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Debt Respite Scheme - a breathing space for those in debt



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Summary

The Government made a manifesto commitment in 2017 to introduce a new Debt Respite Scheme consisting of two elements - a breathing space moratorium and a statutory debt repayment plan.

The [Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020](#) (SI 2020/1311), commonly referred to as “the Breathing Space Regulations”, were made on 17 November 2020 and came into force on **4 May 2021**. The Regulations provide eligible individual debtors with problem debt a period of protection from their creditors known as a “breathing space moratorium”. The aim is to give people the time to access professional debt advice, without the stress caused by spiralling debt and impending enforcement action. However, payment of all “ongoing liabilities” must continue during this time.

There are two types of moratorium: a **standard breathing space** and a **mental health crisis breathing space**. A standard breathing space moratorium is available to eligible debtors seeking professional debt advice (which may be provided in person, on the phone or electronically). The moratorium gives them legal protections from creditor action for up to **60 days**. The protections include pausing most enforcement action and contact from creditors, and freezing most interest, fees, and penalties on their debts. A mental health crisis breathing space moratorium is only available to someone who is receiving mental health crisis treatment and it has some stronger protections. This breathing space lasts for as long as the person's mental health crisis treatment, plus **30 days** (no matter how long the crisis treatment lasts).

An individual can only access a standard breathing space moratorium after being assessed as eligible by a debt advice provider. The Breathing Space Regulations impose an obligation on creditors to comply with the restrictions and protections imposed by the moratorium.

The **Government has yet to set a date for the implementation of the statutory debt repayment plan**. A statutory debt repayment plan would enable a person in financial difficulty to enter a statutory agreement to repay their debts under a manageable timetable with protection from creditor enforcement action.

This Research Briefing provides a summary of the background to the Breathing Space Regulations. It also provides a detailed explanation of how the breathing space moratorium will work in practice. It should be noted that the new Regulations only apply to England and Wales. The current [Scottish Debt Arrangement Scheme](#) already provides debtors with a short breathing space and statutory repayment plan.

1 Background

1.1 Introduction of a Debt Respite Scheme

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.

[Financial Guidance and Claims Act 2018](#) (FGCA 2018) made provision for the creation by regulations of a new the Debt Respite Scheme. The scheme offers two separate means of support to individuals in debt:

- Breathing Space moratorium – implemented by regulations on 4 May 2021.
- A statutory debt repayment plan – not yet implemented.

Both elements of the scheme aim to incentivise more people to access professional debt advice and to access it sooner, helping them reach sustainable debt solutions.¹

The Debt Respite Scheme fulfils a commitment made in the Conservative Party’s manifesto for the 2017 general election:

For some people, the cost of living can become too great. Problem debt can be hard to escape and can compound family breakdown, worklessness, stress and mental health issues. We will adopt a “Breathing Space” scheme, with the right safeguards to prevent abuse, so that someone in serious problem debt may apply for legal protection from further interest, charges, and enforcement action for a period of up to six weeks. Where appropriate, they will be offered a statutory repayment plan to help them pay back their debts in a manageable way. This will give eligible debtors time to seek advice and assistance to apply for a sustainable solution to their debt.²

¹ Financial Services Bill, Explanatory Notes, para 162

² Conservative Party Manifesto 2017, p60

1.2

Past consultations

There have been two separate consultations. First, the Treasury issued a [call for evidence](#)³ on the design of the Debt Respite Scheme, this ran from 14 October 2017 to 16 January 2018. The consultation's [outcome](#) was published in June 2018.⁴ Second, on 29 October 2018, alongside the Autumn Budget, the Treasury published a [consultation](#) on its policy proposal.⁵ The Treasury's [response](#) was published on 19 June 2019, accompanied by an [oral statement](#) by the Economic Secretary to the Treasury.⁶ In its response, the Treasury confirmed that it would be taking forward its proposal and outlined how a Debt Respite Scheme would be designed, funded and administered.⁷ The Treasury explained its policy rationale as follows:

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

First, the protections offered by breathing space will encourage people to access to debt advice. Research commissioned by the Money Advice Service (now the Money and Pensions Service) shows that once an individual seeks debt advice, they are less likely to sink into a cycle of debt, and their creditors receive higher repayments and spend less on recovery costs. However, not enough people who could benefit from debt advice currently access support, and many of those that do access debt advice would benefit from accessing it earlier on.

Second, by protecting debtors from creditor action, breathing space will allow debtors the time and space to fully engage with professional debt advisers to identify a positive and sustainable solution to their problem debt.

