Chapter 12 - Imprisonment

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Legislation Used in Chapter 12

|  |  |  |  |
| --- | --- | --- | --- |
| **Full Title** |  |  | **Abbreviation** |
| Criminal Justice (Northern Ireland) Order 2008 No 1216 |  |  | CJ (NI) Order 2008 |
| Mental Health Act (Northern Ireland) 1961 |  |  | MH Act (NI) 61 |
| Mental Health (Northern Ireland) Order 1986 No 595 |  |  | MH (NI) Order 86 |
| Social Security Contributions and Benefits (Northern Ireland) Act 1992 |  |  | SS C&B (NI) Act 92 |
| The Pensions Act (Northern Ireland) 2015 |  |  | Pensions Act (NI) 15 |
| The Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977 No 74 |  |  | SS Ben (Dep) Regs (NI) |
| The Social Security (General Benefit) Regulations (Northern Ireland) 1984 No 92 |  |  | SS (Gen Ben) Regs (NI) |
| The Social Security (Invalid Care Allowance)Regulations (Northern Ireland) 1976 No 99 |  |  | SS (ICA) Regs (NI) |
| The State Pension Regulations (Northern Ireland) 2015 No 315 |  |  | SP Regs (NI) 15 |
| The Bereavement Support Payment (No 2) Regulations (Northern Ireland) 2019 No 181 |  |  | BSP Regs (NI) |

Chapter 12 - Imprisonment

Effect of imprisonment on social security benefits

12001 **[See DMG Memo Vol 3/96]** When a person is in prison or detained in legal custody, Social Security benefits are affected as follows

**1.** the person is disqualified from receiving any benefit1, 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 dependant spouse, civil partner or person having care of their child who is in prison or detained in legal custody2 (see DMG 12110 - 12111).

1 SS C&B (NI) Act 92, sec 113(1)(b); 2 sec 113(1)(b)

12002 The social security benefits affected are1

**1.** Incapacity Benefit

**2.** Maternity Allowance

**3.** Bereavement Payment

**4.** Widowed Mother’s Allowance

**5.** Widow’s Pension

**6.** Widows Parent’s Allowance

**7.** Bereavement Allowance

**8.** Retirement Pension

**9.** Shared Additional Pension

**10.** Graduated Retirement Benefit

**11.** Attendance Allowance

**12.** Severe Disablement Allowance

**13.** Carer’s Allowance

**14.** Disability Living Allowance

**15.** Industrial Injuries Disablement Benefit

**16.** State Pension2

**17.** Bereavement Support Payment.

1 SS C&B (NI) Act 92, Parts II - V; 2 Pensions Act (NI) 15, sec 19

12003 Claimants are disqualified from receiving these benefits when they are imprisoned or detained in legal custody following criminal proceedings1. Disqualification only affects the payability of the benefit not claimants’ entitlement to that benefit2. This means that when the conditions supporting the disqualification no longer apply, payment of benefit can be resumed providing all the conditions of entitlement remain satisfied. Unless entitlement has been terminated during the period of imprisonment or detention in legal custody, as is possible in, for example, Incapacity Benefit, a claimant should not be required to make a new claim to benefit on release.

1 SS C&B (NI) Act 92, sec 113; 2 CDLA/1930/04

 12004 – 12014

Effect of imprisonment on Jobseeker’s Allowance, Income Support, State Pension Credit and Employment and Support Allowance

12015 For guidance on the effect of imprisonment or detention in legal custody on Jobseeker’s Allowance and Income Support see DMG Chapter 24, for State Pension Credit see DMG Chapter 78, for contribution-based Employment and Support Allowance see DMG Chapter 53 and for income-related Employment and Support Allowance see DMG Chapter 54.

Effect of imprisonment on Universal Credit, Personal Independence Payment, new style Jobseeker’s Allowance and new style Employment and Support Allowance

12016 For benefit specific guidance on the effect of imprisonment or detention in legal custody on Universal Credit see ADM Chapter E3, on Personal Independence Payment see ADM Chapter P4, on new style Jobseeker’s Allowance see ADM Chapter S1 and on new style Employment and Support Allowance see ADM Chapter U6.

 **Note:** ADM Chapter M1 contains guidance on the meaning of new style Jobseeker’s Allowance and new style Employment and Support Allowance.

