



Breathing Space or Debt Respite Scheme

Practical guidance for self storage
operators in England and Wales



A Best Practice Guide
for SSA UK Members

www.ssauk.com

SSA UK Best Practice Guide

Breathing Space Scheme or Debt Respite Scheme

Contents

The Debt Respite Scheme	3
Introduction	3
What is Breathing Space?	3
Standard Breathing Space	3
Mental Health Crisis Breathing Space	3
When does it apply?	3
What must the operator do?	4
Can you contact the customer?	5
What about storage fees that continue to fall due?	5
Can an operator challenge a Breathing Space?	5
When the Breathing Space ends	6
What does this mean in the context of self storage?	6
1. Notification of a protected debt	6
2. Breathing Space is not a payment holiday	6
3. Multiple accounts in arrears	6
4. Joint customers and guarantors	6
5. Late fees	7
6. Statements of account	7
7. Repayment plans	7
8. Overlocking and lien sales	7
9. Existing overlocks	7
10. Late letters	8
11. Existing legal proceedings	8
12. New arrears after the Breathing Space has started	8
13. Contact with the customer	8
14. Contact with debt adviser	9
Why compliance matters	9
SSA UK best-practice reminder	9

SSA UK Best Practice Guide

Breathing Space Scheme or Debt Respite Scheme

The Debt Respite Scheme

Practical guidance for self storage operators in England and Wales. This Guide applies only to the Debt Respite Scheme operating in England and Wales. Different legal regimes apply in Scotland and Northern Ireland. It is a guidance document and not a substitute for legal advice on an individual case.

Introduction

This Guide explains both the definition and application of the Breathing Space Scheme in England and Wales. More importantly, it explains it in the context of what a self storage operator should do when notified that a customer's debt has entered the Debt Respite Scheme, commonly known as Breathing Space.

In summary, on receipt of an official notification, the operator should identify the protected debt, flag the account and immediately pause any collection, lien-sale, disposal or other enforcement activity connected with those arrears.

The guide sets out how to distinguish protected arrears from genuinely new storage charges, manage a unit that is already overlocked, communicate appropriately with the customer and debt adviser, notify third parties, request a review, where permitted and restart action when the Breathing Space ends.

It is important not simply to “pause everything”: each account should be reviewed according to the stage reached, while the goods remain secure and no action is used as leverage to recover the protected debt. It also details when legal advice should be obtained before restricting access, terminating the agreement or dealing with the customer's stored goods.

What is Breathing Space?

The Debt Respite Scheme, commonly known as **Breathing Space**, gives an individual experiencing problem debt temporary legal protection from their creditors while they receive debt advice and consider a longer-term solution.

The debtor must be an individual who lives or usually resides in England or Wales. A company, LLP or other incorporated body cannot itself enter Breathing Space.

A sole trader may qualify in respect of a debt for which they are personally liable, subject to the statutory exclusions applicable to certain business debts, including where the individual is VAT registered or carries on business in partnership with another person.

This guide covers the scheme operating in **England and Wales** under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. There are two types:

Standard Breathing Space

Usually lasts for up to 60 days.

Mental Health Crisis Breathing Space

Applies when someone is receiving qualifying mental health crisis treatment. It lasts for the duration of that treatment, plus a further 30 days.

When does it apply?

A customer cannot simply declare that they are in Breathing Space. The arrangement must be started

by an authorised debt adviser or qualifying local authority. A customer's statement alone does not formally place a particular debt into Breathing Space. However, where a customer credibly states that a Breathing Space has commenced, the operator should urgently check its electronic account, inbox, post and internal records and, where appropriate, contact the stated debt adviser before completing any irreversible sale /disposal.

The operator should then receive an official notification from the Insolvency Service identifying:

- the customer;
- the debt covered;
- the date the Breathing Space started;
- the debt adviser's contact details; and
- where known, the amount or account reference.

The protections must be applied from the date stated in the notification. Electronic notifications are treated as received on the day they are sent, while postal notifications are normally treated as received four working days after posting.

