

# Chapter 12 - Imprisonment

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# Chapter 12 - Imprisonment

## Effect of imprisonment on Social Security benefits

12001 When a person is in prison or detained in legal custody, SS benefits are affected as follows

1. the person is disqualified from receiving any benefit<sup>1</sup> including any dependency increase under specified legislation, but see the exceptions in DMG 12050 - 12079
2. a person receiving benefit will not receive an increase for any dependent spouse, civil partner or person having care of their child who is in prison or detained in legal custody<sup>2</sup> (see DMG 12110 - 12111).

*1 SS CB Act 92, s 113(1)(b); 2 s 113(1)(b)*

12002 The SS benefits affected are<sup>1</sup>

1. IB
2. MA
3. BPT
4. WMA
5. WP
6. WPA
7. BA
8. RP
9. SAP
10. GRB
11. AA
12. SDA
13. CA
14. DLA
15. IIDB
16. SP<sup>2</sup>
17. BSP

*1 SS CB Act 92, Parts II-V; 2 Pensions Act 14, s 19*

- 12003 Claimants are disqualified from receiving these benefits when they are imprisoned or detained in legal custody following criminal proceedings<sup>1</sup>. Disqualification only affects the payability of the benefit not claimants' entitlement to that benefit<sup>2</sup>. This means that when the conditions supporting the disqualification no longer apply, payment of benefit can resume providing all the conditions of entitlement remain satisfied. Unless entitlement has been terminated during the period of imprisonment or detention in legal custody, a claimant should not be required to make a new claim to benefit on release.

*1 SS CB Act 92, s 113(1)(b); 2 CDLA/1930/04*

12004 - 12014

## **Effect of imprisonment on JSA, IS, SPC and ESA**

- 12015 For benefit specific guidance on the effect of imprisonment or detention in legal custody on JSA and IS see DMG Chapter 24, on SPC see DMG Chapter 78, on ESA(Cont) see DMG Chapter 53 and on ESA(IR) see DMG Chapter 54.

## **Effect of imprisonment on UC, PIP, new style JSA and new style ESA**

- 12016 For benefit specific guidance on the effect of imprisonment or detention in legal custody on UC see ADM Chapter E3, on PIP see ADM Chapter P4, on new style JSA see ADM Chapter S1 and on new style ESA see ADM Chapter U6.

**Note:** ADM Chapter M1 contains guidance on the meaning of new style JSA and new style ESA.

## **Effect of imprisonment on SP**

### **Meaning of prisoner**

- 12017 For SP purposes a prisoner is a person, in GB or elsewhere, who is
1. imprisoned or detained in legal custody or
  2. unlawfully at large<sup>1</sup>.

*1 Pensions Act 14, s 19(2)*

## Prisoners who are not to be paid SP

- 12018 Unless DMG 12020 applies, a person is not to be paid SP during the period they are a prisoner<sup>1</sup>
1. in GB or elsewhere who is imprisoned or detained in legal custody
    - 1.1 in connection with or
    - 1.2 as a result of criminal proceedings<sup>2</sup> or
  2. in GB or elsewhere who is unlawfully at large<sup>3</sup> or
  3. in GB who is being detained<sup>4</sup>
    - 3.1 in a mental hospital under specific legislation<sup>5</sup> which allows the Secretary of State for Justice to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital and
    - 3.2 on or before the Secretary of State for Justice certifies their release date<sup>6</sup>, if any or
  4. in GB who is being detained in a mental hospital under specific legislation<sup>7</sup> which allows Scottish Ministers to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital<sup>8</sup>.

**Note:** See DMG 12019 for guidance on when a person is not a prisoner in accordance with 1. or 2..

*1 SP Regs, reg 2(1); 2 reg 2(2)(a); 3 reg 2(2)(b); 4 reg 2(2)(c); 5 MH Act 83, s 47; 6 s 50(3); 7 MH (C&T) Act 03, s 136; 8 SP Regs, 2(2)(d)*

- 12019 However, a person is not a prisoner in accordance with DMG 12018 1. or 2. if
1. they are a prisoner outside GB and
  2. they would not be a prisoner in similar circumstances in GB<sup>1</sup>.

