



Most Benefits are not payable whilst you are in prison, although in certain circumstances payment is only suspended and arrears may be payable on your release. Some benefits, however, remain payable whilst you are in prison, with or without restrictions.

It is important that you inform the relevant benefit authorities, as soon as you, or a member of your family, enter or leave prison to avoid any underpayment or overpayment of benefit.

Note particularly, that if your Income Support or Income Based Job Seekers Allowance stops, you will need to make a fresh claim for Housing Benefit.

If you are being held on remand, it is important to notify the Benefit Authorities as soon as you are sentenced.

INCOME SUPPORT

You count as a prisoner for Income Support purposes if: -

- a) You are detained in Custody following a sentence of imprisonment or
- b) You are remanded in Custody awaiting Trial or sentence or
- c) You are on temporary release e.g. home leave

You do not count as a prisoner if: -

- a) You are released on license or parole or
- b) You are in a bail or probation hostel or
- c) You are detained in hospital under the Mental Health Act 1983 or
- d) You are released under a Home Detention Curfew (electronic tagging)

If you count as a prisoner for Income Support purposes, you are not entitled to any Income Support, apart from housing costs, which are only payable whilst you are on remand awaiting Trial or Sentence.

A prisoner no longer counts as a member of the family for Income Support purposes.

If you are a prisoner, your partner can claim benefit as a single person or a lone parent. If your partner or child is a prisoner, you can no longer claim Income Support for him or her.

If you and your partner are temporarily separated because one of you is in a bail or probation hostel, you still count as a couple for Income Support purposes.

INCOME BASED JOB SEEKERS ALLOWANCE

You are not entitled to Income Based Job Seekers Allowance as you are not able to satisfy the labour market conditions while you are detained in custody or on temporary release.

A prisoner no longer counts as a member of the family for Income Based Job Seekers Allowance. If you are a prisoner, your partner can claim Income Based Job Seekers Allowance or Income Support as a single Claimant or lone partner. If your partner or child is a prisoner, you can no longer claim Income Based Job Seekers Allowance for him or her.

If you or your partner are temporarily separated because one of you is in a bail or probation hospital, you still count as a couple for Income Based Job Seekers Allowance purposes.

HOUSING BENEFIT

If you are remanded in Custody pending Trial or Sentence, or required to live in a Bail Hostel, you remain entitled for Housing Benefit for up to 52 weeks as long as your absence from home is unlikely substantially to exceed 52 weeks.

If you are serving a custodial sentence, including where you are on temporary release (but not when you are detained under the Mental Health Act), you are entitled to Housing Benefit for up to 13 weeks, as long as your absence from home is unlikely to exceed 13 weeks.

If you are serving a sentence of more than 13 weeks, you may still be entitled to Housing Benefit, as prisoners serving short sentences are often released on license after serving half their sentence. The introduction of the Home Detention Curfew Scheme (Tagging) means that it is possible for a prisoner serving a sentence of up to 10 months to be released within 13 weeks.

If you are no longer entitled to Income Support, then you will need to make a new claim for Housing Benefit.

If you are no longer entitled to Housing Benefit, your partner or other person occupying your home may be able to claim benefit as a liable person.

A prisoner continues to count as a member of the Claimant's family as long as he or she is unlikely to be away substantially longer than 52 weeks.

Non-dependant deductions are not made in respect of a non-dependant who is a prisoner.

COUNCIL TAX BENEFIT

The rules are the same as for Housing Benefit, except that you may be able to argue that you are still entitled to Council Tax Benefit as long as your home remains your sole or main residence.

Also a prisoner remains a member of the Claimant's family, so long as he or she is only temporarily absent.

If your home is unoccupied whilst you are a prisoner, you can apply for it to be exempt from Council Tax, as long as you are not in prison for non-payment of a fine or Council Tax.

TAX CREDITS

An award of Working Families' Tax Credit or Disabled Person's Tax Credit is not affected if you, or a member of your family, become a prisoner. If you are in prison when your award ends, however you are unlikely to satisfy the "full time work" rule to be able to reclaim.

A child or young person who is detained in Custody under a sentence imposed by a Court does not count as a member of your family.

A person serving a Custodial Sentence of at least 52 weeks, no longer counts as a partner for Tax Credit purposes.

NON MEANS TESTED BENEFITS

Most non-means tested benefits are not payable or are suspended whilst you are a prisoner.