What must the operator do?

As soon as a notification is received:

1. Identify the customer and debt

Carry out a reasonable search of your records, even if the notification does not include your usual account or unit reference.

Check whether the customer owes any additional debts that are not listed in the notification. Tell the debt adviser about any additional debts you identify, but do not automatically assume they are protected until you receive confirmation.

2. Flag the customer's account

Record:

- the Breathing Space start date;
- the expected end date, if provided;
- the amount of debt protected;
- the debt adviser's details; and
- the actions that have been paused

Make sure all relevant staff understand that normal arrears procedures must not continue automatically.

3. Stop recovery and enforcement action

For the debt included in the Breathing Space, you must stop:

- payment demands and debt-chasing communications;
- default charges, late payment fees, and penalties
- legal proceedings or enforcement of an existing judgment;
- action by debt collection agents or solicitors;
- the sale, removal or disposal of the customer's stored goods; and
- any other action intended to recover or enforce the protected debt.

Any sale or disposal process under the SSA UK Licence Agreement that relates to the protected arrears must therefore be paused, even where the sale process or notices began before the Breathing Space commenced. Government guidance specifically prohibits creditors and their agents from taking control of or selling a debtor's property or goods during the moratorium.

Do not apply a new overlook, suspend access or terminate the agreement **as a means of enforcing protected arrears**. Where a unit was already overlooked before notification, do not automatically remove or retain the overlook. Pause further enforcement, keep the goods secure, contact the debt adviser promptly and obtain appropriate legal advice about access.

4. Notify anyone acting for you

Immediately tell any debt collection agency, solicitor or other appointed agent that the debt has entered Breathing Space and instruct them to stop recovery or enforcement action.

If legal proceedings have already started, notify the relevant court or tribunal in writing as soon as possible.

Can you contact the customer?

Generally, you must not contact the customer to request payment or reinforce the message that the protected debt remains unpaid.

You may contact them:

- in response to a question or complaint they have raised;
- if they ask to discuss the debt or a possible solution;
- about matters unrelated to the protected debt;
- where a court has permitted contact; or
- where contact is required by other applicable legislation.

Any necessary communication should be minimal, supportive and carefully worded. Questions about the Breathing Space or the protected debt should normally be directed to the debt adviser named in the notification.

What about storage fees that continue to fall due?

Breathing Space is **not a payment holiday**. A customer may continue to make voluntary payments, and existing Direct Debit payments can still be accepted.

The arrears identified in the official notification are protected. New storage fees first falling due after the Breathing Space begins will generally be new liabilities and will not automatically form part of the protected debt, because a moratorium debt will normally have been owed when the application was made.

However, storage charges are not listed as statutory “ongoing liabilities” under the scheme. That category is limited to specified liabilities, including mortgages or rent for the debtor’s primary residence, insurance, taxes and utilities. Operators should therefore:

- keep protected arrears clearly separate from genuinely new charges;
- ensure that any communication about new charges relates only to those charges and does not combine them with the protected arrears;
- tell the debt adviser about additional arrears and avoid using new charges as a pretext to recover the protected balance;
- avoid applying default charges, late fees or penalties to the protected debt; and
- obtain legal advice and discuss with the debt adviser, before applying an overlook, restricting access, terminating the agreement or taking enforcement action based on charges arising during the Breathing Space.

Can an operator challenge a Breathing Space?

A creditor can request a review only where they believe:

- the customer is not eligible;
- the debt is not a qualifying debt;
- the arrangement unfairly prejudices the creditor; or
- the customer has sufficient funds to repay their debts.

A request must normally be made in writing to the debt adviser within 20 days of the Breathing Space starting, or within 20 days of being notified that an additional debt has been included. Evidence should be provided to support the request.

When the Breathing Space ends

The operator should receive an official end or cancellation notification. Once it has ended, you may normally:

- restart appropriate contact and recovery action;
- resume legal or contractual enforcement procedures; and
- apply interest, charges or fees from the date the Breathing Space ends.

