this breathing space, interest, default fees and charges would not accrue. Creditors would also be prevented from taking any enforcement, collection or recovery action and any ongoing enforcement action would be paused. The breathing space would apply to a wide range of debts including, council tax and benefit repayments. Importantly, people seeking help for a mental illness would benefit from an alternative access mechanism to breathing space and a longer period of protection for the duration of their treatment.

A statutory debt repayment plan (DRP) would enable someone in problem debt to enter a statutory agreement with their creditors to repay their debts in full over a reasonable timeframe (in exceptional cases, a DRP could last for more than 7 years for vulnerable debtors on low incomes but cannot extend beyond 10 years). Individuals entering a DRP would receive legal protections from creditor enforcement action for the duration of their plan and relief from interest and charges.

The two interventions should be viewed separately. A debtor would be able to enter a breathing space without then entering a DRP. A debtor would also be able to enter a DRP without having first entered a breathing space.

In its [response](#) the Treasury said that that before the end of 2019 the government would lay before Parliament new regulations with the intention of implementing a statutory breathing space in early 2021. A statutory DRP would be developed to a longer timetable.

Implementation of both a statutory breathing space and DRP would complement the government’s wider work to support consumers who take on debt.

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This briefing paper considers the scheme in detail. It should be noted that the proposed new debt measures would extend only to England and Wales. The current Scottish [Debt Arrangement Scheme](#) already provides debtors with a short breathing space and statutory repayment plan.

1. Is there a need for a breathing space?

1.1 Current position

In the UK (but excluding Scotland), agreements to freeze interest and charges and to suspend debt recovery and enforcement action are made **voluntarily** between creditors and debtors. One option is to agree a Debt Management Plan (DMP).

A DMP is an agreement between the debtor and his/her creditors to pay all outstanding debts. DMPs are usually used when either:

- the debtor can only afford to pay creditors a small amount each month; or
- the debtor has debt problems but will be able to make repayments in a few months

However, even where a formal DMP is in place, there is no guarantee that creditors will accept the offers made or freeze interest and charges. In fact, there is no protection against any creditor who forms part of the plan from undermining its effectiveness by taking further action, usually by issuing a court claim.

Currently, protection from debt enforcement is only available if people enter into a formal debt or insolvency procedure, such as:

- an Individual Voluntary Arrangement (IVA)¹,
- administration order²,
- debt relief order³ or
- bankruptcy⁴

In the UK (excluding Scotland), arrangements to freeze interest and charges and to suspend debt recovery and enforcement action, are made voluntarily between debtors and their creditors.

¹ An **IVA** is a legally binding agreement entered into by a debtor to repay his/her creditors at an amount they can afford. This can be a one-off payment (known as a lump sum IVA) or over a longer period to spread payments (usually 5 or 6 years). During an IVA, creditors cannot contact the debtor or increase the debt. When the final payment is made, any remaining debt is written off. Further information is available in a separate Library briefing paper on "[Individual Voluntary Arrangements \(IVAs\)](#)", CBP 5165, 6 April 2016, [online]. In Scotland, IVAs are not available but a **protected trust deed** offers a similar solution but with different benefits, risks and fees.

² An **administration order** is a repayment plan arranged by the county court; they are only available in England, Wales and Northern Ireland. To apply for an administration order the debtor must have less than £5,000 in total and have received at least one court judgment. Once approved, an administration order binds all creditors included in the order; they cannot contact the debtor or add any more interest or charges. It is important to note that debt relief orders are often used in preference to administration orders.

³ A **debt relief order** (DRO) allows debts to be written off in circumstances where the debtor has a relatively low level of debt and few assets. Detailed information is available in a separate Library briefing paper on "[Debt Relief Orders](#)", (CBP 4982), 4 January 2016, [online]. In Scotland, DROs are not available, but a [Minimal Assets Process](#) (MAP) bankruptcy offers a similar solution, but with different benefits, risks and fees.

⁴ **Bankruptcy** (or personal insolvency) is a formal insolvency procedure. It can help a person 'write-off' debts that would otherwise take years to clear (if ever) but it has serious implications for their future credit rating. Further information is available in a separate Library briefing paper on "[Bankruptcy](#)", (CBP 7097) 4 April 2016, [online].