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

The implementation of both breathing space and the plan will complement the government's wider work to support consumers who take on debt. This includes acting to prevent problem debt from

³ HM Treasury, [Breathing Space: call for evidence](#), updated 18 June 2018

⁴ HM Treasury, [Consultation outcome - Breathing space scheme: consultation on a policy proposal](#), 19 June 2018

⁵ HM Treasury, [Breathing Space Scheme: consultation on a policy proposal](#), 29 October 2018

⁶ [Government statement on consultation response to debt relief policy](#), 19 June 2019

⁷ HM Treasury, [Breathing space scheme: response to policy proposal](#), June 2019

occurring and helping people to get out of problem debt should they experience it.⁸

In its [response](#), the Government explained how implementation of a new Debt Respite Scheme would complement its wider work to support consumers who take on debt. The scheme could improve both debtors' finances and returns to creditors.⁹ The Treasury confirmed that regulations on a breathing space would be implemented in early 2021, but the statutory debt repayment plan would be developed over a longer timeframe.¹⁰ **The Government has not set a specific implementation date.**

Since then, of course, the Government have had to make unprecedented policy interventions to save jobs and support livelihoods due to the impact of Covid-19. Various debt charities have suggested that the need for this statutory debt repayment plan is even more pressing.

Further background information is provided in a separate Library briefing paper, "[Breathing space for individuals in problem debt](#)" (CBP 7934).

1.3 Relevant legislation

Breathing space moratorium

In September 2019, the Treasury received and published [advice](#) from the Money and Pensions Service on the establishment of a Debt Respite Scheme in accordance with the [FGCA 2018](#).¹¹

The first part of the Debt Respite Scheme, a breathing space moratorium, has been implemented using the power provided by [section 6](#) and [section 7](#) of the FGCA 2018. This power was used to create the [Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium \(England and Wales\) Regulations 2020](#) ("the Breathing Space Regulations"). [Part 3](#) of the Regulations provide for an alternative breathing space moratorium for people receiving mental health crisis treatment.¹² The Regulations came into force on 4 May 2021.

In the [impact assessment](#) to the new Breathing Space Regulations,¹³ the Government explains the policy objectives as follows:

⁸ Ibid

⁹ HM Treasury, [Breathing space scheme: response to policy proposal](#), 19 June 2019, para 1.8

¹⁰ HM Treasury, [Consultation outcome - Breathing space scheme: consultation on a policy proposal](#), 19 June 2019

¹¹ HM Treasury, [Guidance - Breathing Space Scheme: Money and Pensions Service Advice](#), 26 September 2019

¹² HM Treasury, [Debt respite scheme \(breathing space\): Guidance on mental health crisis breathing space](#), 6 April 2021

¹³ HM Treasury, [Breathing Space Impact Assessment](#), (RPC Reference No: RPC- 4418(1)-HMT), 27 August 2019

The government wants to incentivise more people to access professional debt advice and to access it sooner, helping them to reach sustainable debt solutions. The government also wants to provide debtors who engage with this advice with the headspace to find a debt solution by pausing creditor enforcement action, interest, and charges. By offering these protections in Breathing space, and by making debt advice the gateway to these protections, the policy should deliver these objectives.¹⁴

Statutory debt repayment plan (not yet implemented)

The new [Financial Services Act 2021](#) (section 35) amends the [FGCA 2018](#) to give the Government greater powers in implementing the Statutory debt repayment plan. The amendments are needed to allow the regulations to:

- compel creditors to accept amended repayment terms,
- provide for a charging mechanism through which creditors will contribute to the cost of running the scheme and repayment plans, and
- include in SDRPs debts owed to central government departments

The regulations would be subject to the draft affirmative procedure, requiring approval by a resolution of both Houses. Should the regulations provide for the scheme to apply in Wales and Northern Ireland, they would require the approval of the National Assembly for Wales and the Northern Ireland Assembly. **Currently, there is no statutory debt solution focused entirely on repayment.** (The management of debt was devolved to the Scottish Parliament, not being reserved by the [Scotland Act 1998](#)).

Given the potential benefits to debtors, the Government said in its June 2019 [consultation response](#) that it will continue to work with the Department for Communities and Department for the Economy to consider the introduction of an equivalent Debt Respite Scheme in Northern Ireland.

The remainder of this paper, sections 2 and 3 provides a summary of how the breathing space regulations will work in practice in respect of both a standard moratorium and a mental health crisis moratorium.

¹⁴ Ibid

2 Administration of the breathing space

2.1 Role of the Insolvency Service

The Breathing Space Regulations provide for the administration of the breathing space moratorium by the Secretary of State, whose functions in this regard are carried out by the Insolvency Service.¹⁵

[Part 4](#) of the Regulations sets out the framework for administering the breathing space moratorium, which is dependent on an electronic system maintained by the Insolvency Service. Debt advice providers must use this electronic system to start the breathing space process. Once a person enters a moratorium, the Insolvency Service must send notifications to all known creditors. Creditors may be notified electronically (if they have opted in to using the electronic system), or by email or post.

