

Factsheet



Offenders and benefits

Make Every **£** Count

The information and benefit rates in this leaflet are correct at April 2009

Benefits and offenders

Introduction

This factsheet explains what benefits may be claimed by offenders, or which may be affected or even stop, if someone is in prison, on remand or in custody. The factsheet is divided into sections on:

- benefits available while on remand
- benefits available while in custody
- benefits available on release from prison

On Remand

Remand is defined as:

- held on remand awaiting trial;
- held whilst awaiting sentence, having been convicted;
- residing in a bail hostel or similar accommodation as a condition of their bail;
- been convicted and are awaiting sentence.

Payment of the following benefits are suspended while on remand awaiting trial or sentence:

Non means-tested benefits

Incapacity benefit (IB), contributory employment and support allowance (ESA-C), severe disablement allowance (SDA), industrial injuries benefits (IIB), attendance allowance (AA), disability living allowance (DLA), carers allowance (CA), state retirement pension (SRP), bereavement benefits (BB), maternity allowance (MA), reduced earnings allowance (REA) and retirement allowance (RA).

However if a claimant is released without receiving a sentence of imprisonment (including a suspended sentence) full arrears for the time spent on remand are paid, including any additions to benefit for adult dependants. The claimant will also be credited with any NI contributions for the period.

A claimant who is on remand is not eligible for **JSA**. This is because they do not satisfy the condition that they are available for work. This applies to both contributory and income-based jobseeker's allowance. No arrears of JSA are paid for periods spent on remand where no sentence was imposed.

Statutory sick pay (SSP), statutory maternity pay (SMP), statutory paternity pay (SPP and statutory adoption pay (SAP)

Claimants are not entitled to **SSP, SMP or SPP** when they are in custody. Even if released during a period of entitlement to any of the above, benefit is not paid. However, arrears of **SAP** can be paid if claimants are released without charge, found not guilty or convicted without a custodial sentence.

Child benefit (CB) and guardians allowance (GA)

The claimant can still receive **CB and GA** while on remand if they continue to be responsible for the child.

Where a claimant receives CB for a child who is on remand, this will cease after 8 weeks. Arrears are payable for the time spent on remand if they do not receive a prison sentence.

Means-tested benefits

Income support (IS), income-related ESA (IRESA), income-based jobseeker's allowance (IBJSA) or pension credit (PC)

Claimants are not entitled to **IS, IRESA, IBJSA or PC** while on remand awaiting trial or sentence.

Where a claimant is getting housing costs as part of their IS, IRESA or PC, housing costs can continue for up to 52 weeks while on remand awaiting trial or sentence. This does not apply to claimants in receipt of IBJSA. If a claimant needs help with their housing costs they should claim IS, IRESA or PC as they will not be able to claim IBJSA due to not being available for work.

Claimants who do not receive a sentence of imprisonment and get arrears of **attendance allowance (AA) or disability living allowance (DLA)** may be entitled to arrears of the severe disability premium paid in any means tested benefits.

Claimants on remand are no longer counted as a member of the family for means-tested benefit purposes. A new claim will have to be made by their partner (who may be entitled to income support as a single parent if they have dependent children under 12 years old, under 10 years from 26.10.09).

Housing benefit (HB) and council tax benefit (CTB)

If a claimant is on remand or required to live away from home in a bail hostel they can remain entitled to **HB and CTB** as long as the absence is unlikely to substantially exceed 52 weeks. Prisoners should complete form HCTB6 (notification of remand in custody). They can also be included in a family's HB claim for up to 52 weeks. After this time a fresh claim for benefit must be

made by the person living in the accommodation. No non dependant deductions are made for a prisoner.

If the claimant's home is unoccupied while they are in prison, they can apply for a council tax exemption as long as they are not in prison for non-payment of a fine or council tax.

Working tax credit (WTC)

Claimants remanded in custody awaiting trial or sentence, who are engaged in work (whether inside or outside a prison) are not regarded as being engaged in qualifying remunerative work.

Child tax credit (CTC)

CTC will cease if the claimant is no longer responsible for a child unless the child is living with them in prison. If a partner meets the qualifying criteria they will need to make their own claim.

In Custody

Custody is defined as a person who has been tried, convicted and sentenced to a custodial term. Entitlement to most benefits ceases while serving a custodial sentence in prison as a result of a criminal conviction.

Means-tested benefits

Claimants are not entitled (in their own right or as part of someone else's claim) to JSA, ESA, IS or PC.

However, they may be entitled to **HB** and **CTB** if the claimant actually serves less than 13 weeks. If the claimant has been in receipt of **HB** and **CTB** on remand, the 13 week period begins with the first day of their absence from home rather than the first day of the sentence. If the claimant was in receipt of **IS**, **IRESA** or **IBJSA** they must fill in form HCTB7 (change of status/custodial sentence). Temporary release from a custodial sentence is not treated as a return home. If their home is unoccupied while they are in prison, a council tax exemption can be claimed provided they are not in prison for non-payment of a fine or council tax.

