Prison and benefits

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Child Poverty Action Group works on behalf of the one in four children in Scotland growing up in poverty. It doesn’t have to be like this. We use our understanding of what causes poverty and the impact it has on children’s lives to campaign for policies that will prevent and solve poverty –for good. We provide training, advice and information to make sure hard-up families get the financial support they need.

For information about universal credit and imprisonment, please see our factsheet *Prison and universal credit*.

1. Remanded in custody

You may be ‘remanded in custody’ while you are waiting to appear in court, or waiting for trial or sentencing. Some of the rules about benefits while you are remanded in custody are different from the rules that apply if you have actually received a prison sentence.

**Paying for housing**

If you are getting *housing benefit* to help with rent (and/or *council tax reduction*), this can continue to be paid for up to 52 weeks, providing you are unlikely to be away from home for more than 52 weeks, you intend to return to your home and you don’t sub-let. In exceptional circumstances, you may be able to get housing benefit and council tax reduction for 52 weeks, even if you are away from home for a slightly longer period.

If you are an owner-occupier and get help with housing costs (service charges and ground rent) in your *income support*, *income-related employment and support allowance* or *pension credit*, this can continue for up to 52 weeks, providing you are unlikely to be away from home for more than 52 weeks, you intend to return to your home and you don’t sub-let. In exceptional circumstances, you may be able to get help with housing costs for 52 week, even if you are away from home for a slightly longer period.

**Disability benefits**

If you are on *personal independence payment (PIP)* you can keep getting it for four weeks while you are remanded in custody. After four weeks, PIP stops being paid. If you have more than one period in prison within a year they link together. This means that you might lose your personal independence payment more quickly, or even as soon as you are remanded in custody.
**Example**

Len is remanded in custody for two weeks pending a court appearance and is then released on bail. Six months later he is remanded in custody again, this time for six weeks. This time, his personal independence payment stops after two weeks because the two periods in prison link together and count as one period.

If you are on **disability living allowance** or **attendance allowance**, these benefits are suspended as soon as you are remanded in custody. This means that you should not receive any payment of them while remanded. If you do not receive a prison sentence (for example, you are found not guilty or you receive a non-custodial sentence such as a community payback order), you will be paid the benefit that has not been paid while you were in prison once you are released.

**Other benefits and tax credits**

If you are on **contributory employment and support allowance**, **carer's allowance**, **state retirement pension** or **bereavement benefits**, the benefit is suspended while you are remanded in custody. If you do not receive a prison sentence (for example, you are found not guilty or you receive a non-custodial sentence such as a community payback order), you will be paid the benefit that has not been paid while you were in prison once you are released.

With the exception of housing benefit, help with housing costs and council tax detailed above, means-tested benefits like **income support**, **income-based jobseeker's allowance**, **income-related employment and support allowance** and **pension credit** stop being paid while you are remanded in custody. Even if, in the end, you do not receive a custodial sentence you will not receive payment of these benefits for the period you spent in prison.

You can get **child benefit** while you are a prisoner as long as you continue to be responsible for the child and the money is being used to support the child. If you are in prison for some time, you may want to arrange for child benefit to be paid to the person looking after your child.

If your child becomes looked after by the local authority and, for example, is placed with foster carers or goes to live in a residential unit for eight weeks or more, you cannot continue to receive child benefit.

You can continue to get **child tax credit** while you are a prisoner but only if it is considered a temporary absence and that the child still normally lives with you. There is no set period of time that is considered temporary, but it depends on the circumstances. If your child becomes looked after by the local authority and, for example, is placed with foster carers or goes to stay in a residential unit you cannot continue to receive child tax credit.
2. After you are convicted or sentenced

If you do not get a prison sentence

If you are convicted of an offence, but you do not receive a prison sentence (for example, you receive a fine or a community payback order), then there are no special benefit rules to worry about. If the court decides to give you a community payback order this may include an ‘unpaid work requirement’. This means that you have to do a certain number of hours of unpaid work within a period of time set by the court. Having unpaid work to do may raise questions if you are claiming certain benefits.