In addition, the Insolvency Service is also responsible for maintaining a register of persons whose debts are in a breathing space moratorium (including the date it ended or was cancelled in the last 15 months). Only creditors who have received a notification about a moratorium debt will be allowed to see information held on the register.

On 24 December 2020, the Insolvency Service published [guidance](#) on the Breathing Space Regulations¹⁶ for creditors and money advisors, this was subsequently updated on 4 May 2021. The guidance comprises two documents to help navigate the Regulations:

- [Debt Respite Scheme \(Breathing Space\) guidance for creditors](#)
- [Debt Respite Scheme \(Breathing Space\) guidance for money advisors](#).

The first guidance note is also intended to help debtors who, with the help of a debt adviser, may be considering entering a breathing space.

2.2 Role of professional debt provider

Debt advice providers have a central role in the scheme. They are the point of contact for the debtor, their creditors (and appointed agents), and the

¹⁵ The Insolvency Service, an executive agency of Department for Business, Energy, and Industrial Strategy (BEIS)

¹⁶ The Insolvency Service, [Debt Respite Scheme \(Breathing Space\) Guidance](#), 24 December 2020

Insolvency Service (who own and maintain the electronic service). A breathing space moratorium can only be accessed through a debt advice provider, who is defined as:

- a person authorised by the FCA to offer debt counselling,¹⁷ or
- exempt persons in relation to that activity, such as a local authority where they provide debt advice to residents.¹⁸

Debt advice providers can initiate a breathing space moratorium for anyone who meets the relevant eligibility criteria and conditions. However, they should not do so if it would be inappropriate (e.g. if the individual could go into a debt solution like an individual voluntary arrangement (IVA) or bankruptcy straight away, or if they could manage their finances without a moratorium).

There are other important safeguards to ensure that individuals are complying with the scheme's rules as far as possible. For example, certain ongoing liabilities (such as a mortgage or rent) must be paid as they fall due during a breathing space moratorium. If they are not, or if the debtor is not properly engaging with debt advice, the debt adviser can decide whether the breathing space moratorium should continue.

2.3

Role of the Financial Conduct Authority (FCA)

The FCA requires all regulated firms to provide sound, impartial debt advice that is in the best interests of the debtor. Debt advice providers cannot charge a fee in connection with the breathing space moratorium.¹⁹

On 21 October 2020, the FCA published a [consultation paper](#)²⁰ on minor changes to its Handbook to clarify how its rules will apply in light of the new Breathing Space Regulations. The FCA's stated aim being to "avoid duplicating their effects in a disproportionate way".²¹ Changes to the Handbook were introduced by the [Consumer Credit \(Debt Respite](#)

¹⁷ Authorised persons with Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt counselling) of the [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001](#) (SI 2001/544)

¹⁸ [Regulation 3\(1\)](#)

¹⁹ All FCA regulated debt advice firms must also signpost clients to sources of free debt advice, they must be transparent about the fees and charges payable by their clients and must ensure that those fees and charges do not undermine their clients' ability to make significant repayments to creditors – the FCA takes supervisory and, if necessary, enforcement action where it finds that harm is caused by firms providing inappropriate debt advice

²⁰ Financial Conduct Authority, [Breathing Space Regulations: Changes to our Handbook Consultation Paper](#), CP20/21. October 2020

²¹ The FCA has made some minor changes to certain provisions in chapters 5.6 and 7 of the Handbook

[Moratorium\) Instrument 2021](#) (FCA 2021/4), which came into force on 4 May 2021.²²

On 26 February 2021 the FCA published a [Policy Statement](#)²³ intended for regulated firms, in particular consumer credit lenders and debt collection agencies. In this statement, the FCA states that it does not have powers under the Breathing Space Regulations to supervise compliance or enforce them. However, systematic non-compliance with the Regulations is likely to be of concern as it may call into question whether a firm is meeting the specific rules in the FCA Handbook.

2.4 Role of approved mental health professional

The Government recognises that during mental health crisis treatment it will be harder to engage with debt advice and may be less reasonable to expect the individual to maintain specific obligations under the scheme. In anticipation of this, the breathing space regulations provides alternative access to a moratorium for people in mental health crisis treatment with equally strong protections that last longer, and where the conditions on the debtor are relaxed. This type of moratorium can only be accessed once an approved mental health professional has certified that a person is in crisis treatment. The debt adviser need not provide advice directly to the person but will still check that the relevant eligibility criteria are met. Whereas a standard breathing space moratorium can only be accessed once every 12 months, there is no limit to the number of times that a person can enter a mental health crisis moratorium.

²² The FCA made this instrument in the exercise of its power in section 139A (power of the FCA to give guidance) of the [Financial Services Markets Act 2000](#)

²³ Financial Conduct Authority, [Breathing Space Regulations – Changes to our Handbook](#), Policy Statement PS21/1, February 2021

3 How do the Breathing Space Regulations work?

3.1 How to apply for a breathing space

[Part 2](#) of the Breathing Space Regulations sets out the procedure for applying for a standard breathing space moratorium. [Part 3](#) provides for an alternative breathing space moratorium for people receiving mental health crisis treatment.

