

Breathing Space Advice Note

22 March 2021



About breathing space

Breathing space, or the debt respite scheme, gives people in problem debt protection from their creditors for a period of time in order for them to address their debt problems and find a solution.

The regulations kick in on 4th May 2021 and pretty much any corporate entity to which people may owe money is expected to be ready to respond. There are a handful of exemptions in terms of the type of debts that can be included in breathing space (listed in the guidance linked below). Parking debts both public and private sector qualify for breathing space, so a debtor may include outstanding PCNs in their arrangement.

The guidance for creditors from government is [here](#)

There are two types of breathing space arrangement:

The **standard scheme** which is for a period of 60 days

A **mental health crisis scheme**, which is for as long as a person is assessed to be in a mental crisis, plus an additional 30 days to run concurrently from the date they are deemed to no longer be in crisis.

A breathing space arrangement can only be set up by an FCA regulated debt advisor (this is also the case for a mental health crisis situation where the mental health practitioner would refer the case to the debt advisor).

Breathing space arrangements will be facilitated by the Insolvency Service, who will be responsible for all of the IT systems to support notification of the scheme including a creditor portal which will (once it's ready) be the mechanism to inform creditors about new breathing space arrangements. Initially though, as we understand the portal is not going to be ready by the 4th May, so the Insolvency Service will notify creditors via e-mail. The Insolvency Service aims to contact all major creditors ahead of the rollout. If you are concerned, however, that your organisation hasn't signed up with them yet, you can contact them at breathingspaceproject@insolvency.gov.uk

How a breathing space case will work in practice:

1. A debtor will present as much detail as they are able about debts and creditors to a debt advisor
2. If the debt advisor decides they need a breathing space arrangement the advisor will determine the debts and creditors to be included
3. The arrangement will be registered with the Insolvency Service and added to the Breathing Space Register
4. All creditors included in the breathing space arrangement will be notified by the Insolvency Service. There will only be ONE notification per debt and it may or may not specify what that debt relates to dependent upon how much information the debtor has been able to provide. Such notifications will come to ONE point of contact in the organisation, which may not necessarily be the department dealing with the debt.
5. Creditors must conduct searches of all of their systems to try and identify any and all outstanding debts relating to the debtor named in the breathing space arrangement.
6. Any qualifying debts found must immediately be put on hold and you cannot contact the debtor for the entirety of their breathing space arrangement re these debts, nor can you add any interest or charges to the debt.
7. If, upon searching, it is found that the same debtor has other outstanding debts owing, the debt advisor must be advised and will consider whether or not to include those in the arrangement too. In the meantime those additional debts should be put on hold too.
8. Creditors will be provided with a predicted end date when they are notified of a breathing space arrangement. If a full standard 60 day Breathing Space is completed and no further arrangements are in place, normal service resumes without further notice from either the Insolvency Service or Advice Service. If the arrangement is cut short or arrangements are made for a repayment plan post breathing space, the creditor will be advised by either the Insolvency Service or the Advice Service.
9. In the case of a mental crisis breathing space arrangement, the creditor will be notified by the Insolvency Service or Advice Service when this has ended or further arrangements have been put in place.

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What Breathing space is not:

A payment holiday, so debtors will still be expected to meet ongoing liabilities throughout their breathing space arrangement

A debt write-off, where qualifying debts are merely frozen for the duration of the arrangement

A solution in itself, as it is designed to buy time for the debtor to find a suitable long term solution

A person can only have one standard breathing space in any 12 month period, but after 12 months they could enter into a new arrangement if they still have debt problems. With the mental health version there is no limit on how many times they can go in and out of breathing space as it's directly related to whether or not they are assessed as being in a mental health crisis.

What should my organisation ensure they do to prepare in advance of 4th May 2021?

Ensure all relevant team members have read and understand the breathing space guidance for creditors. Relevant staff should receive training to familiarise themselves with breathing space and new processes and policies.

It is highly recommended, if appropriate, to establish a corporate project group involving all departments to whom debts may be owed. This group could then take responsibility for:

- Building good working relationships with debt charities locally and nationally
- Getting buy in from senior management and members and ensure they understand the significance of breathing space and other possible debt repayment regulations
- Ensuring clear and effective communication channels between staff and with relevant external agents so that breathing space cases are notified to the right people and dealt with effectively
- Reviewing policies relating to debt collection, write off, data protection and GDPR
- Overseeing monitoring and statistics to be able to report on the impact of breathing space
- Consider whether a Single View of Debt is needed

If you don't consider it is necessary or are not able to establish such a group then it is still important to ensure all of the responsibilities above are being covered within your own team

Ensure you know where breathing space notifications will arrive at in your organisation. There will only be one notification per debt which will be sent to one point of contact and it may or may not detail what the debts are in relation to. Some organisations may decide to appoint or nominate a breathing space officer. In some cases we are aware of this has been the FOI officer.

Establish how your team will be notified of a breathing space arrangement, whether this is via an email group, or system notification (an API), or other method. It will be key to develop a swift process to communicate across teams, so that enforcement action can be halted within the required timescales.

Establish responsibility within your team for conducting searches to confirm whether any of the overall outstanding debt to the organisation relates to parking

Our thanks to Mid-Sussex council, Bristow and Sutor and Capita for their contributions to this advice note

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Establish a process to identify all debts owing by the debtor, even if these are not included in the breathing space and for notifying the debt advice service if additional, non included debts, are found. There will need to be a process in place to put these debts on hold until the Debt Advice Provider confirms whether or not they will be included in the Breathing Space arrangement.