Child tax credit (CTC)

CTC can continue to be paid during a custodial sentence if the child is actually living with the claimant, although not if they are living with someone else. In those circumstances that person may be entitled to claim **GA** if the claimant is serving a sentence of 5 years or more and the child has no other surviving parent.

Working tax credit (WTC)

Claimants serving a custodial sentence are not regarded as being in remunerative work (irrespective of whether they are actually working either inside or outside a prison) and are therefore not eligible for WTC.

The social fund

While in prison claimants are not usually entitled to payments from the social fund and will not meet the qualifying rules for cold weather payments. If it is likely that they will be entitled to **IS, IBJSA, IRESA** or **PC** on their release they can make a claim for a community care grant (**CCG**) up to 6 weeks before their release. However, if a decision is made before the benefit entitlement is agreed, a revision must be applied for. There will still be entitlement to a funeral payment if the claimant is still in receipt of **HB** or **CTB**.

Non means-tested benefits

While serving a custodial sentence, claimants are not entitled to **IB, ESA(contrib), SDA, AA, DLA, CA, SRP, MA, bereavement benefits, reduced earnings allowance** or **retirement allowance**. No-one else can receive an increase in any of these benefits for the claimant while they are in prison.

Child benefit (CB)

Claimants can still be entitled to **CB** if the child is living with them or born in custody, or they are paying towards the cost of bringing up the child by at least the amount of weekly child benefit.

Industrial Injuries Disablement Benefit and War Pensions

If the claimant is entitled to **disablement benefit** arrears will be paid on the claimant's release, for up to 12 months.

SMP, SSP, SAP and SPP

Claimants serving a custodial sentence are not entitled to **SMP, SSP, SAP** or **SPP** for all of the maternity or paternity period, even if they are released before the period ends.

Prisoners in hospital

Prisoners in hospital will generally be treated as prisoners and therefore do not qualify for benefits. However, prisoners suffering from a mental disorder are not automatically disqualified unless they are detained under Section 45A or 47 of the Mental Health Act. However they will only be treated as prisoners until the earliest date at which they could have been released. After this they will be treated as hospital inpatients.

Money Advice Unit

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On Release

Claimants released on temporary licence cannot claim benefits; however somebody they are living with can claim a **CCG** from the social fund for help towards their living expenses if they satisfy the rules for the grant.

Claimants with partners, who are released to a bail or probation hostel count as a couple for **IBJSA**, **IRESA** or **IS** which is paid at twice the single rate or the couple rate, whichever is the higher. The 52 week rule for **HB** and **CTB** applies as above. Prisoners should complete form HCTB8 (Release from custody/change of circumstances)

Claimants, who are permanently released, even under an order, should claim benefits as soon as possible. Discharged prisoners are given Form B79 which should be used for verification purposes when claiming benefits. Any discharge grant will count as capital for **IS**, **IRESA** and **IBJSA** purposes.

An **interim payment** or a **crisis loan** could be claimed while the benefits are being processed. If the claimant is in receipt of **IS**, **IRESA** or **IBJSA** s/he could apply for a **CCG** (sometimes up to 6 weeks before likely receipt of these benefits – but see above). CCGs can be awarded for various purposes, including helping the claimant, or a member of their family, to establish themselves in the community following a stay in institutional or residential accommodation in which they received care (including prisons).

Eligible prisoners can now be released for the last 18 days of their sentence under a temporary licence known as an End of Custody Licence (ECL). Until their formal release date, ECL prisoners cannot claim means-tested benefits or any social fund payments. If entitled, they can claim contributory benefits such as CBJSA, (C)ESA and IB straight away.

Instead of benefits, prisoners released under ECL will be paid subsistence payments until their formal release date. Subsistence payments are £47.12 for each complete week plus £7 per day for any part weeks. These are paid by the DWP. Prisoners who have not received their payments can ring the DWP help line on 0292 0381111. In addition, the Prison can pay a one-off discharge grant of £46 plus up to £70 a week (depending on the region) for 3 weeks to help with housing costs This is at the discretion of the Prison Governor and must be paid direct to the landlord or housing provider. A one-off payment of £50 can also be paid if a deposit is required.

Help with travelling expenses

The Prison Department can:

- help with travelling expenses when claimants are temporarily or permanently released from prison;
- help a partner or close relative with the cost of visiting claimants in prison (including the cost of an overnight stay where necessary) if they are receiving IS, IBSA, IRESA, tax credits or have a low income. Application forms are available from the DWP. For more details contact the Assisted Visits Prison Unit, PO Box 2152, Birmingham, B15 1SD (Telephone 0845 300 1423 or textphone 0845 304 0800)

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