1.2 Scotland's DAS scheme

In Scotland, the existing Debt Arrangement Scheme" (DAS) provides a six-week "breathing space" for debtors seeking debt advice, and a statutory repayment plan. **Box 1** below provides a brief outline of the current DAS. **There is currently no equivalent scheme elsewhere in the UK.**

Box 1: The Scottish Debt Arrangement Scheme (DAS)

- The DAS is a Scottish government-backed debt management scheme which allows people to repay debt through a Debt Payment Programme (DPP). It is available to individuals, sole traders, partnerships, trusts, unincorporated businesses, certain categories of charities and certain corporate bodies.
- The scheme is administered by the Accountant in Bankruptcy (AiB).⁵
- Under DAS, a debtor commits to a programme of repaying their debts based on their disposable income.
- Debtors must seek advice and assistance from an "approved" money adviser before applying for a DPP under DAS.⁶
- The approved money adviser must make the application for the client. If the application is successful and payments are maintained, all interest and charges will be stopped from the date of the application and written off once the programme is completed. Creditors will not be able to use diligence (enforcement action) to enforce payment of the debts.
- Importantly, when the approved money adviser or DAS Administrator applies to creditors for approval of a DPP under a DAS, all interest, fees, penalties or other charges owed are frozen, provided the application is approved. Debtors are also protected from creditors taking any action against them to recover their debt. This is the "breathing space" period, which lasts for 6 weeks whilst the full application is prepared.
- A DPP under DAS allows a debtor to repay their debt over an extended period of time. It can be for any amount of money or for any reasonable length of time. A proposal is sent to all of the debtor's creditors for consideration and they are given 21 days to respond with their acceptance or rejection to the terms of the DPP. A charge is made to creditors for the provision of the payment's distribution service and application fee.
- Once the DPP has been approved, the debtor must comply with conditions which are specified in legislation.
- The DPP can last for any reasonable length of time depending on the amount of debt and how much the debtor can pay. Creditors will receive regular payments towards the debts owed to them under the terms agreed.
- In effect, a DPP approved under the [DAS](#) allows individuals, couples or sole traders to repay their debts in full over an extended period. This provides protection from enforcement by their creditors and the safeguarding of their home provided mortgage payments are maintained.

Scotland has a different personal insolvency procedure known as sequestration. This is similar to bankruptcy but has different benefits, risks and fees associated with it.

⁵ The Accountant in Bankruptcy is the Scottish government agency responsible for administering the process of personal bankruptcy and corporate insolvency, and implementing, monitoring and reviewing government policy in these and related areas, for example, Protected Trust Deeds and diligence.

⁶ Since the [Bankruptcy and Debt Advice \(Scotland\) Act 2014](#) came into force in April 2015, all statutory solutions must be accessed via an approved money adviser using the common financial tool (the CFT).

1.3 Call to emulate the Scottish model

As part of the government's [Life Chances Agenda](#), debt advice charities (including [Stepchange](#), [Money Advice Trust](#), [Citizens Advice](#) and [AdviceUK](#)) have called on the Treasury to look at whether a modified version of the Scottish [DAS](#) could work in the rest of the UK. The gist of their argument is as follows:

Ideally, entry into the breathing space forbearance scheme would be granted by registration via a free debt advice provider. Breathing space then becomes part of the advice process so that all options are holistically explored, and people move into an appropriate debt option as soon as practicable.⁷

Charities recognise that a statutory “breathing space” will not solve the debt problems of those on deficit budgets, nor would it help debtors with no prospect of any available income long-term but who have equity – the “asset rich but cash poor.”⁸ However, they see it as a step forward, bridging some of the gaps in existing debt options.

It should be noted that in October 2016, Kelly Tolhurst MP introduced a Private Member's Bill, [Families with Children in Debt \(Respite\) Bill](#). The Bill, which sought to place a duty on lenders to provide financial respite for families in debt, was supported by various charities. However, it did not progress beyond first reading.

⁷ Money Advice Trust, [“Time for statutory breathing space”](#), 8 September 2016, [online] (accessed 18 July 2019)

⁸ [“Time for Statutory breathing space?”](#), by Meg Rooyen for the Money Advice Trust, 8 September 2016, [online] (accessed 18 July 2019)

2. Consultation

Following an independent review of the [Money Advice Service](#) (MAS) in 2014, the government agreed to consider whether some form of statutory “breathing space” and debt repayment plan would be useful and viable additions to the range of formal and informal debt solutions available to consumers and creditors. Further information is set out below.

2.1 Review of the MAS

The [MAS](#) was set up by the government in 2010 as a consumer financial education body. Its statutory role was extended in 2012 to include working with partners to improve the availability, quality and consistency of debt advice.⁹

In May 2014, the government launched an independent review of the MAS led by Christine Farnish.¹⁰ Its remit was to:

- assess the need for consumer education and advice, including how this may evolve (for example, individuals now have greater freedom over their retirement options), and the role that MAS should play in the wider consumer education and advice landscape;
- assess how effectively and efficiently MAS is meeting this need through its current approach and delivery models; and
- recommend any changes to MAS’s approach and delivery models that would enable it to better meet this need

A report, [Review of the Money Advice Service](#), was published in March 2015.¹¹ Annex A (page 67) sets out its recommendations, one of which was that:

“...the government reviews the legal framework for debt administration, ‘in order to provide consumers who agree to specified debt repayment schemes with a “breathing space” by freezing interest and charges, and to ensure a fair and appropriate basis for debt repayments to different classes of creditor.’”