Engage with back office IT supplier to ensure your system is capable of identifying cases in breathing space and putting those cases on hold. You should also talk to your IT supplier about changes to the system to cater for debt repayment plans which may follow breathing space

Ensure you are following section 3.5 of the breathing space guidance for creditors in relation to obligations of creditors and their agents. Communication between you and your agents is absolutely key, ensuring both parties act quickly to cease any enforcement action if either notifies the other of a breathing space arrangement. Keep in mind that different agencies' processes will likely differ, and if you are working with more than one agent it will be important to ensure you are confident in their response.

If you are an agent, consider how you need to communicate with other parts of your supply chain to ensure Breathing Space regulations are met. For example, if you are managing parking operations for an end client, there is a chance that they will receive a notification if the debtor is unclear about who their debt is with. By communicating now with your clients, you can ensure this does not come as a complete surprise, and that there is a process in place to handle it.

FAQ's

Q: I've received notification of a breathing space, what do I need to ensure I do?

A:

1. Interrogate your system for any debts owing by the debtor named on the breathing space
2. Put any debts you find on hold immediately
3. If you find that the debtor has additional debts not included in their breathing space arrangement you must notify the debt advice service. These debts must remain on hold until the debt advisor confirms whether or not they are to be added to the breathing space arrangement.
4. Do not contact the debtor regarding or increase the included debts for as long as they are in breathing space
5. Creditors will be notified by the debt advice service if the breathing space has ended early or to advise that the debtor has entered into a formal debt repayment plan. If you receive notification of neither you may resume enforcement action after the 60 days have elapsed in the case of a standard arrangement. We would suggest this is done in a sensitive and re-engaging manner rather than immediate demands for payment.
6. If it is a mental health crisis arrangement you should wait to be notified before re-commencing enforcement.
7. Ensure the debtor is notified of ongoing current liabilities where applicable and as appropriate during their breathing space arrangement.

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Q: At what stage of the process is a PCN considered a debt?

A: At the time of writing a PCN is considered a debt from the point of issue. We have raised questions with the Treasury in relation to the very first stage (pre notice to owner/keeper) when the identity of the keeper is not known for PCNs issued to a vehicle. We will update this answer as soon as we have clarity on this. Otherwise for all other stages the case must be put on hold until the breathing space arrangement has ended or the debt has been included in a formal repayment plan.

Q: What about the statutory timescales which local authorities have to abide by?

A: The guidance for creditors states that if a time limit for enforcement or new legal claims related to the debt runs out during the Breathing Space moratorium, this is extended to 8 weeks after the moratorium ends, so this may give councils more time to process these cases.

Q: What if the debtor incurs new PCNs whilst they are in a breathing space arrangement?

A: The debtor remains responsible for ongoing liabilities during the breathing space period, so they are still liable for any additional PCNs issued after the arrangement starts, so these be processed in the usual way and cannot be added retrospectively.

Q: If a creditor finds additional debts and these are added to the breathing space arrangement, does that re-start the 60 day clock?

A: No. If a creditor finds additional debts and after considering them the debt advisor decides to add them to the arrangement the end date of the arrangement remains the same for all debts including these additional ones. For example, if you found additional debts on day 5 of the arrangement and they were added on day 10 they effectively would be put on hold for 50 days.

Q: What about local authority parking debts owed by debtors residing outside of the council's area?

A: It is the debtor's responsibility to provide as much information as possible about their debts in order that they can be located by creditors. It is important for parking teams to highlight the possibility of debts coming in from outside the council area and to ensure information is shared by the central point of contact in order that they can be searched and identified.

Q: Are TEC making any changes to their processes?

A: MoJ and TEC are working on specific guidance relating to breathing space and we will ensure members are notified and signposted to it when published

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Q Following notification of Breathing Space, if the customer then fails to engage with the debt advisor during the 60-day period, will the full 60-day period lapse before the Debt Advisor tell us that attempts to engage have failed? Are we then able to begin recovery action immediately - or this a further procedure to follow?

A: This will depend on the discretion of the Debt Advice Provider as action can't be resumed until the moratorium has formally been ended. If a Debt Advice Provider does end the moratorium early, you or your agent/client should be notified via the Insolvency Service or Advice Service. Once Breathing Space ends (whether because it runs for the full 60 days or because it is ended early) enforcement action can proceed as normal, unless you are advised of the debtor moving to a formal repayment plan.

Q: If a debtor offers to make a payment during their breathing space arrangement can we accept it?

A: Yes, debtors are able to make payments to creditors during their breathing space arrangement if they choose to and creditors are perfectly entitled to accept them.

Q: If the Debt Advisor comes forward with an offer of payment - are we obliged to accept the offer - no questions asked? Or are we able to ask for evidence to support the offer?

Breathing Space itself does not change the "power" that Debt Advice Providers have to make arrangements - they will either need to progress to a formal insolvency solution or do their usual work to make an arrangement. The original manifesto commitment linked breathing space and statutory debt repayment plans, but the latter has not been brought into effect yet nor any details given. When they come in, the answer will probably change.

Q: What are the potential penalties for creditors who fail to comply with the guidance?

A: Regulation 12(2) says that "any creditor who fails to notify their agent in accordance with paragraph (1) or fails to do so as soon as reasonably practicable, will be responsible for any losses incurred by a debtor or the agent as a result of the creditor's failure." There is no mechanism for how these losses could be recovered from the creditor and there are no specific fines or penalties defined in the regulations. However, the Debt Advice Provider and the debtor will have access to all the usual routes of complaint in order to address non-compliance. There is also likely to be a considerable reputational cost if any organisation is consistently found not to comply with the regulations. The LGSCO would probably consider you to be at fault if you do not abide by Breathing Space, even if this was not an intentional act. Saying all of that, we understand that in the early stages of these regulations coming into force that simple mistakes will be dealt with forgivingly, provided the creditor then addresses the root cause of the error. Repeated mistakes of the same nature are likely to be viewed less favourably.