You count as a prisoner for the purpose of non-means tested benefits if you are in prison or detained in legal custody in the UK or abroad, in connection with Criminal Proceedings.

If you are in prison for a civil offence (e.g. breach of an Injunction Order), the following rules do not apply and you remain entitled to all benefits, provided you satisfy the normal rules of entitlement.

You do not count as a prisoner if you are released on parole, licence, home detention curfew (tagging) or on temporary release from a Young Offenders' Institution.

If you receive a sentence of imprisonment or detention, and are transferred to hospital because of a mental disorder, you are treated as a prisoner until the date you are expected to be released from prison.

After that, you are treated as a hospital in-patient.

BENEFITS DISQUALIFIED OR SUSPENDED

If you are serving a sentence of imprisonment or detention, you are disqualified from receiving the following benefits: -

- a) Incapacity Benefit and Severe Disablement Allowance
- b) Attendance Allowance, Disability Living Allowance and Invalid Care Allowance
- c) Retirement Pension and Bereavement Benefits
- d) Maternity Allowance
- e) Reduced Earnings Allowance and Retirement Allowance

You are disqualified from receiving an increase in the above benefits for a spouse who is a prisoner.

If you are a remand prisoner awaiting Trial or Sentence, payment of the above benefits is suspended. An increase in benefit for your spouse is also suspended whilst he or she is on remand.

If you subsequently receive a sentence of imprisonment or detention, including a suspended sentence, you will be disqualified from receiving the above benefits for the whole period you are in prison. An

increase of benefit for your spouse is similarly disqualified if her or she is sentenced to imprisonment or detention.

If you or your spouse do not receive a sentence of imprisonment or detention, full arrears of benefit are payable when you are released.

Note however that arrears are only payable if all your normal conditions of entitlement for benefit were met whilst you or your spouse were a remand prisoner.

Other Benefits not payable

- a) Statutory sick pay
- b) Statutory maternity pay
- c) Contribution based Job Seekers Allowance
- d) An increase in benefit for an adult caring for a child if the adult or child is a prisoner

BENEFITS PAYABLE

You remain entitled to Disablement Benefit whilst you are a prisoner, but payment is suspended until you are released then you can only be paid a maximum of 12 months arrears. In addition you are entitled to full arrears for any period you are on remand if you are not subsequently sentenced to imprisonment or detention.

You remain entitled to Child Benefit and Guardian's Allowance whilst you are a prisoner. You must continue to be responsible for the child. If your child is a prisoner, Child Benefit will stop after 8 weeks, but full arrears are payable at the end of any period of remand, if the child is not sentenced to imprisonment or detention. Once Child Benefit stops, Guardian's Allowance and increases in other benefits in respect of the child will also stop.

If you are in prison for some time, you may want to arrange for Child Benefit to be paid to the person looking after the children particularly if he or she needs to claim Income Support or Income Based Job Seekers Allowance for the child.

BENEFITS ON RELEASE

If you are on temporary release, someone caring for you can claim a Community Care Grant for living expenses. The prison department can also provide financial assistance whilst you are on temporary release.

When you are permanently released, you can claim any benefits to which you are entitled as soon as possible. Because Income Support and Income Based Job Seekers Allowance are generally paid in arrears, you may need to apply for a Social Fund Crisis Loan to meet your initial expenses. You can also apply for a Community Care Grant if you are, or expect to be, in receipt of Income Support or Income Based Job Seekers Allowance.

You may receive a discharge grant from the Prison Department (which counts as capital for Income Support/Income Based Job Seekers Allowance purposes).

You are treated as satisfying the labour market conditions for Income Based Job Seekers Allowance for the first seven days after you are released.

If you are released without being sentenced to imprisonment or detention, you should receive any arrears of non-means tested benefits to which you are entitled. You should also check you have been credited with any National Insurance Contributions to which you are entitled.

If you are released following the quashing of a conviction, you are entitled to National Insurance Credits for the period you were wrongly imprisoned.

HELP WITH TRAVELLING EXPENSES

The Prison Department can help you with travelling expenses when you are temporarily or permanently released from prison.

The Prison Department can also help a partner or close relative with the cost of visiting you in prison (including the cost of an overnight stay where necessary) if he or she is receiving Income Support, Income Based Job Seekers Allowance, Tax Credits or has a low income. Application forms are available from the DSS. For more details contact the Assisted Prisons Visits Unit, PO Box 2152, Birmingham, B15 1SD (Tel: 0121 626 2797).

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.