Responding to this review,¹² the government said that the Treasury and the Insolvency Service would undertake an in-depth review of the legal framework for debt administration by the end of 2015. However, this deadline was not met. An extract from the government’s published response is reproduced below:

2.9 The government shares the view that it is essential to ensure the right options and incentives are available to consumers to help

From 1 January 2019, the new [Money and Pensions Service](#) (MPS) created one organisation from three existing providers of money guidance, including the MAS. 2019 is a transition year for the new MPS.

⁹ The MAS currently receives £38 million of levy funding, approved and collected by the FCA from regulated firms. See page 6 of HM Treasury, “[Review of the Money Advice Service](#)”, March 2015, [online] (accessed 18 July 2019)

¹⁰ HM Treasury, “[Money Advice Service: Independent Review](#)”, 20 March 2015, [online] (accessed 18 July 2019)

¹¹ HM Treasury, “[Review of the Money Advice Service](#)”, March 2015, [online] (accessed 18 July 2019)

¹² HM Treasury, “[The government’s response to the independent review of the Money Advice Service](#)”, March 2015, [online] (accessed 18 July 2019)

them deal with their debts and is happy to accept this recommendation.

2.10 It will be important to consider in detail the impacts of additional statutory consumer protections, including balancing the rights of creditors and ensuring that any changes fit well with the formal and informal debt solutions currently available to consumers. As such, HM Treasury and the Insolvency Service will undertake an in-depth review, in close consultation with the FCA, MAS and other stakeholders, which will complete by the end of the year. The government will shortly publish details on the objectives of the review along with the Terms of Reference.¹³

Subsequently, both Conservative and Labour made manifesto commitments in 2017 to introduce a statutory breathing space to help those in serious debt.

Manifesto pledge

Following the General Election, the Conservative government confirmed that it would introduce a six-week breathing space scheme and, where appropriate, debtors would be offered a statutory debt repayment plan. Together, the government refers to the two elements as **“the scheme”**.

2.2 Treasury consultation

On 29 October 2018, as a first step in implementing the government’s manifesto commitment and following the Budget Speech, the Treasury published a consultation document, [“Breathing space scheme: consultation on a policy proposal”](#). The consultation followed the Treasury’s [“Breathing space: call for evidence”](#) which ran from 14 October 2017 to 16 January 2018.

The aim of the consultation, which ran until 29 January 2019, was to consult both the debt advice sector and creditors on how best to design, implement, administer and monitor “the scheme”. The government sought views on key issues, including:

- How should serious problem debt be defined?
- When should the scheme be triggered?
- Should all debts be eligible, and should debts owed by the self-employed and microbusinesses be included?
- What safeguards are needed to prevent the scheme from being abused?
- How might statutory debt repayment plans work as a debt solution?

2.3 Policy rationale

The government’s policy rationale for the scheme is outlined in **Box 2** below.

¹³ Ibid

Box 2: The government's policy rationale for "the scheme"

The implementation of **breathing space** will help individuals in two main ways.

- **First, the protections offered by breathing space will encourage people to access debt advice.** Research commissioned by the Money Advice Service shows that once an individual seeks debt advice, they are less likely to sink into a cycle of debt, and their creditors receive higher repayments and spend less on recovery costs. However, not enough people who could benefit from debt advice currently access support, and many of those that do access debt advice would benefit from accessing it earlier on.
- Second, by protecting debtors from creditor action, a breathing space will allow debtors the time and space to fully engage with professional debt advisers to identify a positive and sustainable solution to their problem debt.

A **statutory debt repayment plan** will offer debtors who are not suited to existing statutory debt solutions, an alternative way of repaying their debts. By enabling debtors to repay their debt in full over a sustainable period, the plan offers a way to improve debtors' finances and improve returns to creditors.

According to the government, the implementation of both a breathing space and a debt repayment plan will complement its wider work to support consumers who take on debt. This includes acting to prevent problem debt from occurring and helping people to get out of problem debt should they experience it.¹⁴ The introduction of a statutory debt repayment plan would also be beneficial to creditors, through providing a predictable stream of repayments and reducing the need for debt collection activity.