Standard breathing space

A standard breathing space moratorium can only be accessed through a debt advice provider, who must consider any application made to them by a debtor.²⁴ They must not charge a fee in connection with a moratorium.²⁵

When considering an application, the debt advice provider must be satisfied about the appropriateness of a breathing space moratorium.²⁶ A moratorium is appropriate where the debtor is unable to pay some of their debt as it falls due, the debtor would benefit from a debt solution and where it is necessary to provide time for assessing debt solutions.²⁷ It follows from this that there may be circumstances where a debt adviser decides that a breathing space is not appropriate for a particular debtor. The Insolvency Service gives the example of someone who, with proper budgeting, has sufficient funds or income to repay their debts, or has valuable assets which could be sold to repay their debts (such as expensive cars). There are other examples of where a breathing space may not be the right solution. For some debtors, it might be appropriate for them to immediately enter a more suitable debt solution, without needing the protections of a breathing space. For example, a Debt Relief Order (DRO) might be more appropriate for someone who has a relatively low level of debt and few assets.²⁸

If a debtor does enter a breathing space, the debt advice provider must notify the Insolvency Service of the moratorium so that an entry can be made in the register and creditors can be notified.²⁹

²⁴ [Regulation 24\(1\)](#)

²⁵ [Regulation 4\(1\)](#)

²⁶ [Regulation 24\(4\)\(b\)](#)

²⁷ [Regulation 24\(5\)](#)

²⁸ For more information see the Library's briefing paper on "[Debt Relief Orders](#)" (CBP4982)

²⁹ [Regulation 25](#)

Mental health crisis breathing space

If an Approved Mental Health Professional (AMHP) certifies that a person is receiving mental health crisis treatment, the AMHP's evidence can be used by a debt adviser to start a mental health crisis breathing space.

In addition to the debtor, the following people can apply to a debt adviser on behalf of a debtor for a mental health crisis breathing space:

- any debtor receiving mental health crisis treatment
- the debtor's carer
- Approved Mental Health Professionals
- care co-ordinators appointed for the debtor
- mental health nurses
- social workers
- independent mental health advocates or mental capacity advocates appointed for the debtor
- a debtor's representative

3.2

Eligibility for breathing space

To be eligible for a standard breathing space, the debtor must meet all the following conditions:

- be an individual
- owes a "qualifying" debt to a creditor (see below)
- lives or usually resides in England or Wales
- does not have a debt relief order (DRO), an individual voluntary arrangement (IVA), an interim order, or be an undischarged bankrupt at the time they apply
- does not already have the benefit of a standard breathing space moratorium nor has had such benefit in the previous 12 months.³⁰

In addition, the debt adviser must also be satisfied that the debtor meets both of the following conditions:

- the debtor cannot, or is unlikely to be able to, repay all or some of their debt,
- and a breathing space moratorium is appropriate for the debtor.³¹

³⁰ [Regulation 24\(3\)](#)

³¹ [Regulation 24\(4\)](#)

A debtor must have at least one “qualifying debt” owed to a creditor, and this must be included in the application. The debtor must tell the debt adviser about all debts and give them the contact details they have for each creditor.

To be eligible for a [mental health crisis breathing space](#), the debtor must still meet the same criteria and conditions for a standard breathing space, but they must also be receiving mental health crisis treatment at the time that an application is made. A debtor who has had a standard or mental health crisis breathing space in the last 12 months may be eligible for a mental health crisis breathing space. This is because there is no limit to how many times a debtor can enter a mental health crisis breathing space.

3.3 When does the moratorium start?

Under the Regulations, a breathing space moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register of moratoria.³² Once a debtor’s details have been put onto the register, the Insolvency Service must send notifications to all known creditors. Creditors may be notified electronically (if they have opted in to using the electronic system), or by email or post. Creditors should receive a notification, telling them the breathing space moratorium start date and details of the qualifying debts. A creditor is considered to have received notification on the day an electronic notification was sent, four business days after the notification was posted, or on the day a notification was left at their address.

3.4 Duration of a moratorium

A standard breathing space ends either:

- **60 days** from the date it started,
- the day after a debt adviser or a court cancels it,
- or if the debtor dies during the breathing space period (in which case, the breathing space ends on the day after the debtor died).

In other words, a standard breathing space moratorium lasts for 60 days (unless cancelled) and cannot be extended.³³

A mental health crisis breathing space will end either:

- **30 days** after the debtor’s mental health crisis treatment has ended (no matter how long the crisis treatment lasts), or

³² [Regulation 26\(1\)](#)

³³ Ibid

- **30 days** after the date a debt adviser had no response after asking for confirmation from the nominated point of contact about a debtor's ongoing mental health crisis treatment.