*1 SP Regs, reg 2(3)*

## Paying SP to persons remanded in custody

- 12020 A person who is remanded in custody is not a prisoner<sup>1</sup> in accordance with DMG 12018 so can be paid SP unless
1. a sentence of imprisonment or detention in legal custody as a result of criminal proceedings<sup>2</sup> or
  2. a sentence of detention where paragraph 12018 3.1 or 4. applies<sup>3</sup> or
  3. a suspended sentence of imprisonment<sup>4</sup>

is later imposed on the person for the offence<sup>5</sup>. Therefore DMs should suspend SP when a person is remanded in custody pending the outcome of proceedings.

*1 SP Regs, reg 3(1); 2 reg 3(2)(a); 3 reg 3(2)(b); 4 reg 3(2)(c); Criminal Justice Act 03, s 189;  
5 SP Regs, reg 3(1)*

12021 However, DMG 12020 1. does not apply if

1. it is imposed outside GB **and**
2. it would not have been imposed in similar circumstances in GB<sup>1</sup>.

*1 SP Regs, reg 3(3)*

## Effect of Imprisonment on BSP

### Meaning of prisoner

12022 For the purposes of BSP a prisoner<sup>1</sup> is a person who

1. In Great Britain or elsewhere is imprisoned or detained in legal custody in connection with, or as a result of, criminal proceedings, **or**
2. In Great Britain or elsewhere is unlawfully at large **or**
3. In Great Britain is being detained
  - 3.1 Under provisions to remove prisoners to hospital<sup>2</sup>; **and**
  - 3.2 On or before the day the Secretary of State certifies to be the person's release date (if any)<sup>3</sup> **or**
4. a prisoner in Great Britain who is being detained under Scottish provisions<sup>4</sup> to transfer prisoners for mental health treatment.

*1 BSP Regs, reg 6(2); 2 MH Act 83, s 47; 3 s 50(3); 4 MH (C&T) (Scot) Act 03, s 136*

### Prisoners who are not to be paid BSP

12023 Unless DMG 12025 applies a person is not to be paid BSP during the period they are a prisoner<sup>1</sup>

1. In Great Britain or elsewhere who is imprisoned or detained in legal custody in connection with, or as a result of, criminal proceedings **or**
2. In Great Britain or elsewhere who is unlawfully at large **or**
3. Being detained
  - 3.1 Under provisions to remove prisoners to hospital<sup>2</sup> **and**
  - 3.2 On or before the day which the Secretary of State certifies to be the person's release date (if any)<sup>3</sup>
4. in Great Britain who is being detained under Scottish provisions to transfer prisoners for mental health treatment<sup>4</sup>.

*1 BSP Regs, reg 6(1); 2 MH Act 83, s. 47; 3 s. 50(3); 4 MH (C&T) (Scot) Act 03, s. 136*

- 12024 A person is not a prisoner in accordance with DMG 12022 1. Or 2. Where
1. A person is a prisoner outside Great Britain, **and**
  2. In similar circumstances in Great Britain, the person would not have been a prisoner<sup>1</sup>.

*1 BSP Regs, reg 6(3)*

## **Paying BSP to persons remanded in custody**

- 12025 A person who is remanded in custody is not a prisoner as in DMG 12022 so can be paid BSP<sup>1</sup> unless
1. a sentence of imprisonment or detention in legal custody as a result of criminal proceedings **or**
  2. a sentence of detention under certain provisions<sup>2</sup> **or**
  3. a suspended sentence of imprisonment
- is later imposed on the person for the offence.

*1 BSP Regs, reg 7(2); 2 MH Act 83, s 47; MH (C&T)(Scot) Act 03, s 136*

- 12026 DMG 12025 1. Does not apply if
1. it is imposed outside GB **and**
  2. it would not have been imposed in similar circumstances in GB<sup>1</sup>.

*1 BSP Regs, reg 7(3)*





## Meaning of imprisonment and detention in legal custody

12027 The term “imprisonment or detention in legal custody” means

1. any detention connected with criminal proceedings<sup>1</sup> or
2. imprisonment imposed by a criminal court<sup>2</sup>.