2.4 Treasury response

In its response, "[Breathing space scheme: response to policy proposal](#)", published on 19 June 2019, the Treasury confirmed it would be taking forward its proposal. **The government said that it would lay regulations on a breathing space before the end of the year. It intends to implement the regulations in early 2021. The debt repayment plan would be developed to a longer timescale.**

Current position

The following three points should also be noted:

- First, implementation of the scheme (that is, the breathing space and the DRP) is intended to complement the government's wider work to support consumers who take on debt.
- Secondly, the proposed statutory breathing space and the debt repayment plan are to be administered by the Insolvency Service.
- Thirdly, the scheme will operate in England and Wales when it is introduced. Given the potential benefits to debtors, and the existing Debt Arrangement Scheme (DAS) in Scotland, the government has said that it will continue to work with the Department for Communities and Department for the Economy to consider the introduction of an equivalent scheme in Northern Ireland.¹⁵

Territorial extent

¹⁴ HM Treasury, "[Breathing space scheme: response to policy proposal](#)" June 2019 [online] (accessed 18 July 2019)

¹⁵ HM Treasury, "[Breathing space scheme: response to policy proposal](#)" June 2019 [online] (accessed 18 July 2019)

3. The scheme: what is being proposed?

The scheme consists of two elements:

- (i) a breathing space; and
- (ii) a statutory debt repayment plan (DRP).

Both elements of the proposed scheme aim to give people in problem debt the opportunity to take control of their finances.

3.1 Key features: statutory breathing space

To enter a breathing space, the individual would have to satisfy the following criteria:

- an individual would have to obtain [Financial Conduct Authority](#) (FCA) regulated debt advice, or advice from another organisation that qualifies for an exemption from FCA authorisation, such as a local authority.
- a debt adviser would have to judge that an individual is in significant financial difficulty and could benefit from entering a debt solution.
- an individual would not be able to enter a breathing space if they had made a successful application to enter breathing space in the previous 12 months.

Access to statutory breathing space

A statutory “breathing space” would give someone in problem debt the right to legal protection from creditor action for a period of **60 days**, during which time they would be able to receive debt advice to enter an appropriate debt solution.

During this moratorium, any interest payments, default fees and charges are prevented from accruing. Creditors would not be able to retrospectively charge such interest, fees and charges once a debtor left the breathing space.

Creditors would also be prevented from taking any enforcement, collection or recovery action and any ongoing enforcement action would be paused. This would include: a pause on creditor contact in relation to debt recovery; pausing the process of the debt pre-action protocol; preventing creditors from starting a new court action; and pausing almost all post-court enforcement action against a debtor.

Statutory breathing space protections would cover:

- almost all personal debts (including those owed to central and local government);
- mortgage and rent arrears; and
- business debts incurred by small sole traders who do not meet the VAT registration threshold.

However, some debts would be excluded, including fines imposed by a court, child maintenance payments and student loans. The Insolvency

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Service would provide administrative support for the statutory breathing space to avoid over-burdensome administrative processes for both debt advisers and creditors.

Individuals receiving NHS treatment for a mental health crisis, would benefit from an **alternative access mechanism** to a breathing space. This fulfils a commitment made by the Economic Secretary to the Treasury during the passage of the [Financial Guidance and Claims Act 2018](#). **Box 3** (below) outlines how this alternative access mechanism would work in practice.

Box 3: In outline: alternative access mechanism to breathing space for individuals receiving NHS treatment for a mental health crisis

- Approved Mental Health Professionals (AMHPs) to produce an assessment that an individual is receiving mental health crisis care. This evidence to be used by debt advisers to determine someone's eligibility for breathing space.
- Existing processes and referral structures available to AMHPs to be used to communicate the assessment to a debt adviser. (AMHPs would also be able to liaise with a third party nominated by the patient to share this information).
- If an individual has mental capacity, then their explicit consent to the sharing of their confidential health data should be sought. If they lack capacity, then existing routes for sharing data via substituted consent (e.g. from a power of attorney) or on the basis of a "best interests" test under the [Mental Capacity Act 2005](#) should be used.
- An individual who enters breathing space through this route to have all the protections of the main scheme.
- The government to limit the reasons for ending a breathing space when accessed through this mechanism. (For example, a breathing space could not end because someone receiving mental health crisis treatment has not engaged with debt advice).
- The protections for this group to continue for however long the individual's crisis care lasts (i.e. the breathing space will not be fixed at 60 days).
- At the end of their crisis care, the AMHP to notify the original debt advice agency, who is then responsible for updating the portal.
- After care ends, the mental health breathing space will continue for a set period of **30 days** (by way of an adjustment period). The individual to use this additional time to consider their finances and whether they want to engage with debt advice and work towards a debt solution. If this is the case, then they can apply to the main scheme.

