

Breathing Space Moratorium

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The Regulations

The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

S I 2020/1311

Effective from 4th May 2021

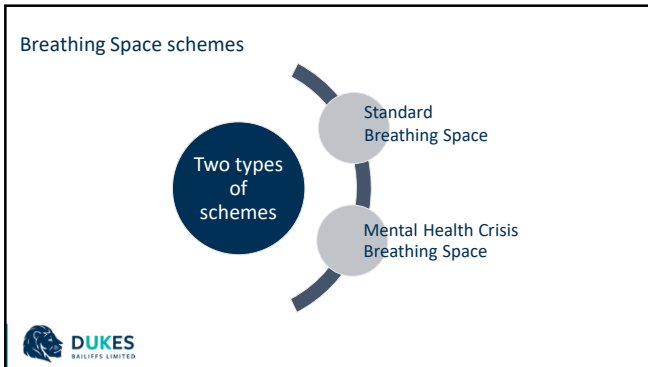
<https://www.legislation.gov.uk/uksi/2020/1311/contents/made>



What is Breathing Space?



Under these regulations – creditors cannot add any interest, fees, penalties or charges either.



Two types of schemes – Main differences

	Standard Breathing Space	Mental Health Crisis Breathing Space
Eligibility	An individual with a qualifying debt(s) who meets the criteria and conditions	A individual with a qualifying debt(s) who meets the criteria and conditions, who is receiving mental health crisis treatment.
Duration	Up to 60 days	The length of their crisis treatment, plus 30 days
Frequency	Only one a year	No limit
Review	Midway review between days 25 and 35	No midway review but ongoing treatment must be confirmed every 20 – 30 days

Breathing Space: who is eligible?

Standard Breathing Space	Mental Health Crisis Breathing Space
<p>INDIVIDUALS ONLY:</p> <ul style="list-style-type: none"> Who are resident, or normally live in England or Wales; Are not an undischarged bankrupt; Do not have a current debt relief order; individual voluntary arrangement (IVA), or an interim order; Have a qualifying debt(s); Cannot meet those debts as they fall due; and Are not currently subject to another breathing space moratorium, or a mental health crisis moratorium. 	<p>INDIVIDUALS ONLY:</p> <ul style="list-style-type: none"> Who are resident, or normally live in England or Wales; Are not an undischarged bankrupt; Do not have a current debt relief order; individual voluntary arrangement (IVA), or an interim order; Have a qualifying debt(s); Cannot meet those debts as they fall due; and Are not currently subject to another breathing space moratorium, or a mental health crisis moratorium. Are receiving mental health crisis treatment.

Who can apply for Breathing Space?

Standard Breathing Space

Generally the debtor will apply, but can also come from their representative.

Representatives are:-

- A person who has been granted –
 - i) An enduring power of attorney under the Mental Health Capacity Act 2005
 - ii) A lasting power of attorney under the Mental Health Capacity Act
- A deputy appointed by the court under the Mental Health Capacity Act 2005;
- A person appointed a guardian under the Guardianship (Missing Persons) Act 2017.

Mental Health Crisis Breathing Space

Rules as in Standard Breathing Space apply, but additionally:-

- A debtors carer;
- An approved mental health professional (AMHP);
- Care coordinator;
- A mental health nurse;
- Social worker;
- Independent mental health advocate or mental health capacity advocate;
- An appropriate person under the Mental Health Capacity Act 2005



How is Breathing Space applied for?

ONLY THROUGH A DEBT ADVICE PROVIDER

Either of:-

1. A Financial Conduct Authority (FCA) authorised debt advisor, or
2. A Local Authority (where they provide debt advice to residents)



Debt types applicable for Breathing Space

Any debt or liability (whether in sole or joint names), including any under:-

- An order or warrant for possession of their home or place of business;
- A court judgment;
- A controlled goods agreement
- Any debt owed or liability payable to the Crown.

WILL INCLUDE



- a) Ongoing mortgage payments; ****
- b) Ongoing rent payments; ****
- c) Ongoing insurance payments;
- d) Ongoing taxes, duties and NI contributions;
- e) Ongoing water, sewerage, gas, electricity, heating oil or solid fuel charges;
- f) VAT owing from running a business;
- g) Business debts incurred as part of a partnership;
- h) Debts or liabilities owed due to fraud; ****
- i) Court fines imposed due to an offence or recognisance; **
- j) Repayment of advances of UC, PIP, JSA and ESA;
- k) Ongoing council tax and business rates payments;
- l) Child maintenance orders; social fund loans; and repayment of student loans;
- m) Damages due to negligence, nuisance or breach of statutory, contractual or other duty under the Consumer Protection Act.

CANNOT INCLUDE



How will Breathing Space notifications be received

Creditors will be notified of Breathing Space by either:

Creditors can then also view and manage their notifications through:

Creditor notifications:

- Issued through Gov.Notify
- Sent for each individual debt
- Notifications sent in real time

- Sent in batches
- Daily email notification advising that Breathing Space notifications are ready to collect
- Organisations will need to build API capability

Insolvency Service Creditor Onboarding

Good morning/afternoon

As you may know, the Breathing Space scheme is due to be launched on 4th May 2021.

You can find the guidance for creditors on Breathing Space here: [Debt Respite Scheme \(Breathing Space\) guidance - GOV.UK \(www.gov.uk\)](#)

We are currently in the process of gathering the details of organisations who are likely to be frequently included in Breathing Space applications with the intention that these organisations will receive their Breathing Space notifications electronically.

Electronic notification of Breathing Space starting and ending could entail us providing you with access to our electronic service so you can receive automated notifications direct to your IT system (an API). Alternatively, you could opt to receive the notifications by email.

We would appreciate it if you could provide the details requested below, if you represent more than one organisation, please provide the details for each one.