If you are on jobseeker’s allowance (JSA) you have to be available for and actively seeking work. You will have signed a ‘claimant commitment’ setting out what you need to do to look for work. DWP guidance suggests that Jobcentre Plus staff should liaise with Criminal Justice Social Work staff (who will be supervising your unpaid work) to help avoid any problems.

Even if you are unwell and on employment and support allowance (ESA) you might still get an unpaid work requirement. The person organising your unpaid work should take account of any health problems that you have. Your unpaid work placement does not count as ‘work’ for ESA purposes and so should not interfere with your entitlement to ESA.

If you do not get a prison sentence but you have been remanded in custody

If payment of your contributory employment and support allowance, carer’s allowance, state retirement pension or bereavement benefits has been suspended because you have been remanded in custody you will be paid the benefit you have missed out on if you are released without receiving a custodial sentence.

If you do not receive a custodial sentence but you have been remanded in custody, you may have to claim universal credit when you come out of prison. This is likely to affect you if your entitlement to income support, income-based jobseeker’s allowance, income-related employment and support allowance or tax credits has stopped as a result of being remanded in custody. As a result of the introduction of universal credit, most people cannot now make a new claim for these benefits/ tax credits and must claim universal credit instead. The exception to this is people who come under the ‘severe disability premium gateway’.

Severe disability premium gateway

The severe disability premium (SDP) gateway affects people who are receiving the SDP in their income support, income-based jobseekers allowance, income-related employment and support allowance or housing benefit or have done so in the past month and have continued to satisfy the conditions of entitlement for the SDP. The SDP gateway prevents you from claiming universal credit and means that you can make a new claim for the benefits that are being replaced by universal credit. Financially, this is usually better. The SDP gateway can affect you if you are remanded in custody and means that you may be able to reclaim the benefit you were on previously and not have to claim universal credit.
**Example**
Leo gets PIP daily living component. He lives alone and no-one gets carer’s allowance in respect of looking after him. He also gets housing benefit and income-related ESA which includes the severe disability premium. Leo is remanded in custody for two weeks. During this time his income-related ESA entitlement stops. His PIP and his housing benefit continue to be paid. When he is released after two weeks he is able to reclaim income-related ESA because of the ‘SDP gateway’. This is because his housing benefit would have continued and would include the SDP. This enables him to reclaim income-related ESA instead of having to claim universal credit.

**If you get a prison sentence**
If you are convicted of an offence and you receive a prison sentence, your social security benefits will be affected.

**Paying for housing**
You can get housing benefit and council tax reduction during an absence from home of up to 13 weeks, provided you intend to return home and do not sublet. The absence from home must be unlikely to last for longer than 13 weeks, and if you are already remanded in custody before sentencing, this period of time counts towards the 13 weeks. When working out how long you are likely to be away from home, the local authority administering your housing benefit and/or council tax reduction should take account of remission you are likely to get on your sentence. For example, if you are sentenced to four months in prison, but are likely to be released after two months.

If you are an owner-occupier getting help with some housing costs through income support, income-related ESA or pension credit, you can no longer receive this once you are serving a prison sentence.

If you have a partner who is still living in the home while you are in prison then they may be able to claim assistance with housing costs such as rent, but if they are under pension age this will usually have to be through universal credit. They may also be able to claim council tax reduction

**Disability benefits**
If you receive a prison sentence personal independence payment (PIP) will stop after four weeks in prison. If you have already been remanded in custody for more than four weeks before your trial or before being sentenced, your PIP should already have stopped. If you get disability living allowance (DLA) or attendance allowance (AA) it should stop immediately. If you have already been remanded in custody, DLA/AA should already have been suspended.

**Other benefits and tax credits**
Most benefits are not payable while you are serving a prison sentence. For example, you cannot be paid contributory employment and support allowance, carer’s allowance, state retirement pension or bereavement benefits while you are serving a prison sentence. You also cannot get any means-tested benefits like income support, income-based jobseeker’s allowance, income-related employment and support allowance and pension credit.

You can get child benefit while you are a prisoner as long as you continue to be responsible for the child and the money is being used to support the child. If you are in prison for some time, you may want to arrange for child benefit to be paid to the person looking after your child.
If your child becomes looked after by the local authority and, for example, is placed with foster carers or in a residential unit for 8 weeks or more, you cannot continue to receive child benefit.

