

## The Debt Respite Scheme (Breathing Space)

The Insolvency Service has released guidance for creditors which can be found by [clicking here](#).

The legislation can be found by [clicking here](#).

### Key Points

- Government scheme ran by The Insolvency Service which is a part of the Department for Business, Energy and Industrial Strategy
- Provides someone who is in problem debt the right to legal protections from their creditors.
- Comes into force on 4<sup>th</sup> May 2021.
- Standard Breathing Space timescale is 60 days.
- There is also a Mental Health Crisis Breathing Space that has different timescales.
- If you are informed of a Breathing Space, you must search through your records to identify the Parking Charge/s related to it, and stop all enforcement until the Breathing Space ends
- You must also inform any third parties (debt recovery agents, solicitors) who you may have passed the data to, to ensure that they also stop enforcement until the Breathing Space ends.
- The operator and the third party should make a note of the date that the breathing space started, and the date that the breathing space ends to ensure that no enforcement action occurs during the breathing space, but also so they are aware of when the breathing space has ended so that enforcement action can recommence.

## **What is a Breathing Space?**

There are two types of breathing space: a standard breathing space and a mental health crisis breathing space.

A standard breathing space is available to anyone with problem debt. It gives them legal protections from creditor action for up to 60 days. The protections include pausing most enforcement action and contact from creditors and freezing most interest and charges on their debts.

A mental health crisis breathing space is only available to someone who is receiving mental health crisis treatment and it has some stronger protections. It lasts as long as the person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).

A debtor can only access a breathing space by seeking debt advice from a FCA regulated or local authority debt adviser. The debt adviser is responsible for the administration of a breathing space and will be the point of contact for the debtor and the Operator.

A debtor is only allowed one breathing space per year.

## **When does the Debt Respite Scheme (Breathing Space) begin?**

The Debt Respite Scheme (Breathing Space) begins on 4<sup>th</sup> May 2021.

## **Identifying a Breathing Space**

The Debt Respite Scheme (Breathing Space) will give someone in problem debt the right to legal protections from their creditors.

A debtor must have at least one qualifying debt owed to a creditor. An unpaid parking charge qualifies as a qualifying debt.

A breathing space will start the day after the debtor's details are put onto the breathing space register. The breathing space register is held and facilitated by the Insolvency Service.

Once a debtor's details have been put onto the register, you will receive a notification, telling you the breathing space start date and details of your qualifying debt (if the debt adviser had those details). If the debt adviser is aware that you are owed more than one qualifying debt, you will receive a notification for each debt.

## **What should Operators do to prepare for a Breathing Space?**

The IPC would recommend that Operators and third parties register with the Insolvency Service to receive electronic notifications regarding the debt respite scheme. If you have registered, you should receive a notification the same day that details are put on the register. It is likely this will be the day before the breathing space starts. If you have not registered you will receive notifications by post, it's likely you'll receive it after the breathing space has started.

Once a debtor's details have been put onto the register, you will receive a notification, telling you the breathing space start date and details of your qualifying debt (if the debt adviser had those details). If the debt adviser is aware that you are owed more than one qualifying debt, you will receive a notification for each debt.

If Operators are registered with the insolvency service, if there is a breathing space, they will be able to see information including:

- the debtor's full name
- the debtor's date of birth
- the debtor's usual residential address
- the trading name or names and any address, if the debtor has carried on business with qualifying debts included in the breathing space.
- the details of the breathing space debt that is owed to you.
- the date the breathing space started.
- the date the breathing space ended or was cancelled.

## **What should Operators do if they are contacted regarding a Breathing Space?**

Once a breathing space has started, you or anybody acting on your behalf (debt recovery agents, solicitors) must not take any enforcement actions against the debtor.

When you receive a notification, you must search your own records to identify the specific debt owed to you by the debtor. This needs to happen as soon as possible.

If an Operator is using a third party to pursue unpaid Parking Charges, then it is the Operators responsibility to inform the third party of the breathing space to ensure that they suspend enforcement action. If you do not do this as soon as possible, you may be liable for any losses the debtor or the third party have as a result.

If the debtor gives the debt adviser contact details for any third party appointed by the Operator when the debtor applies for the breathing space, a notification of the start of the breathing space will also be sent to the third party. If the third party is

sent this notification, the Operator is not liable for any of the third parties' losses they could have avoided. Where a third party manages the debt on behalf of an Operator, they should tell the Operator of the breathing space and the protections.

If you have only received notification about one debt, but you are owed two or more debts (for example, the debtor has more than one outstanding parking charge with you that is not included in the original Breathing Space) then you should consider applying the protections set out below to all debts and, in all cases, you should tell the debt advisor about any additional debts. It is the debt adviser who will decide if the additional debt qualifies for the breathing space. When the debt adviser is given (or becomes aware of) details of an additional debt, they must decide whether it is a qualifying debt. If the debt adviser decides that it is, they must update the electronic service. The electronic service will send you a notification.

The operator and the third party should make a note of the date that the breathing space started, and the date that the breathing space ends to ensure that no enforcement action occurs during the breathing space, but also so they are aware of when the breathing space has ended so that enforcement action can recommence.

### **What happens if the breathing space concerns a parking charge that is at the internal appeal or IAS appeal stage?**

As the appeal has been instigated by the debtor, the normal process should be adhered to and the decision can be made regarding whether the appeal will be allowed or rejected. The appeal decision can be conveyed to the debtor, but Operators should not request payment until the breathing space ends.

### **What happens if we have already started legal proceeding to recover the unpaid Parking Charge?**

If you have started legal proceedings, you will need to contact the court to inform them of the breathing space. The court will then decide as to whether the proceedings may continue.

### **What happens when the breathing space ends?**

It is important to remember that a breathing space is not an opportunity for a debtor to avoid paying their outstanding debt. Once a breathing space has ended enforcement action can recommence.

If legal proceedings were suspended as a result of a breathing space, they can be continued from the point that they were suspended.

### **What happens if a debtor makes contact to pay their unpaid Parking Charge during a Breathing Space?**

If a debtor makes contact with an Operator or third party then the payment can be accepted. It is important to remember that the operator, or any third party cannot contact the debtor to pursue the debt.

### **What happens if Operators or third parties don't comply with a Breathing Space?**

You must apply all the breathing space protections for a debtor after you are notified about a breathing space. If you do not, any action you take is null and void and you may be liable for the debtor's costs.

The debtor can complain to their debt adviser, who will contact you to remind you of your obligations. The debtor can also complain directly to you, using your complaint procedure. This might include referring their complaint to the IPC.

If you still do not meet your obligations, the debt adviser can tell the Insolvency Service and they will contact you to remind you of your obligations.