This means that these individuals could have breathing space which lasts for a maximum of the length of their crisis care, plus 30 days, then plus 60 days for the main scheme.

3.2 Key features: statutory debt repayment plan (DRP)

The proposed DRP would offer individuals who are not suited to existing statutory debt solutions an alternative way of repaying debts, in full, over a manageable timeframe. For a DRP to be effective, the government believes that it should:

- provide wide-ranging protections for debtors, including those that do not currently choose to enter formal Debt Management Plans;
- be easy to offer and administer for debt advisers; and
- improve return for creditors.

To enter a DRP an individual would have to meet 3 criteria:

- they must access debt advice;
- they must be assessed as being able to repay their debts in full over a reasonable timeframe (in exceptional cases, a DRP could last for more than 7 years for vulnerable debtors on low incomes, but cannot extend beyond 10 years);
- their creditors must have agreed to the terms of the plan or the Insolvency Service must rule that the plan proposed by their debt adviser **is fair and reasonable** in which case it will be imposed on creditors.

Creditors have **14 days** from receiving the proposal to object to the DRP on the following basis:

- inaccuracies in an individual's standard financial statement;
- the proposed level of payments to creditors; or
- the period over which the plan will operate

The possible outcomes are as follows:

- If less than 25% by value of the creditors object to the plan then the plan will simply commence.
- If more than 25% by value of the creditors object to the plan then the plan will be subject to a "fair and reasonable" assessment by the Insolvency Service. In assessing whether the proposed plan is "fair and reasonable" to both creditors and the debtor, the Insolvency Service will consider all relevant factors including: creditors' reasons for objection to the proposed plan; views of the debt advice agency; and the proportion of creditors objecting to the plan.
- If an individual's proposed plan is deemed to be "fair and reasonable" by the Insolvency Service it would commence immediately.
- However, if a plan is judged not to be fair and reasonable, the proposal will be rejected, and the plan referred back to their debt advice agency. The debt advice agency will still then be able to propose a revised plan, should they believe this was the best solution for the debtor.

Access to a statutory debt repayment plan

An objection mechanism will be used for the plan.

Fair and reasonable test

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The government questioned whether it would be appropriate to include a further objection mechanism once a “fair and reasonable” test had been completed. It said it would consult with expert stakeholders on the issue in the coming months and provide further details in due course.¹⁶

Individuals who have entered a DRP will be protected from enforcement action on a wide range of personal debts, including financial services debt, household bills, and arrears owed to central and local government. However, **housing debt** (i.e. rent payments and mortgage arrears) **are excludable from the plan based on an assessment by the debt adviser**. (The obvious risk being that a landlord may decide not to renew a tenancy agreement if he must wait a long time to be paid under a DRP. Similarly, if mortgage arrears are not paid and the debtor subsequently leaves the plan, their home could be at risk of repossession). Business debts would be treated in the same way as under a statutory breathing space (see above).

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

It is important to note that the two interventions (a statutory breathing space and DRP) should be viewed separately. A debtor would be able to enter a breathing space without then entering a DRP (although they must seek debt advice). A debtor would also be able to enter a DRP without having first entered a breathing space.

Debts included in the debt repayment plan

Protections

¹⁶ Ibid

4. Views of interested parties

The government received over 130 responses to its consultation from a wide range of stakeholders, including creditors, debt advice agencies, and local authorities. A summary of responses can be viewed [online](#).¹⁷ From the government's own response to the issues raised, it is possible to glean further detailed information about the operation of "the scheme".

4.1 Proposed statutory breathing space

Eligibility

Almost all respondents agreed that an individual should be assessed as being in problem debt to qualify for a breathing space. Creditor organisations suggested that the government should define what "problem debt" is in the context of a statutory breathing space, to ensure consistency in the characteristics of those who enter the scheme.

There were divergent views over the requirement to have a 12-month window before an individual could re-enter a breathing space. Many debt advice agencies and consumer organisations suggested that the 12-month limit should not apply at all, "as some individuals may experience life shocks and require the protections more than once in 12 months".¹⁸ However, other respondents – mainly local authorities – suggested that the 12-month limit should be extended, as they were concerned that allowing individuals to repeatedly enter a breathing space during a short period could lead to abuse of the protections.

Some respondents suggested that a breathing space for individuals who hold debt jointly would be helpful. This would also ensure consistency with the equivalent Scottish DAS.

In its response, the government said that problem debt means: "that a debtor is having difficulty paying their debts and is in sufficient financial difficulty to have a realistic chance of entering a debt solution such as insolvency or a debt management plan".¹⁹

In respect of the other eligibility issues raised, the government explained that the scheme would operate as follows:

To enter breathing space, an individual will first have to access FCA-regulated debt advice, or advice from another organisation that qualifies for an exemption from FCA authorisation, such as a local authority. This could be done through different debt advice channels – online, telephone or face-to-face.

