



The Debt Respite Scheme & Breathing Space

March 2021

Introduction

The **Debt Respite Scheme** introduces an approach to personal debt management designed to help people in problem debt to repay what they owe to their creditors in a managed way.

Last November the Senedd approved the Regulations for the first part of the Debt Respite Scheme – **Breathing Space** – to apply in Wales.

The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 will come into force on **4th May 2021**.

Breathing Space will **give someone in problem debt** the time they need to access professional advice to identify their best pathway out of debt and **the right to legal protections from creditor action**. This person is referred to here as the ‘debtor’.

Housing associations’ role

In the context of these regulations, a housing association may perform the role of **creditor** and/or **debt advice provider** (also referred to as ‘debt adviser’).

There is specific guidance available both for [creditors](#) and for [debt advisers](#), and the regulations can be read [here](#).

Creditors

A breathing space will start the day after the debtor’s details are put onto the breathing space register. The Insolvency Service electronic service will send the creditor a notification. The creditor must stop all action related to that debt and apply the protection to these debts from the

date set out in the notification. These protections must stay in place until the breathing space ends.

Creditors must make sure they stop:

- the debtor having to pay certain interest, fees, penalties or charges for that debt during the breathing space
- any enforcement or recovery action to recover that debt, by the creditor or any agent appointed
- enforcement action including¹
 - action to serve a notice to take possession (NoSP) of a dwelling let to the debtor
 - action to take possession of a dwelling let to the debtor having served a NoSP
- contacting the debtor to request repayment of that debt, unless permission is obtained from the court

Interest can still be charged on the principal in secured debt, but not on the arrears.

If it's not possible to stop interest, fees, penalties or charges accruing on the debt during the breathing space (for example, this could be because of IT system limitations), it can continue to accrue. However, the debtor must not be required to pay charges or interest that accrue in this way either during or after the breathing space.

Debt advisers

An individual or organisation can perform the role of debt adviser only if they are authorised by the Financial Conduct Authority (FCA) to offer debt counselling.

Debt advisers are responsible for the administration of a breathing space. They are the point of contact for the debtor, their creditors (and appointed agents) and the Insolvency Service (who own and maintain the electronic service).

Types of breathing space

There are two types of breathing space: a **standard breathing space** and a **mental health crisis breathing space**. The differences between them are set out in a table [here](#) as well as described below.

Standard breathing space

A standard breathing space is available to anyone with problem debt. It gives them legal protections from creditor action for up to 60 days. The protections include pausing most

¹ More detail can be found on page 11 of the [Breathing Space regulations](#)

enforcement action and contact from creditors and freezing most interest and charges on their debts.

A breathing space can only be started by:

- a debt advice provider who is authorised by the Financial Conduct Authority (FCA) to offer debt counselling
- a local authority (where they provide debt advice to residents)

Debtors can only access a breathing space by seeking debt advice from a debt adviser. Anyone who cannot or is unlikely to be able to repay their debts can apply to a debt adviser for a standard breathing space. Although all applications must be considered, the debt adviser might decide a breathing space is not appropriate for a debtor.

Mental health crisis breathing space

A **mental health crisis breathing space** is only available to someone who is receiving mental health crisis treatment and it has some stronger protections. It lasts as long as the person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).

If an Approved Mental Health Professional (AMHP)² 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

² AMHPs are mental health professionals who have been approved by a local social services authority to carry out certain duties under the Mental Health Act. They are responsible for coordinating a person's assessment and admission to hospital if they are sectioned. More information [here](#).

Eligibility

Any person who is eligible and is having trouble paying their debts can apply to a debt adviser for a standard breathing space. Their representative (for example, someone with power of attorney) can also apply on their behalf.

For a standard breathing space, the debtor must:

- be an individual
- owe a qualifying debt to a creditor
- live or usually reside in England or Wales
- 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
- not already have a breathing space or have had a standard breathing space in the last 12 months at the time they apply
- cannot, or is unlikely to be able to, repay all or some of their debt
- The debt advisor must also be satisfied that a breathing space is appropriate for their client

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. There is no limit to how many times a debtor can enter a mental health crisis breathing space.

Qualifying & excluded debts

Qualifying debts include rent arrears, credit cards and payday loans, but exclude secured debts, child maintenance or advance payments of Universal Credit. A full list can be seen in the guidance for [creditors](#) and [debt advisers](#).

Qualifying debts can include any that the debtor had before the Breathing Space legislation came into force on 4 May 2021. New debts incurred during a breathing space are not qualifying debts. Neither are new arrears on a secured debt that arises during a breathing space.

Ongoing liabilities

While a creditor cannot enforce a breathing space debt during a breathing space or charge interest or fees on it, a debtor is still legally required to pay their debts and liabilities. During the breathing space, the debtor should continue to pay any debts and liabilities they owe; the creditor can continue to accept these payments.

Certain debts are considered 'ongoing liabilities' during a standard breathing space. The debtor needs to keep paying these if they can. If they don't, the debt adviser might cancel the standard breathing space.

Reviews

During a standard breathing space, a debt adviser must carry out a midway review between day 25 and day 35. This is to make sure they are satisfied the debtor is complying with their obligations.

A creditor can ask a debt adviser to review the breathing space, or specific debts being included in it, if they consider that:

- the breathing space unfairly prejudices their interests. For example, they think that there has been discriminatory treatment in respect of them or their debt
- 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 do not qualify
- the debtor has enough funds to repay their debts

After a review, if a creditor does not agree with a debt adviser's decision, they can apply to a court to cancel the breathing space in respect of some or all of the debts.

Statutory Debt Repayment Plan

The Statutory Debt Repayment Plan (SDRP) is the second part of the Debt Respite Scheme. The SDRP scheme introduces a new statutory debt solution in England, Wales and Northern Ireland focussed on debt repayment rather than insolvency.

When introduced, the SDRP will offer people a debt solution that will help them to repay what they owe to their creditors in a manageable timeframe when they exit a breathing space. For the duration of their Statutory Debt Repayment Plan, a person will receive legal protections from the creditors taking enforcement action or adding interest, charges or fees to their debt.

While the breathing space element of the Debt Respite Scheme is due to be implemented in May 2021, the UK Government has so far only spoken of implementing SDRPs over a 'longer time frame'.

Next steps

Member housing associations met on 11th March to discuss the regulations, with CHC in attendance. It will also be discussed at the next meetings of the Housing Management and Welfare Strategic Delivery Groups (30th and 31st March respectively).