You can continue to get child tax credit while you are a prisoner but only if it is considered a temporary absence and that the child still normally lives with you. There is no set period of time that is considered temporary, but it depends on the circumstances. If your child becomes looked after by the local authority and placed with foster carers or kinship carers or in a residential unit, you cannot continue to receive child tax credit for her/him.

You can continue to be entitled to industrial injuries disablement benefit while you are in prison, although you do not get paid the benefit until you are released, and will only be paid a maximum of 12 months of benefit.

Assisted prison visits

The Assisted Prison Visits Unit can help your partner or close relative (or someone else if they are your only visitor) with the cost of visiting you in prison, or with the cost of bringing your children to visit you. S/he must be getting one of the following benefits: universal credit, income support, income-based jobseeker’s allowance, income-related employment and support allowance, pension credit, health benefits on the grounds of low income, child tax credit or working tax credit. If you are on universal credit or working tax credit your income has to be below a certain level to qualify.

You apply online at http://www.gov.uk/help-with-prison-visits. You can phone on 0300 063 2100 or email assisted.prison.visit@justice.gov.uk if you have any queries or difficulties, or if you are unable to claim online.

What if you are detained in hospital?

Sometimes, even though you are in hospital, you count as being a prisoner and the rules set out above still apply to you. You still count as a prisoner if, following a conviction, you are ordered by court to be detained under a ‘hospital direction’ (under section 59A of the Criminal Procedure (Scotland) Act 1995) or you are sent to prison and then later you are transferred to hospital under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
3. Released after serving a prison sentence

When you are permanently released after serving a prison sentence you should claim any benefits you may be entitled to as soon as possible. The prison should give you a discharge form which may be helpful in proving your identity. You may be interviewed by a DWP liaison officer before leaving prison and, if so, they should tell you which benefits you should claim once you’ve been released.

If you were getting disability living allowance, attendance allowance or personal independence payment before going into prison, payment should have only been suspended and you should not need to make a fresh claim – just let the Disability Benefits Centre know that you have been released. The exception to this is if you had a time-limited award and it has run out while you have been in custody. In this situation you will have to make a new claim.

Means-tested benefits such as universal credit are generally paid in arrears. You may be able to ask for a **budgeting advance** or a **short-term advance** while you are waiting for your benefit to start being paid.

**Scottish Welfare Fund**

The Scottish Welfare Fund can provide a **crisis grant** if you need help in an emergency or disaster and you have no other money to meet your immediate needs. The fund can also provide a **community care grant** for items such as furniture, clothing or removal expenses and is intended to help people re-establish themselves in the community or stay independent in the community. You may be able to get a community care grant following a period in prison. To get help from the Scottish Welfare Fund you must be on a low income. You should be treated as having a low income if you get certain means-tested benefits – universal credit, income support, income-related employment and support allowance, income-based jobseeker’s allowance or pension credit, but you can be awarded a grant even if you do not get one of these benefits.

If you are going to stay with a relative or friend while you are out of prison on temporary release, the person you are staying with may be able to get a community care grant from the Scottish Welfare Fund to help with living expenses. They must be on a low income to get a grant.

The Scottish Welfare Fund is administered by your local authority. Check for details of how to apply at [http://www.mygov.scot/scottish-welfare-fund](http://www.mygov.scot/scottish-welfare-fund/)

For more information about the Scottish Welfare Fund see CPAG in Scotland’s factsheet [The Scottish Welfare Fund](http://www.mygov.scot/scottish-welfare-fund/)
Further information and advice
For more information on any of the issues covered in this factsheet please see CPAG’s *Welfare Benefits and Tax Credits Handbook*, or contact our advice line for advisers on 0141 552 0552 (Monday to Thursday 10am to 4pm, Friday 10am to 12 noon) or on advice@cpagscotland.org.uk

CPAG in Scotland’s advice line is only for advisers. If you having problems with your own benefits and need advice you should contact your local citizen’s advice bureau or other welfare rights service.