

Breathing space: debt respite scheme



On 4 May 2021 the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the Regulations) came into effect. The Regulations contain many details and below is a summary of the main headline points.

The Debt Respite Scheme, which is also known as “breathing space”, provides a tenant in debt protection from creditors such as landlords or letting agents as it pauses the creditors’ ability to pursue the debtor for the debts for a defined period as well as pausing interest and late payment fees.

Who can apply?

The scheme applies to individuals and sole traders (not companies) who are not VAT registered.

There are two types of legal protection under the Regulations: a standard breathing space moratorium and a mental health crisis breathing space moratorium.

Standard breathing space moratorium

To obtain a standard breathing space moratorium, a tenant has to apply to an FCA registered debt adviser. If successful, the breathing space moratorium will protect the tenant from creditor action for up to 60 days. Once the breathing space has started, their application will be reviewed by the debt adviser between days 26 to 35, and at that point the moratorium will either be cancelled or carry on for the full 60 days.

Mental health crisis breathing space moratorium

A tenant can also apply for a mental health crisis breathing space moratorium. To qualify, they will have to meet the same requirements as a standard breathing space moratorium but also be receiving mental health crisis treatment at the time of the application. This type of breathing space will continue throughout the whole of the tenant's treatment period, plus another 30 days or, alternatively, for 30 days after the date a debt adviser had no response after requesting confirmation that a debtor's mental health crisis treatment is on-going.

Notification of a moratorium to a landlord

A landlord should receive notification from the Insolvency Service that their tenant has been granted either a standard or mental health crisis moratorium which should include details of the type of breathing space granted to the tenant and details of the debt that is caught under the moratorium.

What can't a landlord do during a moratorium?

- contact the tenant about the debt
- serve notice under section 8 of the Housing Act 1988 which relies on grounds relating to rent arrears
- continue previous possession proceedings which relate to the debt
- commence possession proceedings which relate to the rent arrears
- charge the tenant late payment fees or add interest to the existing arrears

What can a landlord do?

- serve a notice under section 21 of the Housing Act 1988
- start or continue possession proceedings based on a section 21 notice
- speak to a tenant about issues unrelated to the debt, such as repairs, and can answer questions from the tenant about the debt

What can a landlord expect a tenant to do during the moratorium?

- pay rent that falls due throughout the period
- pay utility bills
- pay council tax

And finally

- a tenant cannot apply for another breathing space within 12 months of the expiry of a previous moratorium and won't be eligible to apply if they have an IVA, DRO or are an undischarged bankrupt
- a landlord is not prevented from pursuing a guarantor in relation to the moratorium debt if one exists
- a landlord will be unable to recover any interest, fees, penalties or charges that accrued once the moratorium is lifted – including legal fees. A sensible course of action would be to stay any court proceedings to minimise unrecoverable costs during the breathing space period.

The Regulations are undoubtedly welcome news for tenants and, for some, may relieve the pressure and allow them to resolve their debt related issues but landlords may not welcome the restrictions it places on them to deal with their property portfolios. Whether the Regulations will only serve to delay, in many cases, the inevitable legal action by landlords for recovery of the arrears and/or possession proceedings remains to be seen.



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