Please complete the details below and return to breathingspace@insolvency.gov.uk by 12th March 2021.

Breathing Space – Creditor Information

General Organisation Details

Organisation Name(s)	
Organisation Address	
General Email Address	
Organisation Telephone Number	
Website Address	
Organisation Type	
Preferred communication method for Breathing Space notifications (email or API)	

Insolvency Service Creditor Onboarding

Contact Details

We will use these details to contact you if we have any questions about the information supplied, or if there are any issues with sending notifications to you once Breathing Space goes live.

Primary Contact Name	
Primary Contact Job Role	
Primary Contact Email address	
Contact Telephone number	
Secondary Contact Name	
Secondary Contact Job Role	
Secondary Contact Email Address	
Primary Contact Email address	
Further information	

Debt Types

This information will be used to enable Debt Advisers to select from the specified debt types when entering your organisation as a creditor.


Please therefore ensure that any debt types specified will make sense to the debt adviser as this will help ensure the right one is selected (so for example, avoid acronyms or internal department names).

We would also suggest a maximum of 6 debt types if possible.

Please provide the names of the debt types for your organisation, if you do not wish to utilise debt types please indicate this in the box below.

Debt Types
<small>Example: Credit Card</small>

We do not require any debt types:



Insolvency Service Creditor Onboarding

Email Address for Notifications

This will be the email address that Breathing Space notifications are sent to. We recommend that that a mailbox with shared access is used for this purpose.

You can also provide details of an alternative email address to be used if for any reason you are unable to receive notifications at the primary address.

Email Address	
Secondary Email Address	

Super User Details

The super-user would be the person responsible for giving members of your organisation access to the Breathing Space portal once it goes live.


Organisation Name	
Super User Name	
Email Address	

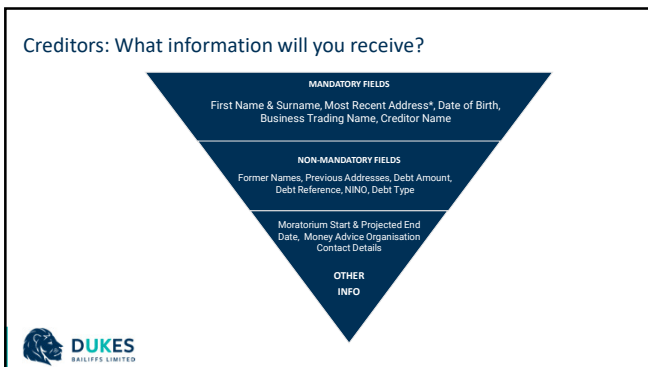
Your Details

Name	
Email Address	
Date	

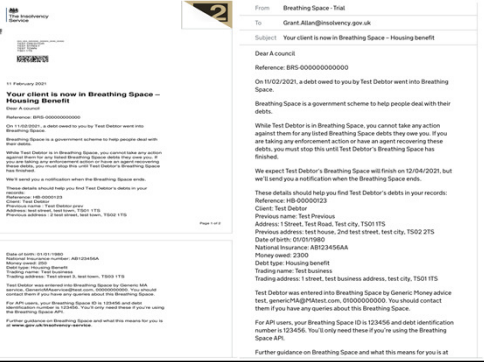
Please send the completed form to: bss@inspaces@insolvency.gov.uk

Forms need to be returned by the **17th March 2021**





Example creditor letter & email



Creditors: What you must do when you receive a notification

- Search your records to identify the specific debt, and any other debts owed by the debtor (including any in joint names);
- Not contact the debtor to request payment of the debt(s);
- Notify any assigned creditor of the breathing space and give their details to the debt advisor;
- Notify the debt advisor of any other debts found if they are not included in the notification;
- Ensure any agent appointed stops any enforcement or recovery action;
- Notify in writing, any court or tribunal of the breathing space if you have already filed a petition for bankruptcy or started any action (the court must stop any bankruptcy proceedings until the breathing space ends or is cancelled);
- Stop the addition of any interest, fees, penalties or charges to the debt(s) for the period of the breathing space;
- Stop any enforcement or recovery action – (for all parties to the debt, not just the person named in the breathing space);

Creditors: What rights do you have?

- Creditors can access the breathing space register to obtain information about the debtor and the debt they owe you, ...well - eventually. (You won't be able to see information regarding other creditors and other debts)
- Creditors have the right to ask for a review of the breathing space within 20 days of the start date on specific grounds
- Can appeal to the Court if the Debt Advisor doesn't cancel the breathing space following a review, but must be within 50 days of the start of the breathing space.

Enforcement agents: What we must not do once we receive a notification

- Take enforcement action regarding the breathing space debt(s) for all parties to the debt against the debtor(s) in the breathing space.
- Add interest, fees, penalties or charges to the debt(s) for the period of the breathing space.
- Contact the debtor to request payment of the debt(s).
- At the end of the moratorium period, the agent cannot require the debtor to pay any fees, penalties or charges that accrue during the period that relate to the storage of goods seized before the start of the breathing space.
- Sell any of the debtor's good, (unless the agent took control of them before the breathing space started).
- Take control of the debtor's goods;
- Collect a breathing space debt through existing third-party deductions from an individual's benefit payments;
- Apply to the DWP for a new third-party deduction to be taken from an individual's benefit payments;

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What this means in practice

- INTERNAL & EXTERNAL COMMUNICATIONS
- MONITORING & REVIEWING
- SIGNPOSTING
- RÔLES & RESPONSIBILITIES
- APPEALS & CHALLENGING
- POST BREATHING SPACE ACTION
- SYSTEM REQUIREMENTS
- REPORTING
- CROSS CHECKS
- TRAINING

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Any questions?

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Thank you

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