Debt advice charities originally called on the Government to introduce a 42-day breathing space moratorium. However, in its [2018 consultation](#) the Government proposed extending the breathing space to 60 days.³⁴ As summarised in the [consultation response](#), most respondents welcomed this time extension on the basis that 60 days was a more realistic period for an individual to enter a sustainable debt solution having first obtained debt advice.³⁵

3.5 What debts are included in a breathing space?

For the purposes of the Breathing Space Regulations, a moratorium debt is any “qualifying” debt:

- That was incurred by a debtor in relation to whom a breathing space moratorium is in place.
- That was owed by the debtor at the point at which the application for the moratorium was made.
- About which information has been provided to the Insolvency Service by a debt advice provider.³⁶

Importantly, there is no limit on the amount of any individual debt, or total debts, that can be included in a moratorium.

Qualifying debts

Debts included in a breathing space moratorium must be “qualifying debts”. All debts will be qualifying debts unless they are non-eligible debts.³⁷ Examples of qualifying debts include debts accrued on:

- credit cards
- store cards
- personal loans
- pay day loans
- overdrafts
- utility bill arrears
- mortgage or rent arrears

³⁴ HM Treasury, [Breathing Space Scheme: consultation on a policy proposal](#), 29 October 2019

³⁵ HM Treasury, [Breathing space scheme: response to policy proposal](#), June 2019

³⁶ [Regulation 6](#)

³⁷ [Regulation 5\(1\)](#)

Debts owed to central and local government (e.g. personal tax debts, council tax arrears, and benefit overpayments) are all likely to qualify unless they are included in the list of excluded debts (see below). Joint debts can be included in a moratorium, even if only one person applies for a breathing space, but the breathing space does not affect the other person's debts and liabilities in their own name. Guarantor loans (i.e. an unsecured loan where a second person is responsible for paying off the debt if the borrower cannot) can also be included in a breathing space moratorium. However, the protections do not extend to the guarantor (although the guarantor could apply for their own breathing space if they're eligible).

Excluded debts

Certain debts are excluded from for a breathing space moratorium. Excluded debts comprise:

- Non-eligible business debt. While some business debts qualify for the breathing space, they do not qualify if the debt only relates to the business (not the debtor personally).³⁸
- Any new secured debt arrears that accumulate after the breathing space starts are not protected (e.g. mortgage, hire purchase or conditional sale agreement arrears). However, arrears on secured debts can be included in the breathing space if they existed at the date of the application. In addition, if a secured debt is also an ongoing liability and a debtor misses payments, it could mean the debt adviser stops their breathing space (see below).
- Debts incurred from fraud or fraudulent breach of trust.
- Any liability in respect of a fine imposed by a court. This includes any interest on the fine and any penalties connected to it.
- Any obligations arising under a drugs or criminal confiscation order.
- Any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings.
- Any obligation arising under a maintenance assessment or maintenance calculation made under the Child Support Act 1991.
- Any debt which consists of a liability to pay damages for negligence, nuisance, or breach of a statutory, contractual, or other duty.
- Any liability to pay damages for death or personal injury caused to someone else.
- Any obligation arising from a payment out of the social fund by way of crisis loan or budgeting loan. (The social fund is a government fund that assists individuals on low incomes to purchase household goods).
- Any student loan debt or liability.
- Advance payments of Universal Credit.

³⁸ [Regulation 5\(6\)\(d\)](#)

- Any liability for council tax or non-domestic rates for a financial year (subject to exceptions).³⁹

These excluded debts effectively mirror the debts that are not discharged in bankruptcy under the [Insolvency Act 1986](#).

It should be noted that an eligible non-domestic rates debt is a qualifying debt if all instalments for that financial year have fallen due and have not been paid. If a debtor has been served with a 'further notice', the remaining liability for that financial year is a qualifying debt.

Debts identified after a breathing space starts

It is possible for a debt to be added to a breathing space at a later date, because it is only identified after the breathing space has started. When the debt adviser is given (or becomes aware of) details of an additional debt, they must decide whether it is a qualifying debt. Assuming that it is, the additional debt does not become a breathing space debt until the debt adviser has updated the electronic service and a notification has been sent to the creditor.

The creditor must apply the enforcement action protections to this debt from the date they receive the notification, or when it is considered in the regulations that they have received it, whichever is the earliest. For electronic notifications this is the date they are sent; for postal notifications this is 4 working days after it was posted. However, this will not change the original start or end date of the breathing space.

In circumstances where the debt adviser is told of the additional debt more than **45 days** after the breathing space started, the debt adviser might think it inappropriate to add the additional debt to the breathing space and can decide not to do so.

