

Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations

The government's Debt Respite Scheme comes into force on 4th May 2021 giving individuals in debt the right to legal protection from their creditors.

What is a breathing space, and what does this mean for creditors?

There are two types: i) A breathing space moratorium, which lasts for up to 60 days and, ii) a mental health crisis breathing space moratorium, which lasts as long as the mental health treatment continues, plus 30 days. Once effective, a creditor must stop all activities relating to that debt and apply the protections. If a creditor has commenced legal proceedings, either in-house or instructed solicitors, this must stop, including enforcement action.

Breathing space moratorium

A debtor can apply to a debt advice provider authorised by the Financial Conduct Authority (FCA) to offer debt counselling for advice and a breathing space moratorium.

The debtor must be:

- An individual living in England or Wales (includes sole traders)
- Owe a qualifying debt to a creditor
- Not have a debt relief order or an individual voluntary arrangement or be an undischarged bankrupt
- Not already had a breathing space in the previous 12 months

The debt advice provider is responsible for administering the breathing space moratoriums, being the point of contact for the debtor, the creditor and the Insolvency Service. The debt advice provider must be satisfied that the debtor cannot pay some or all of their debt as it falls due and considers the debtor would benefit from a debt solution.

If a debtor could pay with some budgeting assistance, or sell assets quickly to clear the debt, then a breathing space will not be appropriate. If a suitable debt solution such as an individual voluntary arrangement is available, this may be more appropriate.

Mental health crisis breathing space moratorium

An approved mental health professional (AMHP) certifies that a person is receiving mental health crisis treatment. In that case, a debt advice provider can start a mental health crisis breathing space. The application does not need to be made by the individual and can be done on their behalf by their carer, social worker, mental health nurse and others. The debtor must still meet the same criteria as for the standard breathing moratorium.

Qualifying debts

All personal debts are likely to be qualifying debts, with a few exceptions. It includes joint debts even if only one debtor applies and business debts owed by sole traders not registered for VAT. Student loan debts do not qualify for the scheme.

What steps should you take once notified

The Insolvency Service will maintain the electronic service that the debt advice providers will use to send out the notification to creditors and maintain a register of persons whose debts are in breathing space, including the date it ended or cancelled in the last 15 months.

You will be notified either electronically via the electronic system if you have opted into the electronic system, email, or by post. The breathing space will start on the day of receipt of the email or four business days after the posted date.

Once notified, you will need to identify all debts owed by the debtor and advise the debt advisor of any debts not included in the notification. You will need to:

- Stop all interest and charges for the duration of the breathing space.
- Stop any enforcement or recovery action to recover the debt either by you or any agent you have appointed.
- Stop contacting the debtor to request payment.
- If you have commenced proceedings, you must tell the court in writing as soon as you receive a notification. The court must stop bankruptcy proceedings and enforcement, but other court proceedings can continue until judgment.

If the debtor owes more than one debt and one of these does not qualify, you can continue with enforcement and start legal proceedings regarding the non-qualifying debt. A creditor has 20 days to challenge a moratorium if it considers that the debtor has enough funds to pay their debts as they fall due but will need evidence to support this application. If the debt advice provider, after consideration, does not cancel the moratorium, the creditor can apply to the county court for review.

What to do if your debtor is with STA

You should notify us immediately you receive a notification and you could opt for the electronic service provided by the Insolvency Service [once available] to expedite notifications to you. We attach our process plan for the Debt Respite Scheme should you wish to see how we protect your debtor and you.

Comment

The moratoriums are another form of support to debtors but are not a complete payment holiday; the debtor remains liable to pay the debt. You can continue to accept payments. You may want to review your processes and procedures to ensure that notifications, when received, are acted upon promptly and paused as required. They will present creditors with further delay in recovering outstanding liabilities and affect recovery processes, which the COVID-19 pandemic has already impacted. They should, however, sit alongside existing policies of dealing with vulnerable debtors.

Here is the government website link to the [Debt Respite Scheme](#).