You must not backdate interest, fees or penalties that would have arisen during the protected period unless a court specifically permits this. Before restarting action, check whether the customer has entered bankruptcy, an Individual Voluntary Arrangement, a Debt Relief Order or another formal debt solution.

What Does this Mean in the Context of Self Storage?

1. A debt is not a breathing space debt unless the debt adviser has notified you as creditor that it is

If you haven't received notification from the debt adviser that your customer's debt is a breathing space debt, you do not need to apply any of the restrictions and can continue any action to recover the debt, even if your customer tells you they are in a breathing space. It is up to the customer to inform the debt adviser about the debt and for the debt adviser to decide whether to notify you as creditor that the debt is a breathing space debt.

2. The breathing space does not mean a payment holiday

Customers still need to meet their on-going payments of storage fees when they fall due. The breathing space restrictions concern debts in place when the breathing space begins, which essentially means accounts that were already in arrears when the breathing space starts and how far the enforcement process had gone when the breathing space began. While you cannot enforce a breathing space debt during a breathing space or charge interest or fees on it, a debtor is still legally required to pay their debts and liabilities. During the breathing space, the debtor should continue to pay any debts and liabilities they owe you. You can continue to accept these payments, including those you get from existing direct debits.

3. Multiple accounts in arrears

Check if you have more than one account with the customer. If you receive a notification for all accounts that are in arrears, then you need to apply the restrictions to all accounts. If you don't receive notifications for all accounts in arrears, notify the debt advisor and clarify which (if more than one) account the restrictions apply to.

4. Joint customers and guarantors

Where a notified Breathing Space debt is jointly owned, the restrictions on enforcement apply to action to recover that debt from the other person who is jointly liable, even if that person has not entered their own Breathing Space. The protections do not automatically extend to a guarantor. A guarantor would ordinarily require their own Breathing Space to obtain personal protection.

5. **Late fees**

If your licence agreement allows you to charge late fees that haven't already been raised, you can't charge these during the breathing space or retrospectively (for the breathing space) after the breathing space comes to an end. Any late fee on the overdue account that has been properly accrued prior to the commencement of the breathing space remains part of the debt.

6. **Statements of account**

Ideally, communications you send customers should not show interest, late fees or charges that accrue during a breathing space on accounts that were overdue at the start of the breathing space and have been notified as breathing space debts. However, if limitations on your IT systems mean that these show on invoices or the account, it does not breach the regulations to show them, as long as you do not require the customer to pay them and you make it clear you are not asking the debtor for payment of the interest/late fees on the specified account(s) for the duration of the breathing space.

7. **Repayment plans**

If you have agreed a repayment/instalment plan with your customer, the customer should continue to make payments under that agreement as they fall due. Although no enforcement action may be taken during the breathing space moratorium period, any unpaid instalments may be treated as a breach of the repayment plan and allow you to take appropriate steps from that point once the breathing space ends.

8. **Overlocking and lien sales**

Any proposed sale or disposal relating to protected arrears must be stopped, even where the sale process or notices began before the Breathing Space commenced. A new overlook or access restriction must not be applied because the customer has failed to pay protected arrears.

9. **Existing overlooks**

Regulations do not expressly state that every overlook installed before the Breathing Space must automatically be removed. However, the SSA UK Standard Self Storage Licence Agreement expressly links the overlook and refusal of access to non-payment and provides that the restriction may continue until the debt has been paid in full. Continuing to withhold access solely to secure or obtain payment of the protected debt therefore creates a significant risk of being treated as continued collection or enforcement of the debt, or enforcement of security.

Where an overlook was already in place before the operator received notification, do not assume that it must automatically be removed or that it can automatically remain throughout the Breathing Space. The Regulations do not expressly require every step completed before the moratorium to be reversed. However, continuing to withhold access specifically to pressure the customer into paying protected arrears may be treated as continuing collection or enforcement.

