Benefits and prisoners

Entitlement to most benefits is either suspended or stopped if you are a prisoner. Some benefits are only payable for a limited period. Some may be paid on release.

It is important to be clear which benefit(s) you get:

- ‘means tested’ (paid as a top-up because you are on a low income) such as Income Support, Income-Based Jobseeker’s Allowance, Income-Related Employment and Support Allowance, Pension Credit, Universal Credit and Housing Benefit.
- ‘non means-tested’ - based upon National Insurance contributions, such as Contribution-Based Jobseeker’s Allowance, Contribution Based Employment and Support Allowance, Bereavement Benefits, State Retirement Pension.
- ‘non means tested’ because you are disabled or a carer – such as Attendance Allowance, Disability Living Allowance, Personal Independence Payment or Carer’s Allowance, Incapacity Benefit, Severe Disablement Allowance – or because you are pregnant or responsible for children – Maternity Allowance, Child Benefit and Guardian’s Allowance.
- Tax Credits and benefits paid to employees (Statutory Maternity, Paternity and Adoption Pay, and Statutory Sick Pay) have different rules – seek advice.

If you are not sure, or you are on a combination of benefits, seek advice.

In order to avoid being paid too much benefit, you must make sure that the office paying your benefit knows that you are in custody or prison – this is your responsibility as the claimant and you cannot assume that anyone else will tell the DWP. If you are paid a combination of benefits, tell each benefit office that you deal with.

Who counts as a prisoner?

You count as a prisoner for non means-tested benefits if you are imprisoned or detained in legal custody in connection with criminal proceedings (remand).

For means-tested benefits you count as a prisoner if you are serving a sentence, if you are in custody awaiting trial or sentence (remand) or you are on temporary release under specific provisions (not including parole licence).

Not in ‘legal custody’?

You usually do not count as being in legal custody if you are:
- on bail
- living in a bail or probation hostel (in approved premises)
- released on parole
- released on temporary licence (for non means-tested benefits only)
- under a home detention curfew (tagging).

Benefits are payable as long as you follow the normal rules for claiming them: this may mean, if you are on temporary release, that you cannot satisfy the job-seeking rules for Job Seeker’s Allowance.

If you are living away from your usual home when on bail, some means-tested benefits are affected. You can only get help with housing costs for your normal home and not for rent at a hostel.

If you are a member if a couple, how long you will continue to be paid means-tested benefits as a couple depends upon which benefit you get - seek advice.

**Community sentences** do not count as ‘prison’ but if you are subject to such a sentence and you get Jobseeker’s Allowance or Universal Credit, you may need advice on how to make sure you can meet the requirement to be available for work and looking for work while you serve the sentence.

**In temporary Police detention**

The only benefits that can be affected by this are Jobseeker’s Allowance and Universal Credit, as you have to show that you are seeking work in order to be paid benefit. If are in temporary Police detention, you may not be seen to meet these conditions.

In order to avoid losing benefit, you will need to inform Jobcentre Plus as soon as you can, and ask that your job-seeking requirements be reduced for that period.

**In custody awaiting trial or sentence**

You will not be entitled to most **means-tested benefits** except for some help with your housing costs, and this will only be for a limited time.

If you get help with mortgage interest costs (available with Income Support, income-Based JSA*, Income-Related ESA or Pension Credit) and for Housing Benefit for your rent, this may continue for up to 52 weeks.

*If you receive Income-Based JSA you may not be able to satisfy the requirement to be available for and seeking work.

If you receive Universal Credit, you may be able to get help with your housing costs (rent and/or mortgage interest) for up to 6 months in total if you are awaiting trial/sentence, or serving a sentence.

You should seek advice about entitlement as the rules are complicated.
Most **non means-tested benefits** are suspended.

If you get Industrial Injuries Disablement Benefit, this is still payable, but not until you are released. Additions to IIDB (such as Constant Attendance Allowance and Exceptionally Severe Disablement Allowance) are suspended.

Child Benefit and Guardian’s Allowance remain payable but you must remain ‘responsible’ for the child/ren for whom benefit is paid. Seek advice, as this can be difficult. You may need to arrange for a relative or friend to claim in your place.

| If you are sentenced (including suspended sentences) – any remaining entitlements stop and benefits are not paid for the **whole** time that you spend in prison. |
| If there is no sentence or a conviction is quashed – you will get full arrears of non means-tested benefits on release - as long as you satisfied the normal rules for getting benefit throughout your time in custody. |

You cannot get arrears of means-tested benefits.

**In prison**

Only the following are possible:

Housing Benefit or Universal Credit housing costs may be payable for short periods – you will need advice about entitlement.

Industrial Injuries Disablement Benefit is payable, but without Constant Attendance Allowance or Exceptionally Severe Disablement Allowance - benefit is not paid until you are released. If you are owed arrears of IIDB, you will only get a maximum of 12 months’ arrears.