A claimant sentenced to imprisonment as a result of civil proceedings is not disqualified<sup>2</sup>.

*1 R(P) 2/57; 2 R(S) 8/79*

12028 Imprisonment or detention in legal custody includes detention

1. in a prison or detention centre or
2. of a child or young person under the direction of the Secretary of State or
3. in a hospital or similar institution as a result of criminal proceedings<sup>1</sup> or
4. abroad<sup>2</sup>.

A person in a young offenders' institution is not imprisoned, but is detained in legal custody.

*1 SS (Gen Ben) Regs, reg 2(8)(b); 2 R(S) 2/81*

12029 Imprisonment or detention in legal custody might be

1. before the proceedings commence, for example custody before a charge or
2. before the conclusion of proceedings, for example remand in custody or
3. after the proceedings, for example sentenced to prison.

It does not include a period before criminal proceedings begin where the person is released on bail.

12030 The word "detention" describes the physical confinement of a person<sup>1</sup>. A period of authorized absence from a place of detention is not a period in which a claimant is

1. kept in a prison or
2. detained in legal custody.

See DMG 12041 for pre-release schemes.

*1 R(S) 10/56*

## Period of detention in legal custody

12031 The day on which detention in legal custody starts is a day of detention in legal custody. The day of release is **not** a day of detention.

## Effect of a pardon

12032 Where

1. disqualification because of imprisonment or detention in legal custody had been imposed **and**
2. a pardon is granted for the offence associated with the imprisonment or detention in legal custody

the disqualification ends because of the pardon. See DMG Chapter 04 for further guidance on supersession for a relevant change of circumstances and when the decision takes effect.

## Effect of a successful appeal

12033 Where a person successfully appeals against conviction they are not disqualified for the period of imprisonment or detention in legal custody. See also DMG 12057.

## Release on licence

12034 Release on licence means release on parole after completion of a specified part of the original sentence. The following guidance does not cover prisoners on pre-release schemes; guidance on such cases should be sought from DMA Leeds through the usual channels. A person released on licence<sup>1</sup>, including on temporary licence, is no longer imprisoned or detained in legal custody. The DM should consider

1. the importance of any specific terms the licence may have **and**
2. the way the terms alter the actual state of the release.

*1 Criminal Justice Act 03, s 237 to 258; Prisoners and Criminal Proceedings (Scotland) Act 1993, Part I; Prisons (Scotland) Act 1989*

12035 Conditions are imposed in all cases of release on licence and the person can be returned to prison if they breach these conditions.

12036 There are several early release on licence schemes including

- Parole - where the prisoner is released on the recommendation of the Parole Board after completing a specified part of their original sentence.
- Curfew - more commonly referred to as “tagging”, where a prisoner is released on licence before their automatic release date. The conditions of release require them to wear an electronic tag and remain at home during agreed periods of the day<sup>1</sup>.

- Remote monitoring on release - another type of curfew applicable to various types of release on licence<sup>2</sup>.

*1 Criminal Justice Act 03, s 253; Prisoners and Criminal Proceedings (Scotland) Act 1993, Part I;*

*2 Criminal Justice (Scotland) Act 2003, s 40*

12037 - 12040

## **Release on temporary licence**

12041 In certain circumstances prisoners may be allowed short periods of release on temporary licence. The purpose of this is either for compassionate reasons or to help the prisoner improve their chances of resettlement after their release. They may find work outside prison to support themselves and their families and spend short periods at home. Prisoners released on temporary licence are not imprisoned or detained in legal custody<sup>1</sup>.

*1 CAO v Carr; R(IS) 20/95*

12042 - 12049



## Exceptions to the disqualification provisions

12050 There are exceptions to the provisions disqualifying benefit on imprisonment or detention in legal custody. These are where

1. no penalty is imposed<sup>1</sup> (see DMG 12051) **or**
2. the person is suffering from mental disorder<sup>2</sup> (see DMG 12070 - 12087) **or**
3. the person is in receipt of GA or death grant<sup>3</sup> (see DMG 12088) **or**
4. the person is in receipt of IIDB<sup>4</sup> (see DMG 12090 - 12091).