The appropriate initial approach is to:

- keep the goods secure and pause any sale, disposal or further enforcement action;
- not make removal of the overlook conditional upon payment of the protected arrears;
- contact the debt adviser promptly and explain the contractual lien, the existing overlook and the risk that unrestricted access may allow all goods to be removed; and
- seek an agreed arrangement regarding access, which may include supervised or controlled access where appropriate.

This approach keeps the goods secure without using the overlock as direct leverage to recover the protected debt. Notify any third party involved in the lien sale process that no further action may be taken until the Breathing Space has ended or appropriate advice confirms otherwise.

In summary, the operator must not:

- make removal of the overlock conditional upon payment of the protected debt;
- refuse access solely because the protected debt remains unpaid;
- use the overlock to pressure the customer or debt adviser; or
- continue any sale, inventory, removal or disposal process relating to the protected debt.

The operator should promptly contact the debt adviser and seek to agree access arrangements that are not conditional upon payment of the protected debt. Where unrestricted access would create a genuine safety, security or identification concern, supervised or controlled access may be considered.

Any continuing restriction must be based on a genuine reason independent of debt recovery, must be proportionate and should be recorded in writing. Case-specific legal advice should be obtained where appropriate access arrangements cannot be agreed.

10. Late letters

The government guidance says that, during a breathing space, you (or any agents you have instructed) must not contact a debtor about any collection or enforcement action for a breathing space debt. This includes asking them to pay or starting or continuing any legal action. This means that the late letter/lien sale process should be put on hold for the breathing space and then restarted from the point at which it was frozen once the breathing space ends.

11. Existing legal proceedings

If you as operator have already filed a petition for bankruptcy or started any other action in a court or tribunal relating to a debt that is now in breathing space, you must tell the court or tribunal in writing. You must do this as soon as you receive notification of the breathing space.

12. New arrears after the Breathing Space has started

Breathing Space can only apply to debts in existence when the Breathing Space starts, even if they are identified later. If a customer with a protected debt on one account goes into arrears on another account during the Breathing Space, those genuinely new arrears will not ordinarily be protected by the existing moratorium. The operator may communicate separately about those new charges and may, in principle, exercise contractual rights arising solely from their non-payment. Keep the debts clearly separate, ensure that communications relate only to the new charges, do not use them as a pretext to recover the protected balance and obtain legal advice before applying an overlock or other access restriction.

13. Contact with the customer

Although you are not able to contact the customer about any collection or enforcement action for a breathing space debt, you can contact them about ongoing liabilities, or if they ask you to talk about a breathing space debt or a debt solution, or to deal with complaints they sent you. It is not intended to stop communication that might be helpful to the debtor. You might want to contact a debtor at the start of a breathing space to tell them they do not need to worry about normal communications you send them. Any communication you send should be minimal and must be carefully drafted to ensure it cannot be read as asking them to pay what they owe. If you receive calls from customers worried by letters they receive from you during a

Breathing Space, this may mean that you need to consider whether the letters are appropriately worded, and whether they are consistent with the regulations.

14. Contact with debt adviser

You and the debt adviser may contact each other during the Breathing Space about the debtor and the debt. The adviser may not have detailed knowledge of self storage, so explain the practical and contractual position clearly. Provide the relevant licence terms, payment history, overlock date, proposed sale date and details of the operator's lien. Where appropriate, seek an agreed arrangement for access and, if there are grounds to challenge the Breathing Space, request a review within the 20 days described above.

Why compliance matters

Failure to apply the protections can make recovery or enforcement action null and void. The operator may also become liable for the customer's costs and could face a complaint through the debt adviser, the Insolvency Service or an appropriate regulator.

SSA UK best-practice reminder:

Pause any sale, disposal, collection activity or new access restriction relating to protected arrears. Where a unit was already overlocked, do not automatically remove or retain the overlock. Keep the goods secure, contact the named debt adviser, explain the operator's contractual rights and the risk of the goods being removed, seek an agreed arrangement regarding access and take legal advice before taking further action.

This is a guidance document – not a substitute for legal advice on an individual case.