

## Debt respite scheme regulations 2020 – More protection for individual debtors

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The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the **“Regulations”**) come into force on the **4 May 2021** and provide individual debtors, who obtain debt advice, legal protection from their creditors. If a creditor receives notice of a moratorium period in relation to a debt, often referred to as a ‘breathing space’, it must stop all action related to that debt and freeze all interest and charges on their debts until the breathing space ends.

### The breathing space moratorium

There are two types of moratorium. A breathing space moratorium and a mental crisis breathing space moratorium. A breathing space moratorium can only be initiated by a debtor applying to a debt adviser (authorised by the FCA to offer debt counselling) who must confirm to the Insolvency Service that the debtor satisfies the relevant conditions. A mental crisis breathing space moratorium can be initiated by a debtor, their carer, an approved mental health professional/nurse or social worker.

The breathing space moratorium lasts for 60 days unless it is cancelled or the debtor dies, whereas the mental health crisis breathing space moratorium will not end until 30 days after the debtor stops receiving mental health crisis treatment, the moratorium is cancelled or the debtor dies. For a mental health crisis breathing space moratorium the debt adviser must have received certification from an Approved Mental Health Professional that the debtor is receiving mental health crisis treatment.

## Relevant conditions debtor must satisfy

To apply for a breathing space, the debtor must:

- be an individual living in England or Wales;
- owe a “qualifying debt” to a creditor;
- not have a debt relief order, be subject to an individual voluntary arrangement or be an undischarged bankrupt; and
- not already have had a breathing space moratorium in the last 12 months.

The debt adviser must be satisfied that the debtor cannot or is unlikely to be able to repay some or all of their debt and the breathing space is appropriate in the circumstances. A breathing space will not always be appropriate. For example, if a debtor has assets that could easily be sold to clear the debt or there are other debt solutions readily available. A debtor applying for a mental health crisis breathing space must, in addition to satisfying the above conditions, show they are receiving mental health crisis treatment.

## Qualifying debts

All personal debts and liabilities are qualifying debts. Debts include any sum of money owed by a debtor, while liabilities include any obligation on the debtor to pay money. Most individual debts are likely to be ‘qualifying debts’ including business debts owed by sole traders who are not registered for VAT, credit card payments, personal loans and mortgage or rent arrears. In relation to business debts that are guaranteed personally, the Government guidance provides that “*Guarantor loans can be included in a breathing space, but the protections do not extend to the guarantor. The guarantor can apply for their own breathing space, if they’re eligible*”.

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 moratorium.

## Steps to take once notified

The Insolvency Service will notify creditors and maintain a register of breathing space moratoriums and when they end. Once notified, creditors must identify all debts owed by the debtor and advise the debt adviser of any debts not included on the notification. Creditors must also:

- stop all interest and charges for the duration of the breathing space;
- stop any enforcement or recovery action (including court proceedings and bankruptcy petitions) to recover that debt;
- stop contacting the debtor to request payment of that debt without permission of the court; and
- notify the court in writing if you have commenced proceedings. The Court must stay bankruptcy or enforcement proceedings but other court proceedings can continue until judgment.

Creditors have 20 days to challenge a breathing space moratorium if it can evidence that the debtor has sufficient funds to pay his or her debts. The creditor can apply to the court if it is unsatisfied with the debt adviser’s decision. Creditors can also continue to enforce and recover non-qualifying debts.

## Impact of the regulations on creditors

The moratoriums are another form of support to debtors but are not a complete payment holiday; the debtor remains liable to pay the debt, and creditors can continue to accept payments. Creditors will need to ensure they



have put in place adequate procedures to make sure that neither they, nor their agents, take any action against a debtor when notified of a breathing space moratorium otherwise they may be liable for any losses the debtor suffers as a result. In addition to existing vulnerable debtor policies, creditors will also need to ensure relevant procedures are in place to make sure interest and charges do not accrue during the breathing space period.

## How can we help

We have a dedicated team of debt recovery specialists with many years of experience collecting debts for clients. The majority of those debts will be business to business so the Regulations will not apply, but there will cases where the debt is owed by a sole trader or a third-party guarantor, in which case the Regulations may apply.

If you have been chasing for payment of a debt it is also worth remembering that the Regulations permit existing court proceedings to continue until the court makes an order or judgment – so try not to delay issuing proceedings. Further, as secured debts are generally excluded from the Regulations, financiers may want to consider, where possible, securing any guaranteed obligations with a legal charge.

From a landlord's perspective, it is important to note that rent is still payable under the Regulations. This means that the tenant should continue to pay their rent. If the tenant defaults on payment of their rent, the debt adviser may be contacted who can cancel the breathing space moratorium if they consider it fair and reasonable to do so.

Finally, it is essential that you notify your agents or solicitors of any notification you may receive from the Insolvency Service who will ensure you comply with the Regulations, liaise with the debt adviser and help you assess their decision. If you have any questions concerning the Regulations, please do not hesitate to contact Gina Hope or Aimee Hunter in our Debt Recovery Department.



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