*1 SS (Gen Ben) Regs, reg 2(2); 2 reg 2(3), (4) & (4A); 3 reg 2(5); 4 reg 2(6)*

### No penalty imposed

12051 There is no disqualification for receiving certain benefits for imprisonment or detention in legal custody unless at the end of criminal proceedings the court imposes

1. a penalty (see DMG 12054 - 12058) **or**
2. a penalty for fine default<sup>1</sup> (see DMG 12069).

*1 SS (Gen Ben) Regs, reg 2(2)*

### Benefits affected

12052 The benefits affected are<sup>1</sup>

1. IB
2. AA
3. DLA
4. WB
5. WPA
6. Child's special allowance
7. MA
8. SAP
9. RP
10. SDA
11. IIDB
12. REA
13. IDB

14. CA<sup>2</sup>

15. RA.

*1 SS (Gen Ben) Regs, reg 2(2); 2 SS (ICA) Regs, reg 14*

## Meaning of Court

12053 Court means<sup>1</sup> any

1. Court in

1.1 UK

1.2 Channel Islands

1.3 Isle of Man

1.4 any place to which the Colonial Prisoners Removal Act 1884 applies or

2. Court-Martial within the meaning of the Courts-Martial (Appeals) Act 1968 or

3. Courts-Martial Appeal Court.

*1 SS (Gen Ben) Regs, reg 2(8)(a)*

## Meaning of penalty

12054 Penalty<sup>1</sup> is

1. a sentence of imprisonment or

2. detention in a young offenders institution or

3. an order for detention in a young offenders institution or

4. detention in GB as a result of any order made under the Colonial Prisoners Removal Act 1884<sup>2</sup>.

*1 SS (Gen Ben) Regs, reg 2(8)(c); 2 reg 2(8)(d)*

12055 The term penalty includes a suspended sentence of imprisonment at the end of criminal proceedings, even if it has not taken effect<sup>1</sup>.

**Note:** A suspended sentence does not disqualify a claimant who is not in prison or detained in legal custody.

*1 R(S) 1/71*

12056 The following are not penalties and so no disqualification is imposed for the period before the end of criminal proceedings during which the person is remanded in custody when

1. a fine is imposed (see DMG 12069) or

2. the charge is withdrawn or

3. there is a conditional or absolute discharge or acquittal or

4. the claimant is detained in hospital by court order following conviction or
5. an order putting a person under guardianship is made or
6. a Community Rehabilitation order is made.

## Penalty cancelled

12057 Where a penalty has been imposed, a Higher Court can later

1. quash the conviction or
2. substitute another penalty

with an order which is not a penalty. The effect is as though no penalty had been imposed.

12058 Disqualification will therefore be removed for any relevant period of imprisonment or detention in legal custody. See DMG Chapter 04 for further guidance on supersession and when the decision takes effect.

## Suspension

12059 Payment of those benefits listed in DMG 12052 is suspended during the period of remand in legal custody whilst criminal proceedings are continuing and there is a possibility that at the end of those proceedings the claimant would be disqualified<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 3(1); reg 3(2)*

12060 The suspension covers

1. the period of imprisonment or detention in legal custody<sup>1</sup> and
2. any benefit payable during that period even if it is not in respect of that period<sup>2</sup>.

*1 SS (Gen Ben) Regs, reg 3(1)(a); 2 reg 3(1)(b)*

12061 The provision in DMG 12060 ensures that benefit is not paid to a claimant while they are in prison. Nevertheless, any payment as in DMG 12060 2. which becomes payable may be paid to a third party with the agreement of the Secretary of State<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 3(3)*

12062 Suspension continues even if the claimant is transferred to mental hospital. When the criminal proceedings are concluded the claimant is disqualified from receiving benefit for this period if they are sentenced to a period of imprisonment or are detained or liable to be detained in a mental hospital under certain legislation<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 3(2); MH Act 83 s 45A; s 47; Criminal Procedure (Scotland) Act 1995 s 59A; MH (C & T) (Scot) Act 03 s 136.*

