

Dagenham Estates Guides

Issue 1 May 2021

On the Debt breathing space regulations.

The ever changing face of legislation



On 4 May 2021 the Debt Respite Scheme (“Breathing Space”) comes into force. What is it? And what does it mean for you?

(Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.



What is a debt breathing space?

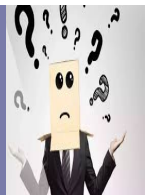
The breathing space is a set period of time where a tenant cannot be chased for their rent arrears, or any other debt included in the breathing space. The scheme is designed to give people the opportunity to take stock of their finances and look for options to start addressing their debts. There are two types of breathing space:

Standard 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.

Mental health crisis breathing space



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).



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An Approved Mental Health Professional (AMHP) can certify that a person is receiving mental health crisis treatment. The AMHP's evidence can be used by a debt adviser to start a mental health crisis breathing space.

Who administers the breathing spaces?

The Insolvency Service maintains an electronic service that debt advisers use to start the breathing space process, and also sends notifications to creditors during it.

How can a tenant get a breathing space?

Anyone who cannot or is unlikely to be able to repay their debts can apply to a debt adviser for a standard breathing space. A tenant who wants a breathing space must seek debt advice from a registered debt adviser who is authorised by the Financial Conduct Authority (FCA) to offer debt counselling or a local authority (where they provide debt advice to residents). The debt adviser must ensure that the tenant will be able to meet their obligations at the end of the breathing space period – a breathing space cannot be given if it will make a tenant's debts worse.

What to do if your tenant has a breathing space



If the tenant has included rent arrears in their breathing space, then you or the landlord will be notified by the Insolvency Service. This has important consequences:

- You must put on hold any action you are taking in relation to the rent arrears – this includes all letters, emails, automatic reminders, texts and phone calls demanding payment.
- A Section 8 notice cannot be issued for rent arrears (Section 8 notices can still be issued on other grounds). A Section 21 (no fault) notice can still be issued
- Any court action that has been started must be put on hold
- You must also complete a reasonable search of your records for any additional debt(s) the tenant owes you, as these may also need to be added to the breathing space
- Agents are advised to consider whether they need to make any changes to their systems and processes to comply with the regulations



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Can I still contact guarantors?

If your tenant has a guarantor, you can still chase them for the rent arrears as the tenant's breathing space does not relate to the guarantor. The guarantor can apply for their own breathing space, if they're eligible, and you will receive a notification if the guarantor is covered.

Requesting a breathing space review

You can ask a debt adviser to review the breathing space, or specific debts being included in it, if you consider that:

- the breathing space unfairly prejudices your interests. For example, you think that there has been discriminatory treatment in respect of you, or your debt.
- the tenant does not meet at least one of the eligibility criteria for a breathing space
- any of the debts included in the breathing space do not qualify
- the tenant has enough funds to repay their debts You have limited time to request a review, either:
 - within 20 days of the breathing space starting, based on the start date in the notification you received

Can I still contact the tenant?

Yes, you can still contact the tenant about anything property related, such as inspections and repairs. But you must not under any circumstances discuss the rent arrears.

Who can I contact about the arrears?

If your tenant has a breathing space you will be able to contact the tenant's debt adviser to discuss the rent arrears (and any other debts owed to you) and to offer any debt solution. The debt adviser's details will be included in the notification from the Insolvency Service.

What about the normal monthly rent payments?

A breathing space is not a payment holiday. While you cannot enforce the collection of rent arrears or charge interest during a breathing space, the tenant is still legally required to pay their rent that falls due as normal.

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- within 20 days of an additional debt being added to the breathing space, based on the date when you received or were deemed to have received the notification

To request a review, you need to give the debt adviser a written statement with the reasons you want a review and provide any supporting evidence you want to include. This will need to be done outside of the electronic service. The debt adviser can decide to carry out the review you have requested as part of the breathing space midway review process. The debt adviser must cancel the breathing space in respect of all or some of the debts if they agree with you unless the debt adviser thinks cancelling the breathing space is unfair or unreasonable due to the tenant's personal circumstances.

How does a breathing space affect repossessions?

The legislation underpinning Section 8 notices seeking possession has recently been updated to account for a debt breathing space. You must now include details of the breathing space debt scheme within Section 8 notices when seeking to gain possession of a property, or risk the repossession being rejected by the court.

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