

Local authorities and the Debt Respite Scheme

What is this legislation and how might it affect local authorities?

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The [Debt Respite Scheme](#) (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 ("the Scheme") is due to come into force on 4 May 2021.

But what is this legislation and how might it affect local authorities?

Whilst many of the legislative changes during the pandemic have had the aim of assisting businesses, this piece of legislation is targeted at individuals: specifically, individuals who are in debt and require "breathing space" from their creditors. The reasoning behind this legislation actually pre-dates the coronavirus pandemic but, given the current financial difficulties faced by many, its introduction may be well timed.

When the Scheme is introduced, there will be two strands to the proposed legislation - "standard breathing space" and "mental health crisis breathing space".

Standard breathing space

Standard breathing space will be available to any individual with a problem debt and could legally protect them from any creditor action for up to 60 days. The protection includes pausing any court proceedings, enforcement action and contact from creditors. It also incorporates freezing most interest and charges on their debts.

Mental health crisis breathing space

Mental health crisis breathing space is similar to standard breathing space save for two differences. Firstly, a debtor must meet an additional requirement of receiving mental health crisis treatment - an approved mental health professional needs to certify that the debtor is receiving mental health crisis treatment. The second difference is that the "breathing space" will continue until 30 days after the mental health crisis treatment stops. The length of the treatment does not affect this period.

Obtaining breathing space

"Breathing space" can only be started by debt-advice providers who are authorised by the Financial Conduct Authority (FCA) to offer debt counselling, or a local authority where they provide debt advice to residents.

There are certain criteria a debtor will need to meet for standard breathing space, although the threshold appears low. The eligibility requirements are:

- you are an individual (as opposed to a business);
- you have a debt that is not an excluded debt (as detailed below);
- you live or usually reside in England or Wales;
- you do not have a debt relief order, an individual voluntary arrangement, an interim order, are not an undischarged bankrupt at the time of the application; and

- you must not already have had the benefit of a standard breathing space in the last 12 months prior to applying.

The debt advisor must also be satisfied that the individual cannot, or is unlikely to be able to, repay all or some of their debt and that the breathing space is appropriate for the individual.

Excluded debts

All personal debts and liabilities are qualifying debts, with the exception of the following:

- Secured debts;
- Debts incurred from fraud or fraudulent breach of trust;
- Liabilities to pay fines imposed by a court for an offence;
- Obligations from a confiscation order;
- Child maintenance or obligations under an order made in Family Court proceedings;
- A crisis or budgeting loan from the social fund;
- Student loans;
- Damages awarded to pay for death or personal injury caused to someone else;
- Advance payments of Universal Credit; and
- Council tax liabilities that have not yet fallen due.

Appealing against breathing space

A creditor can make an application to end the breathing space if they believe, or have evidence to suggest, the debtor has assets that could be sold off to satisfy the debt. The first point of action should be to contact the debt-advice provider acting on behalf of the debtor. If that does not yield results, then an application to the court can be made. However, creditors will want to consider if it is economical to make an application given the standard breathing space only prevents action for up to 60 days.

Impact on local authorities'

A local authority has two potential roles in relation to the Scheme. Local authorities primarily may be a potential creditor of an individual subject to a Scheme. But some local authorities who provide debt advice to their constituents may also find themselves as administrators of the Schemes.

Where a local authority is also an administrator of a Scheme and there is a breathing space in place, it is vital that there are sufficient internal checks and safeguards in place to prevent other departments within the local authority from pursuing its debts.

To chase debts in these circumstances would not only be unauthorised and void but may cause reputational damage and risk eroding public confidence. The local authority could also be liable for the debtor's costs if any actions are improperly taken during a breathing space.

An aggrieved debtor can elect to complain to (1) their debt adviser, who will contact the local authority to remind it of its obligations; or (2) the local authority using its complaint procedures, which might include referring that complaint to the ombudsman or regulatory body. We understand that repeated breaches of the Scheme will be taken very seriously by the Regulator.

Local authorities' Public Sector Equality Duty

This is the legal duty which public authorities are under, meaning they have to consider how their policies and practices affect people with protected characteristics, such as people with mental health problems.

If a local authority is considering how it will approve and administer schemes, it must factor in its public sector equality duty and ensure protected characteristics are not unfairly affected.

This is particularly important where a local authority is a creditor of an individual for whom a mental health crisis breathing space exists or anticipated.

In order to ensure compliance with the equality duty (which applies in addition to a local authority's duty not to discriminate) it is imperative that a local authority can evidence that it has:

- removed or minimised any disadvantages an individual might have because of their mental health problem or protected characteristic; and
- taken steps to meet the needs of people with protected characteristic that are different from the needs of people who don't have protected characteristics.

Local authorities should ensure all staff comply with the requirements to eliminate discrimination, harassment and victimisation, and make sure people with a protected characteristic have the same opportunities as other individuals.

What does the Scheme mean for local authorities chasing debts?

The legislation will prevent most creditor action (be that litigation, bankruptcy petitions or enforcement action) against a debtor with an active breathing space in place.

Save for the limited exceptions listed above, most liabilities which a local authority may pursue against an individual will be captured by the Scheme. It is therefore important to ensure that all staff who are involved in the collection of debts are aware of the Scheme and how to comply with it once it comes into force in May.

Currently, it is not yet known how popular the Scheme will be, but we anticipate it being deployed tactically to try and avoid repayment. It will also be interesting to see the approach taken by other authorised debt-advice providers before a breathing space is granted.

Local authorities should keep a careful eye on debtors who may use the breathing space as an opportunity to conceal or dissipate any assets they may have, that have not been disclosed to a debt-advice provider. We would always suggest conducting your own checks on a debtor's assets before pursuing a debt. If you do not have your own service internally, we may be able to support you with a legal and data-protection compliant service to facilitate this.

Please do not hesitate to get in contact with us should you have queries with regard to your current procedures and/or the new Scheme.

Contact

Joe Price

Senior Associate

Joe.Price@brownejacobson.com

+44 (0)330 045 2864

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