12063 - 12068

## **Imprisonment for non-payment of fines**

12069 Imprisonment for non-payment of a fine can be the result of civil proceedings. The DM should consider the nature of the original offence if a person is imprisoned for non-payment of a fine. If the original offence was a criminal action, the DM should

1. regard the imprisonment as a criminal offence **and**
2. disqualify from benefit<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 2(2)*

## **Mentally disordered persons detained in legal custody**

12070 Subject to the exceptions in DMG 12073 disqualification does not apply for any period during which a person is detained in legal custody at the end of criminal proceedings, if it is a period during which that person is liable to be detained in a hospital or similar institution as a person suffering from a mental disorder<sup>1</sup>. See Appendix 1 for information about the legislation covering patients concerned in criminal proceedings or under sentence.

*1 SS (Gen Ben) Regs, reg 2(3)*

12071 “Hospital or similar institution” means<sup>1</sup> any place in which people suffering from mental disorder may receive care or treatment but not at or in a

1. prison **or**
2. detention centre **or**
3. Borstal institution **or**
4. young offenders institution **or**
5. remand centre.

*1 SS (Gen Ben) Regs, reg 2(8)(b)*

12072 If a person is found to be insane during criminal proceedings so that they cannot be tried or their trial cannot proceed, those proceedings will be treated as completed<sup>1</sup>. There will be no disqualification.

*1 SS (Gen Ben) Regs, reg 2(8)(g)*

12073 The exceptions referred to in DMG 12070 are where the person is

1. detained<sup>1</sup> (or liable to be detained) under specific legislation<sup>2</sup> which allows a court, which has imposed a term of imprisonment, to direct that the offender be detained in a hospital or similar institution instead of a prison where that offender suffers from a psychopathic disorder **or**
2. serving<sup>3</sup> a sentence of imprisonment and is then detained in a mental hospital under specific legislation<sup>4</sup> which allows the Secretary of State for Justice or Scottish Ministers to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital.

*1 SS (Gen Ben) Regs, reg 2(3)(a); 2 MH Act 83, s 45A; Criminal Procedure (Scotland) Act 95, s 59A*

*3 SS (Gen Ben) Regs, reg 2(3)(b); 4 MH Act 83, s 47; MH (C & T) (Scot) Act 03, s 136*



- 12074 Where there is a hospital direction as in DMG 12073 1. or where the person is transferred from prison to a mental hospital as in DMG 12073 2. the person will be disqualified for receiving benefits<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 2(3)(a) & (b)*

- 12075 A person who is transferred to a mental hospital as in DMG 12074 may recover and be sent back to prison; the normal rules disqualifying prisoners from receiving benefits will apply.

- 12076 Where a person has been disqualified and is transferred to

1. a hospital or
2. similar institution

the disqualification will continue until the date when the person would have been released, had the transfer not been made<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 2(4)*

- 12077 In England and Wales, where applicable, the earliest date on which the prisoner would have been expected to be released from prison will be notified in a certificate given to the Secretary of State by an officer acting on behalf of the Secretary of State for Justice<sup>1</sup>. A certificate will not be issued where the prisoner was sentenced to life imprisonment.

*1 SS (Gen Ben) Regs, reg 2(4)*

- 12078 In Scotland certificates are not issued on any case because the terms of the prisoner's transfer to mental hospital cease at the point that their sentence would have ended<sup>1</sup>. Any further detention would require a fresh order which would not be made under the relevant legislation<sup>2</sup>.

*1 CSS/239/07; MH (C & T) (Scot) Act 03, s 136, s 217; 2 s 136*

- 12079 For DMG 12077 - 12078 it is enough to know under what legislation the prisoner is held in mental hospital. They will be disqualified if it is under the relevant legislation and there is no certificate.

## **Life sentences and tariffs**

- 12080 Life sentences (or indeterminate sentences) fall into two categories

1. mandatory life sentences - where a person is convicted of murder, this is the only sentence which can be imposed **and**
2. discretionary life sentences - where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, eg. for public protection.