Ongoing liabilities

Certain debts are considered "ongoing liabilities", during the breathing space the debtor must keep paying these debts if they can.⁴⁰ Examples of ongoing liabilities include:

- a mortgage secured against the debtor's primary residence (this does not include arrears accrued up to the start of the breathing space)
- a lease or rental agreement for the debtor's primary residence (this does not include arrears of rent for the property accrued up to the start of the breathing space)
- an insurance agreement
- any taxes, duties, and national insurance contributions

³⁹ [Regulation 5\(5\)](#)

⁴⁰ [Regulation 2](#)

- any local taxes or rates for local authorities
- and utility payments (e.g. water, sewerage, electricity, gas, heating oil or solid fuel bills).

Any other debts or bills (secured or unsecured) that fall due during a standard breathing space are not ongoing liabilities.

Insolvency Service [guidance](#) states that a breathing space is not a “payment holiday” or a payment deferral scheme. Other than pausing interest and fees, no new arrangements are made regarding the debts protected in a moratorium. This means that during the moratorium, a debtor is still required to keep paying certain ongoing liabilities as they fall due.⁴¹ If a debtor does not make these payments despite having the means to do so, the debt adviser must cancel their moratorium at the midway review unless the debtor’s personal circumstances would make cancellation “unfair and unreasonable”.

It is important to note that this obligation and review process does not apply to debtors during a mental health crisis breathing space.

3.6 What happens during the breathing space?

Effect on the debtor

During a standard breathing space moratorium, a debtor must:

- inform their debt advice provider if there is any material change in their circumstances or financial position,
- make any payment due in relation to ongoing liabilities (see above) as they fall due,
- engage with the debt advice provider appropriately.

In addition, the debtor must not obtain additional credit either alone or jointly with another person, that at any one point in time collectively exceeds £500 (including under a hire purchase or conditional sale agreement).

Effect on creditors

The Insolvency Service, using its electronic service, will notify creditors of the start date for a breathing space moratorium. Once notified, a creditor must undertake a reasonable search to identify any debts owed by the debtor and notify the debt advice provider of any debts not included within the original notification. During the moratorium, a creditor cannot:

- Require a debtor to pay interest that accrues on a qualifying debt.

⁴¹ Ibid

- Require the debtor to pay fees, penalties, or charges in relation to a qualifying debt that accrue during the moratorium period.
- Take any steps to collect a qualifying debt, commence legal proceedings, enforce a judgment or security without court permission or unless the Breathing Space Regulations specify otherwise (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise).⁴²
- Instruct an agent to take any of these actions.⁴³

These protections apply from the start date of the breathing space, as set out in the notification, and must stay in place until the breathing space ends. They also apply to any joint debtor.⁴⁴ If a creditor fails to comply, any action they take after the start date of the breathing space is null and void, and they may be liable for the debtor's costs. Examples of prohibited enforcement action include the following (this is not an exhaustive list):

- starting any action or legal proceedings (including bankruptcy petitions) against the debtor,
- obtaining a warrant or writ,
- seeking a liability order,
- making a court application for a default judgment for a claim for money against the debtor,
- trying to enforce a judgment or order issued by a court or tribunal,
- or instructing bailiffs to take control of the debtor's property or goods.

In circumstances where a creditor receives a notification of a breathing space moratorium in respect of a debt that they have sold on to another creditor (the "assignee"), they must tell the assignee about the moratorium and pass the assignee's contact details to the debt advice provider. The creditor will be liable to the debtor and to the assignee for any losses in failing to take these steps as soon as possible.

It is important to note that a creditor can still start or continue any legal action relating to any debt that is not a breathing space debt, during a breathing space.

⁴² [Regulation 7](#)

⁴³ Ibid

⁴⁴ [Regulation 7\(7\)\(n\)](#)

3.7

What happens to already existing legal proceedings?

There may be existing legal proceedings at the start of the breathing space moratorium. If a creditor has already filed a petition for bankruptcy or started any other action in a court or tribunal relating to a debt that is now in a breathing space, the creditor must inform the court or tribunal in writing as soon as they receive notification of the breathing space.⁴⁵ The court must stop the bankruptcy proceedings, until the breathing space ends or is cancelled. Other court proceedings about the debt (other than enforcement of court judgments or orders) can continue until the court or tribunal makes an order or judgment.

Unless the court or tribunal gives the creditor permission to continue, the court or tribunal must make sure any action to enforce a court order or judgment about a breathing space debt stops during the breathing space. These might be actions like:

- holding a hearing during the breathing space
- making or serving an order or warrant, writ of control, writ of execution or judgment summons
- instructing an enforcement agent to serve an order, warrant, writ of control, writ, execution, or judgment summons.

However, the court or tribunal can still send notices or correspondence to the debtor about an action or proceeding.