All [approved] debt advice agencies ... will be able to offer breathing space. However, no debt advice agency will be able to charge the individual for related advice or entrance to breathing space.

Definition of problem debt

Procedure for accessing statutory breathing space

Debt advice agencies to offer a breathing space.

¹⁷ HM Treasury, "[Breathing space scheme: response to policy proposal](#)", June 2019, [online] (accessed 18 July 2019)

¹⁸ Ibid

¹⁹ Ibid

Second, a debt advice agency will have to assess that an individual has a realistic chance of entering a formal debt solution, such as bankruptcy or an Individual Voluntary Arrangement, or a voluntary debt management plan and needs time in order to be able to do so.

[...] when completing this assessment, the debt advice agency will not have to complete a full Standard Financial Statement in order to enter a person into breathing space. Instead, the debt advice agency should retrieve enough information to confirm that a debtor has a realistic chance to enter a debt solution, as well as to identify the debtor's creditors.

A debt advice agency will not be able to enter someone into breathing space if they do not have a realistic chance of entering a debt solution during breathing space. Examples of such debtors include those who:

- would be advised to pursue options other than a debt solution – such as being given budgeting advice
- clearly need to enter a formal insolvency solution, such as bankruptcy, and are in a position to do so immediately, including being able to pay the relevant fees
- are already in insolvency solutions

The government agrees it is important that vulnerable groups can enter the protections at appropriate times but wants to safeguard against abuse of the scheme. To provide this balance, the government will retain the 12-month limit between an individual being able to access breathing space.

The government is minded to allow couples with joint debts to enter breathing space together if, following an assessment of their joint finances, the debt advice agency felt they would both be eligible for breathing space. This follows practice in the equivalent Scottish Debt Arrangement Scheme. The government said it would work with expert stakeholders over the coming months to refine how this might work in practice.²⁰

Objection mechanism for creditors

There was a wide variety of responses to the question of whether there should be a mechanism for creditors to object to a debtor entering a breathing space.

Respondents from debt advice agencies and consumer organisations felt there should be no objection mechanism for creditors, on the basis that this could reduce the attractiveness of a breathing space and it was unnecessary given the short period involved. However, some creditor organisations felt that the inclusion of an efficient objection mechanism could reduce the risk of abuse of the statutory protections.

The government gave its position as follows:

Having considered the possible benefits of such a mechanism, alongside the views of consultation respondents, the government is not minded to include a formal objection mechanism for breathing space. This is because the inclusion of such a

No one can enter a breathing space if they do not have a realistic chance of entering a debt solution.

A 12-month window before an individual can re-enter a breathing space.

Government to work with stakeholders to refine how individuals who hold debt jointly be included in a breathing space.

mechanism may not be workable during the short period of breathing space.²¹

Notification of portal

In its response, the government confirmed that the Insolvency Service would operate the portal that would notify creditors of an individual's entrance to or exit from a statutory breathing space. It agreed with respondents that a central portal would help to reduce the administrative burden on debt advice agencies and creditors.²²

Insolvency Service to operate a central notification portal

Register of individuals protected by the scheme

In the consultation, the government asked whether there should be a public register of individuals in the protection of the scheme. (This would replicate the current practice in the Scottish DAS and insolvency debt solutions).²³

Many respondents felt that a public register would be inappropriate. They were concerned that debtors could be put off from entering the scheme because of the public nature of the register. Some respondents suggested that there should be a semi-private register of all individuals in the scheme, which only creditors and debt advice agencies would be able to access. However, the government had its own concerns about a semi-private register:

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

Private register of individuals in the scheme

The government has decided in favour of a private register. In addition to proactive notification when an individual enters breathing space, individual creditors will have access to a register of those individuals who owe them debts who are in breathing space and have been included in the portal.²⁴ However, creditors will not be able to access details of other debtors in breathing space through this register.²⁵

²¹ Ibid

²² Ibid

²³ For example, the [Bankruptcy and Insolvency Register](#)

²⁴ HM Treasury, "[Breathing space scheme: response to policy proposal](#)" June 2019 [online] (accessed 18 July 2019)

²⁵ Ibid

Which debts are to be included?

Many respondents agreed with the policy proposal that to be effective the widest possible range of personal debts should be included in a breathing space. Some creditor organisations also thought it important that no creditor received preference through having their debts excluded from a breathing space.