- 12081 In both cases, the trial judge sets a tariff period which is effectively the “punishment” part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the general public. Otherwise they will remain in prison.
- 12082 A trial judge who decides that the requirements of retribution or deterrence can only be satisfied if the person remains in prison can decline to set a tariff period. In the case of mandatory lifers (see DMG 12080 1.) this is called a ‘whole life order’. It means that a prisoner can never become eligible for a Parole Board review or for release.
- 12083 A prisoner who remains in prison beyond their tariff date does not become eligible for benefits because they are still a prisoner. Similarly, a prisoner with a life sentence (see DMG 12080 1. and 2.) who is transferred<sup>1</sup> to psychiatric hospital for treatment, does not become eligible for benefits when the tariff date has been reached<sup>2</sup>. Such a person would only become eligible for benefits upon release.

*1 MH Act 83, s 45A; s 47; Criminal Procedure (Scotland) Act 95, s 59A; MH (C & T) (Scot) Act 03, s 136;  
2 SS (Gen Ben) Regs, reg 2(3), 2(4) & 2(4A)*

## Technical Lifers - England and Wales only

- 12084 A High Court judgment<sup>1</sup> dealt with the issue of whether there was unequal treatment under Human Rights legislation between those persons
1. sent to hospital for treatment<sup>2</sup> without having been given a prison sentence
- who **are** eligible for benefit **and**
2. those given a prison sentence and are either–
    - 2.1 sent directly to hospital for treatment<sup>3</sup> or
    - 2.2 transferred to hospital from prison<sup>4</sup>
- who are **not** eligible for benefit.

*1 Regina (EM and others) v Secretary of State for Work and Pensions [2009] EWHC 454 (Admin);  
2 MH Act 83, s 37 & 41; 3 s 45A; 4 s 47*

- 12085 The Court found that the difference in treatment of those persons termed ‘technical lifers’ could not be justified.
- 12086 A ‘technical lifer’ is an administrative classification. It involves the Secretary of State for Justice accepting that the criminal court that heard the individual’s case would have given an order for hospital treatment rather than impose a sentence of imprisonment, if, for example, a suitable bed had been available.
- 12087 The effect of this is that a person given the status of a ‘technical lifer’ should be treated, for the purposes of benefit entitlement, as though they had been sent to hospital for treatment without having been given a prison sentence (see DMG 12084 1. above).

**Note:** The practice of awarding 'technical lifer' status to eligible prisoners was abandoned in 2005.

## **Guardian's Allowance and Death Grant**

- 12088 There is no disqualification from GA or death grant during a period of imprisonment or detention in legal custody<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 2(5)*

12089

## **Industrial Injuries Disablement Benefit**

- 12090 There is no disqualification from IIDB during a period of imprisonment or detention in legal custody. This includes annual uprating and increases in disablement assessments. However, increases in IIDB such as CAA and ESDA will be subject to disqualification<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 2(6)*

- 12091 Where the sentence of imprisonment is greater than a year, the amount of IIDB payable should be limited to the total amount of IIDB payable for one year<sup>1</sup>. The DM can use any continuous period of a year to calculate a claimant's entitlement, if the claimant has

1. been detained for longer than a year and
2. had varying assessments.

This will ensure that the basis of the calculation made is of the greatest benefit to the claimant.

*1 SS (Gen Ben) Regs, reg 2(7)*

12092 - 12099

## **Imprisonment or detention in legal custody abroad**

- 12100 When a person is imprisoned or detained in legal custody abroad<sup>1</sup>, the same benefit rules apply for

1. disqualification and
2. exception from disqualification.

**Note:** UK benefit rules apply only for imprisonment for a criminal offence. The DM should decide whether the offence for which the claimant is convicted in the other country would be a criminal offence in the UK. A person detained abroad without trial is not disqualified for receiving benefit.

*1 R(S) 2/81; SS (Gen Ben) Regs, reg 2(9) & (10)*

12101 - 12109



# **Imprisonment or detention of dependants**

## **Spouse or civil partner**

- 12110 The disqualification rules for receiving personal benefit apply equally to an increase of benefit for a spouse or civil partner who is in prison or detained in legal custody. The person receiving the benefit will not receive an increase for that dependant for any period during which their dependent spouse or civil partner is in prison or detained in legal custody<sup>1</sup>.