Before a breathing space has started, an enforcement agent (or bailiff) may have already taken control of goods by removing them from the debtor's home and securing them elsewhere. In these circumstances, the goods may be sold during the breathing space and the costs of the sale deducted from the proceeds. However, fees accrued during the breathing space for storage of those goods cannot be charged either during the breathing space, or after it ends.

Once the breathing space ends (or is cancelled), existing legal proceedings can be continued. If the time limit for enforcement has run out during the breathing space, this is extended to 8 weeks after it ends (see below).

⁴⁵ [Regulation 10\(1\)](#)

3.8 Contact between creditors and debtors during a breathing space

Generally, during a breathing space, creditors (or any agents they have instructed) must not contact a debtor about any collection or enforcement action for a breathing space debt. This includes asking them to pay or starting or continuing any legal action. Instead, during the breathing space, a creditor should contact the debtor's debt adviser about the debt owed, or to discuss a debt solution.

3.9 Can a breathing space be cancelled early?

Midway review

During a standard breathing space moratorium, a debt adviser must carry out a midway review between day 25 and day 35, to determine whether the breathing space should continue or be cancelled.⁴⁶ If satisfied that the debtor is complying with their obligations, the standard breathing space moratorium will continue until the end date.

Assuming they do not consider that the debtor's personal circumstances would make it "unfair or unreasonable", the debt adviser must cancel a standard breathing space moratorium in respect of some or all debts if they think that:

- The debtor has failed to comply with any of their obligations. (This includes them not paying their ongoing liabilities if they have the means to do so).
- A debt solution has been put in place in respect of all the moratorium debts.
- They have been unable to consult the debtor (i.e. the debtor is not communicating).⁴⁷

The debt advice provider must notify the debtor that the breathing space is being cancelled and update the electronic service so to inform the Insolvency Service so that its register is amended. The Insolvency Service must then notify creditors that the breathing space has been cancelled, and whether this is for some or all debts. After receiving this notification, creditors can restart enforcement action and charges. However, they cannot backdate any interest or fees accrued during the breathing space, except with the permission of the court.

⁴⁶ [Regulation 27](#)

⁴⁷ [Regulation 27\(5\)](#)

A mental health crisis breathing space is treated differently, it does not have a midway review, but the debt adviser is expected to regularly check that the person is still receiving mental health crisis treatment. The breathing space will continue for the duration of this treatment, plus 30 days. The debt adviser must cancel a mental health crisis breathing space if:

- they believe the evidence provided to them about the debtor's mental health crisis treatment contains inaccurate, misleading, or fraudulent information, and they do not consider that the debtor's personal circumstances would make the cancellation unfair or unreasonable.
- the debtor asks for the mental health crisis breathing space to be cancelled.

A Creditor's requested review

A creditor can challenge a breathing space moratorium. They can ask a debt adviser to review the breathing Space, or specific debts included in it, but only if the creditor considers that:

- the breathing space moratorium unfairly prejudices their interests (e.g. there has been unfair treatment in respect of their debt), or
- there has been some material irregularity in relation to any of the following:
 - the debtor does not meet at least one of the eligibility criteria for a breathing space,
 - any of the debts included in the breathing space did not qualify,
 - the debtor has enough funds to repay their debts.⁴⁸

However, a creditor has limited time to request a review, it must be made either:

- within **20 days** of the breathing space starting, based on the start date in the notification they received,
- or within **20 days** of an additional debt being added to the breathing space, based on the date when you received or were deemed to have received the notification.⁴⁹

To request a review, the creditor needs to give the debt adviser a written statement with the reasons why they want a review (with any relevant supporting evidence). Where an additional debt is included in a moratorium,⁵⁰ the creditor to whom the additional debt is owed may also

⁴⁸ [Regulation 17](#)

⁴⁹ [Regulation 17\(3\)](#)

⁵⁰ [Regulation 15](#)

request a review.⁵¹ In practice, the debt advice provider might decide to combine a review carried out on a creditor's request with the midway review.

Having carried out a review in response to a creditor's request, a debt advice provider must cancel a breathing space in respect of some or all of the debts if there is sufficient evidence that the moratorium unfairly prejudices the interests of the creditor or there has been some material irregularity.⁵² However, a debt advice provider is not required to cancel a moratorium if they consider that the debtor's personal circumstances would make the cancellation "unfair or unreasonable".⁵³

The cancellation takes effect on the day following the day on which the Insolvency Service amends the register.⁵⁴ When notified, creditors must be given the reason for the cancellation.⁵⁵

It is possible, of course, that after a review, the creditor disagrees with the decision of the debt advice provider. In which case, the creditor still has the option to apply to the court to cancel the breathing space in respect of some or all of the debts.⁵⁶ The creditor must make the court application within **50 days** of the breathing space starting, or **50 days** after being notified about an additional debt being added to it.⁵⁷ However, the creditor can only make a court application after the outcome of the debt adviser's review is known.

3.10

What happens when a breathing space ends?