However, some respondents, mainly from local authorities, suggested that some debts, including those owed to central and local government, should not be included in the breathing space. They suggested that “current forbearance” practices were sufficient to protect individuals in problem debt without the introduction of a breathing space.

In its response, the government confirmed that similar personal debts to those included in personal insolvency solutions (such as bankruptcy) would be included in a breathing space. Specifically, the breathing space protections would cover:

- financial services debt,
- household bill arrears, and, importantly,
- arrears owed to central and local government (including council tax arrears).

It would include personal debts owed to HMRC and all debts owed to DWP (either through benefit overpayments or from benefit advances – covering both legacy benefits and Universal Credit).

As with bankruptcy, a very small number of debts would be excluded from the breathing space, including:

- debts incurred because of fraudulent behaviour,
- fines imposed by a court, including criminal fines,
- confiscation orders,
- child maintenance payments and debts that arise after an order made in family proceedings,
- social fund loans, and
- student loans.

Treatment of business debts

According to the government, most respondents felt that including the debts of sole traders with a turnover below the VAT threshold would provide appropriate protections for these individuals, given that their personal and business finances are often interlinked. However, some creditors felt that the provisions for sole traders would be inappropriate because it could mean that unviable businesses continued to trade during the breathing space.

The government’s policy response was as follows:

A wide range of debts to be included in a breathing space, including arrears owed to central and local government.

Having considered the views of consultation respondents, given that breathing space will not be as effective for small sole traders if their business debts are not included, the scheme's protections will cover the business debts of sole traders who have a turnover under the VAT threshold (currently set at £85,000). The government disagrees that this could prop up unviable businesses in the long term – the protections last for sixty days and sole traders will be expected to pay their ongoing liabilities.

As with personal debts, a wide range of business debts for this group will be eligible for breathing space, including business credit, business utility bills, and supply chain debts. Importantly, breathing space will also include all national and local taxes that can be owed by sole traders – including employer and employee NICs, PAYE and business rates, and VAT.

The government expects that it will be for a debt advice agency to verify that a sole trader's turnover is below the VAT threshold – for example, by looking through evidence of the individual's "self-assessment" tax return, or their small trader accounts.²⁶

It was recognised by the government that there might be circumstances where in addition to having personal debts, a sole trader has personal liability for business debts which are not eligible for inclusion in the breathing space because the business has an income that is higher than the VAT threshold. In these circumstances, a differentiation needs to be made between an individual's personal and business debts.

Breathing space protections

Debt advice agencies and non-financial services creditors supported the freezing of interest. However, some financial services creditors felt the freezing of interest was too strong a protection and would add to the administrative burden of the scheme.

Having considered the responses, the government stated its position is as follows:

The government recognises the views of both sets of consultation respondents. However, given that debtors who enter breathing space are likely to be in significant financial hardship, the government will provide that no contractual or default interest, or default fees and charges will be charged in respect of the debts included in breathing space.

In addition, as proposed in the consultation, creditors will not be able to retrospectively charge interest, or default fees and charges on these debts, should an individual leave breathing space without entering a debt solution.²⁷

Breathing space protections to cover business debts of sole traders who have a turnover under the VAT threshold.

No contractual or default interest, or default fees and charges will accrue in respect of the debts included in a breathing space.

4.2 Proposed statutory debt repayment plan (DRP)

The government is expected to outline the details of the DRP's implementation in due course.

²⁶ Ibid

²⁷ Ibid

In its consultation, the government outlined the three criteria than an individual would have to meet to be eligible for a DRP:

- they must access debt advice;
- they must be assessed as able to repay their debts in full over a reasonable timeframe (set out in the consultation as being an average of 7 years, and no longer than 10); and
- their creditors must have agreed to the terms of the plan, or the Insolvency Service must rule that the plan proposed by their debt adviser is “fair and reasonable” so creditors are obliged to comply with it

Whilst most respondents agreed with the first two requirements, some respondents suggested that FCA-regulated debt advice should be the “gateway” to the plan to help reduce instances of individuals mis-using the protections. Most respondents agreed that creditors should have to agree to the terms of a proposed DRP to ensure it was fair.

However, some debt advice agencies did not consider that the proposed timeframe was appropriate. They suggested that DRPs should be able to last for more than 10 years if a debt advice agency felt that that the plan would still be the most appropriate solution for the debtor. They highlighted that creditors would still receive full repayment of debt, no matter what time period creditors received these repayments over.

In contrast, several respondents, mainly from creditor organisations, suggested that a DRP which lasted for more than the maximum 10-year period set out in the consultation would be too long. Indeed, some creditor organisations suggested that an individual would be more suited to an insolvency solution (such as an Individual Voluntary Arrangement), if they were unable to pay their debts in a shorter timeframe than 7 years. These respondents thought it could be unfair to some creditors if they received repayments over a particularly extended period.