Child Benefit and Guardian’s Allowance remain payable but you must remain ‘responsible’ for the child/ren for whom benefit is paid. Seek advice, as this can be difficult. You may need to arrange for a relative or friend to claim in your place.

Contribution-Based Jobseeker’s Allowance (CJSA) is not payable even if you are on temporary release, as you do not count as available for work.

Personal Independence Payment (PIP) is payable for the first 28 days in prison no matter what the outcome of legal proceedings, but an award of PIP made whilst you are a prisoner is not payable.

For PIP, periods in prison are linked together if separated by a year or less, and they can also be linked with periods in a care home or in hospital and so payment may stop early.
Tax Credits

NB it is not normally possible to make a new claim for Tax Credits after 1/2/19. Some severely disabled people may still be able to make a claim for Tax Credits – seek advice.

If you are of working age and your existing TC claim stops, you will usually have to claim Universal Credit. This does not apply however if you are a disabled claimant who receives, or has been receiving in the last month, a ‘severe disability premium’ as part of Income Support, Income-Based Jobseeker’s Allowance, Income-Related Employment and Support Allowance or Housing Benefit.

Seek advice as this is a complex set of rules.

If you are old enough to claim your State Retirement Pension, you may be able to claim Pension Credit to top up your income.

Going in to prison will end a single person’s Working Tax Credit claim. If you have a partner, they should seek advice to see if s/he may be able to qualify for benefit in your place.

An award of Child Tax Credit for a couple should not be affected.

Child Tax Credit may stop if you are a lone parent in prison. HMRC will look at:
- whether you are still ‘responsible’ for the child/ren
- the length of the sentence
- if you are in regular contact with the child/ren
- if the child is with you in prison (i.e. in a mother and baby unit)

If someone else takes responsibility for the child/ren, they may be able to claim Child Benefit and possibly add the child/ren to an existing Tax Credit claim or claim Universal Credit (if they are making a new claim) If the person is of pension age they may be able to claim Pension Credit, which now includes an extra amount for children.

Statutory Sick Pay/Maternity Pay/Paternity/Adoption Pay

These are not payable if you are detained in legal custody or sentenced. The definition of being a prisoner is the same as for non means-tested benefits.

Statutory Sick Pay stops and you can only re-qualify under the normal SSP rules when you are no longer in prison.

Statutory Maternity/Paternity Pay is not payable for the whole of the normal payment period, even if you are released from prison during this period. You may be able to get maternity allowance instead.
Payments of Statutory Adoption Pay or Statutory Shared Parental Pay should re-start on your release, and should be made for any period in custody if you are released without charge, found not guilty or convicted but without a custodial sentence.

**If you are claiming benefits for your partner**

You no longer count as a couple for Income Support, Income-Based JSA, Income-Related ESA or Pension Credit if you are in prison – your partner may have to claim as a single person or lone parent.

Most new claims for people of working age will now be for Universal Credit – seek advice, as this may not apply to some disabled claimants.

For Housing Benefit, you can be regarded as a couple for up to 52 weeks, providing you intend to be a couple again and your absence from home will not exceed 52 weeks by a substantial amount.

For Universal Credit, the partner who is not a prisoner may claim as a single person.

**Release from prison**

On temporary release, you may be entitled to non means-tested benefits but not to means-tested benefits. See above.

Before permanent release, ask for advice from a DWP Prison Work Coach about re-starting claims, claiming arrears of benefits or claiming some benefits in advance of leaving prison.

It is especially important to get advice and help with Universal Credit, as this is a new benefit but also it has no claim form and is usually claimed online. You will need advice about how to claim and you may also need help with making sure you have adequate evidence of ID to support your claim. You will also need to make sure you have a bank account for benefit payments, and that you arrange and attend appointments at the Jobcentre following your release.

It is also important to seek advice on UC before you are released as it is possible to make a claim for UC up to a month in advance: this will help a great deal with your financial stability on leaving prison, especially as you usually have to wait five weeks for your first payment of UC and you can apply for (repayable) advance payments if you are released from prison but you are still waiting for payment.

You should be given a discharge form to help prove your identity. This is especially important with Universal Credit, as you need ID in order to support your claim – see above.

Seek advice about arrears of benefit and of any National Insurance Contributions that may be due to you if there has been no sentence or your conviction has been quashed.

There are special rules if you have a partner and you are released to a bail or probation hostel – seek advice.
The Prison Service can help with travelling costs on temporary or permanent release.

Detained in hospital or prison with a mental disorder - there are special rules for people in this situation. Seek advice.

Additional information can be found on our website, visit [www.derbyshire.gov.uk/welfarebenefits](http://www.derbyshire.gov.uk/welfarebenefits)

To keep up-to-date with benefit changes in Derbyshire go to [www.derbyshire.gov.uk/benefitnews](http://www.derbyshire.gov.uk/benefitnews)

Benefits Helpline – 01629 531535 or email [welfarebenefits@derbyshire.gov.uk](mailto:welfarebenefits@derbyshire.gov.uk)

Monday, Tuesday, Thursday, Friday
11.00am – 4.00pm