When a breathing space moratorium ends, all creditors will be sent a notification. If the breathing space was cancelled by the debt adviser or the court, or the debtor has died during the breathing space period, the notification will tell creditors the reason why it was cancelled.

Importantly, once a breathing space ends, a creditor can:

- Start applying interest, fees, penalties, and charges to the debt from the date that the breathing space ends. (However, they cannot backdate or apply any interest, fees, penalties, or charges that accrued or would have accrued during the Breathing Space period, unless a court allows you to do this).
- Take any action to enforce their debt, including contacting the debtor, or collecting debts from benefits.

⁵¹ [Regulation 17\(6\)](#)

⁵² [Regulation 18\(2\)](#)

⁵³ [Regulation 18\(3\)](#)

⁵⁴ [Regulation 18\(7\)](#)

⁵⁵ [Regulation 18\(8\)](#)

⁵⁶ [Regulation 19\(1\)](#)

⁵⁷ [Regulation 15\(7\)](#)

- Start or continue any legal proceedings about their debt.

However, a creditor cannot take these actions if the debtor has entered a formal debt solution, for example, a debt relief order or bankruptcy. Similarly, creditors cannot take enforcement action if they have agreed a formal arrangement with the debtor, such as an individual voluntary arrangement (IVA). Creditors can check the [Individual Insolvency Register](#) to see if a debtor is in a formal insolvency solution.

Finally, where a debtor dies during the breathing space, the moratorium ends on the day after the day on which the debtor died.⁵⁸ A debt adviser must notify the Insolvency Service of the death of the debtor as soon as possible.

3.11

Limitation periods extended for a moratorium

A limitation time limit means any time limit applicable, whether under the [Limitation Act 1980](#) or any other legislation, to the bringing of an action.

It is possible that a limitation period may expire during a breathing space moratorium or shortly after it ends. To safeguard the rights of creditors, such limitation periods are extended under [regulation 8](#) of the Breathing Space Regulations, provided the following apply:

- A limitation time limit relates to a right of action in respect of a moratorium debt.
- A moratorium in relation to the debt starts before the limitation time limit expires.
- The limitation time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

If the above circumstances apply, for the purposes of bringing an action in respect of a moratorium debt, the relevant limitation time limit will expire at the end of a period of eight weeks beginning with the day on which the moratorium ends.⁵⁹

Time limits for debt enforcement are also extended on a similar basis.⁶⁰ Specifically, [regulation 9](#) of the Breathing Space Regulations applies where:

⁵⁸ [Regulation 21\(1\)](#)

⁵⁹ [Regulation 8\(4\)](#)

⁶⁰ As defined by [regulation 9\(3\)](#) of the Breathing Space Regulations, an enforcement time limit means a time limit (i) by which a creditor (or an agent) is legally obliged to take enforcement action in respect of a debt (or would be so obliged but for the existence of the moratorium in relation to the debt); (ii) which is not a limitation time limit (within the meaning of regulation 8 of the Breathing Space Regulations) relating to a right of action in respect of the debt

- An enforcement time limit relates to the taking of enforcement action in respect of a moratorium debt by a creditor or an agent acting by or on behalf of a creditor.
- A moratorium in relation to the debt starts before the enforcement time limit expires.
- The enforcement time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.
- If the above circumstances apply, for the purposes of taking enforcement action in respect of the debt, the enforcement time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

3.12

Future review of the Debt Respite Regulations

HM Treasury must from time to time carry out a review of the regulatory provision contained in the Debt Respite Regulations, and publish a report setting out the conclusions of the review. The first report must be published before **4 May 2026**. Subsequent reports must be published by HM Treasury at intervals not exceeding 5 years.

4 Stakeholder responses

The [Money and Pension Service](#) overwhelmingly supports the introduction of both Breathing Space and the SDRP, believing they have the “potential to provide new and effective ways to support more people in resolving debt problems and will add to the significant social and economic benefits that debt advice already offers”.⁶¹

The debt charity [StepChange](#) has also welcomed the scheme.⁶² However it has stressed that “sometimes people need a longer period of time to get through the debt advice process and into a long-term solution for their debts”. It has called on the Government to ensure the statutory debt repayment plan allows for low start repayments, subject to review. It also highlighted the warning in Peter Wyman’s 2018 [Independent Review of Debt Advice](#) that the debt advice sector needs to grow 50% in the next two years to help all those who need it.⁶³ StepChange urged the Government to ensure administration of the scheme does not increase costs or divert funding away from the debt advice frontline.

⁶¹ Money & Pensions Service, [Debt Respite Scheme: Response to Request for Advice](#), 14 August 2019, p1

⁶² StepChange, [Breathing Space and Statutory Debt Repayment Plans – Our take on the Government’s proposed scheme](#), undated

⁶³ Peter Wyman, [Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland](#), 2018, para 41

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