*1 SS CB Act 92, s 113(1)*

## **Person caring for a child**

- 12111 There is no entitlement to an increase of benefit for a person caring for a child or children for
1. any period during which that person is in prison or is detained in legal custody<sup>1</sup>  
or
  2. any week in which the child is in prison or is detained in legal custody.

*1 SS Ben (Dep) Regs, reg 10(2)(d) & Sch 2, para 7(b)(ii)*

## **Fresh claims**

- 12112 The rules on increases for a dependent spouse or civil partner affect payment and not entitlement. A fresh claim is not required when benefit is to be restored following a period of imprisonment or detention.

12113 - 12999



# Appendix 1

## **Mentally disordered persons detained in legal custody (See DMG 12070)**

### **Mental Health Act 1983 Part III**

- 1 Part III of the Mental Health Act 1983 covers patients concerned in criminal proceedings or under sentence. It contains rules on remands to hospital, hospital and guardianship orders, restriction orders and directions to be made on transfer of prisoners to hospital.

#### **Section 37 - Hospital order**

- 2 This section allows the Crown Court to order that a person, who has a mental disorder and who is convicted of an imprisonable offence, be detained in a hospital for treatment. Although they have committed an offence for which a prison sentence could have been imposed, it wasn't. Instead they have received a hospital order which is as much an outcome as being given, for example, a conditional or absolute discharge, a suspended sentence, a probation order. Benefit entitlement should not be affected in such cases. The Scottish equivalent is sections 57A and 58 of the Criminal Procedure (Scotland) Act 1995.

#### **Section 41 - Restriction order**

- 3 Where the Court makes a hospital order under section 37, it may also make a restriction order. Where a person is subject to a restriction order the Secretary of State for Justice's consent is required before they may be transferred, given leave of absence or discharged. The Scottish equivalent is section 59 of the Criminal Procedure (Scotland) Act 1995. Benefit entitlement should not be affected in such cases.

#### **Section 45A - Hospital direction and limitation direction**

- 4 This section allows the Crown Court when imposing a prison sentence, at the same time to give a hospital direction for immediate admission and detention in hospital. If the person responds to treatment or further treatment will not be beneficial, they will be remitted to prison to continue to serve their sentence. These cases are rare. A hospital direction must be accompanied by a limitation direction, which imposes the same restrictions as a restriction order under section 41. From 10.4.06 a claimant admitted under this section is disqualified from receiving benefit. The Scottish equivalent is section 59A of the Criminal Procedure (Scotland) Act 1995.



## **Section 47 - Transfer direction**

- 5      Section 47 allows the Secretary of State - in practice the Secretary of State for Justice - to direct that a person, serving a prison sentence for an offence, be removed to a hospital for treatment for mental disorder. The person is, in effect, a prisoner for the duration of the sentence which was imposed and is disqualified from receiving benefit during that period. They will only become a hospital in-patient for benefit purposes if they are still in hospital after the date when they would have been automatically released had they remained in prison. The making of a transfer direction can result in the person remaining in hospital long after the date on which they would have been released from prison had a transfer direction not been made. The Scottish equivalent is section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

## **Section 48 - “Remand” transfer direction**

- 6      This section provides a similar power to that of section 47 for a person who has not been sentenced. It applies, for example, to people on remand. Such people would be subject to suspension of benefit until they are sentenced. The direction ceases to have effect when the court disposes of the case.

## **Section 49 - Restriction direction**

- 7      When transferring a prisoner to hospital under sections 47 or 48, the Secretary of State - in practice the Secretary of State for Justice - may also impose a restriction direction, which has the same effect on the person as a restriction order under section 41. The effect of this direction on benefits is that disqualification or suspension continues until
1.      the automatic release date for a sentenced prisoner or
  2.      the court disposes of the case for an un-sentenced prisoner.

***The content of the examples in this document (including use of imagery) is for illustrative purposes only***