The government’s response was as follows:

[...] the government is keen that the eligibility criteria for the plan provide a balance between allowing suitable debtors to enter the protections of the plan and ensuring that creditors are repaid over a reasonable timeframe.

The government will allow debt advice agencies to propose plans with time lengths of more than seven years. This is given debt advice agency feedback that some vulnerable debtors, who may have low incomes, could benefit from a plan that lasts for a longer period than seven years.

However, the government recognises that if there were significant numbers of plans with a longer timeframe than seven years this could unfairly impact creditors. Because of this, the government expects debt advice agencies to only enter individuals into plans that are scheduled to run for more than seven years in exceptional circumstances. As proposed in the consultation, debt advice agencies will not be able to propose plans that extended for a longer period than ten years.²⁸

In exceptional circumstances, a DRP could last for more than 7 years for vulnerable debtors on low incomes.

However, a DRP cannot extend beyond 10 years.

5. Statistics on levels of debt

According to a [Review of the Money Advice Service](#), at least 3 million consumers in the UK are struggling with problem debt.²⁹ This can be caused by a range of factors including:

- rising household bills for essential services,
- more irregular and uncertain incomes, and
- external shocks such as illness, job loss or divorce

The report concludes that a lack of budgeting skills and poor money management is usually not the main driver. Looking further ahead, it states that interest rate rises may push a further cohort of people into problem debt.

The same report found that awareness of the availability of free debt advice amongst consumers is relatively low:

“[...] many people don’t understand the difference between free and commercial advice. In addition, many consumers wait 12 months or more before seeking help.”³⁰

According to the [Review](#), in 2012/13, £158,000 people were helped with MAS funds of £27 million.³¹ By 2015, some 220,000 people were helped with funds of £34 million.³²

More recently, an “[Independent Review of the Funding of Debt Advice](#)”, commissioned by MAS and written by Peter Wyman in 2018, concluded that not enough people who could benefit from debt advice seek support.³³ Specifically, it recommended that around 1.7 million people a year could benefit from engaging with debt advice. Around 1.1 million people a year currently receive debt advice.³⁴ Even when individuals seek debt advice, they often do so significantly later than when the advice would first be beneficial. According to estimates from [StepChange](#), most of the people who contact them about problem debt have waited a year before seeking advice.³⁵ Similarly, two-thirds of the people who contacted Christians Against Poverty had worried about their debts for over a year before seeking advice; a third had waited over three years.³⁶

²⁹ HM Treasury, “[Review of the Money Advice Service](#)”, March 2015, [online] (accessed 18 July 2019)

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ [Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland](#), Peter Wyman, January 2018, [online] (accessed 18 July 2019)

³⁴ Ibid

³⁵ “[StepChange response to Call for Evidence on breathing space: call for evidence](#)” January 2018 [online] (accessed 18 July 2019)

³⁶ Christians Against Poverty, [Client Report 2018](#), [online] (accessed 18 July 2019)

6. Other government initiatives

In its most recent consultation document on a Statutory breathing space, the government stated that it was fully committed to supporting vulnerable consumers and, because of this, it is taking a proactive approach to support people in debt. It gave its position as follows:

The government is acting to prevent problem debt from occurring and helping people to get out of problem debt effectively should they experience it. For instance, the government has reformed the regulation of consumer credit, through transferring regulation of activity to the Financial Conduct Authority (FCA). FCA rules mandate consumer credit firms to only lend money to people when the firm has a reasonable expectation that a consumer can repay the debt. FCA-regulated firms must also comply with a high-level principle to treat customers fairly. The FCA also regulates debt advisers.

As well as supporting people who take on credit, the government is putting in place support to help people take good financial decisions. To do this, the government is setting up the new Single Financial Guidance Body (SFGGB), which will provide free-to-user support on all aspects of people's financial lives. The SFGGB will also have a statutory duty to improve the public's financial capability.

Alongside this preventative action, the government has taken steps to support those who have fallen into problem debt, including through providing access to high-quality, free-to-user debt advice.

The government-commissioned Money Advice Service (MAS) spent just under £49 million in 2017-18 to provide debt advice to over 485,000 people. This year, MAS' debt advice budget has increased to over £56 million, enough to provide support to over 530,000 people.

The introduction of breathing space and the plan will complement this work, by encouraging people in problem debt to access debt advice, providing time for them to find a sustainable solution to their debts, and introducing a new solution with statutory backing, in addition to the options already available.³⁷

³⁷ HM Treasury, "[Breathing space scheme: response to policy proposal](#)," June 2019, [online] (accessed 18 July 2019)

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