Effect of imprisonment on State Pension

Meaning of prisoner

12017 For State Pension purposes a prisoner is a person, in Northern Ireland or elsewhere, who is

**1.** imprisoned or detained in legal custody **or**

**2.** unlawfully at large1.

1 Pensions Act (NI) 15, sec 19(2)

Prisoners who are not to be paid State Pension

12018 Unless DMG 12020 applies, a person is not to be paid State Pension during the period they are a prisoner1

**1.** in Northern Ireland or elsewhere who is imprisoned or detained in legal custody

**1.1** in connection with **or**

**1.2** as a result of

 criminal proceedings2 **or**

**2.** in Northern Ireland or elsewhere who is unlawfully at large3 **or**

**3.** in Northern Ireland who is being detained4

**3.1** in a mental hospital under specific legislation5 which allows the Department 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 Department for Justice certifies their release date6, if any.

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

1 SP Regs (NI) 15, reg 2(1); 2 reg 2(2)(a); 3 reg 2(2)(b); 4 reg 2(2)(c);
5 MH (NI) Order 86, art 53; 6 art 56(3)

12019 However, a person is not a prisoner in accordance with DMG 12018 **1.** or **2.** if

**1.** they are a prisoner outside Northern Ireland **and**

**2.** they would not be a prisoner in similar circumstances in Northern Ireland1.

1 SP Regs (NI) 15, reg 2(3)

Paying State Pension to persons remanded in custody

12020 A person who is remanded in custody is not a prisoner1 in accordance with DMG 12018 so can be paid State Pension unless

**1.** a sentence of imprisonment or detention in legal custody as a result of criminal proceedings2 **or**

**2.** a sentence of detention where DMG 12018 **3.1** applies3 **or**

**3.** a suspended sentence of imprisonment4

 is later imposed on the person for the offence5. Therefore decision makers should suspend State Pension when a person is remanded in custody pending the outcome of proceedings.

1 SP Regs (NI) 15, reg 3(1); 2 reg 3(2)(a); 3 reg 3(2)(b); 4 reg 3(2)(c);
Treatment of Offenders Act (NI) 1968, sec 18; 5 SP Regs (NI) 15, reg 3(1)

12021 However, DMG 12020 **1.** does not apply if

**1.** it is imposed outside Northern Ireland **and**

**2.** it would not have been imposed in similar circumstances in Northern Ireland1.

1 SP Regs (NI) 15, reg 3(3)

Effect of imprisonment on Bereavement Support Payment

Meaning of prisoner

12022 For the purposes of Bereavement Support Payment a prisoner1 is a person who

**1.** in Northern Ireland or elsewhere is imprisoned or detained in legal custody with, or as a result of, criminal proceedings **or**

**2.** in Northern Ireland or elsewhere is unlawfully at large **or**

**3.** in Northern Ireland is being detained

**3.1** in a mental hospital under specific legislation2 which allows the Department 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 Department for Justice certifies their release date3, if any.

1 BSP Regs (NI), reg 6(2); 2 MH (NI) Order 86, art 53; 3 art 56(3)

Prisoners who are not to be paid Bereavement Support Payment

12023 Unless DMG 12025 applies to a person is not to be paid Bereavement Support Payment during the period they are a prisoner1

**1.** in Northern Ireland or elsewhere is imprisoned or detained in legal custody in connection with, or as a result of, criminal proceedings **or**

**2.** in Northern Ireland or elsewhere is unlawfully at large **or**

**3.** in Northern Ireland is being detained

**3.1** in a mental hospital under specific legislation2 which allows the Department 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 Department for Justice certifies their release date3, if any.

1 BSP Regs (NI), reg 6(1); 2 MH (NI) Order 86, art 53; 3 art 56(3)

12024 A prison is not a prisoner in accordance with DMG 12022 **1.** or **2.** where

**1.** a prisoner is a prisoner outside Northern Ireland **and**

**2.** in similar circumstances in Northern Ireland, the person would not have been a prisoner1.

1 BSP Regs (NI), reg 6(3)

Paying Bereavement Support Payment 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 Bereavement Support Payment1 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 provisions2 **or**

**3.** a suspended sentence of imprisonment

 is later imposed on the person for the offence.

1 BSP Regs (NI), reg 7(1) & 7(2); 2 MH (NI) Order 86, art 53

12026 DMG 12025 **1.** does not apply if

**1.** it is imposed outside Northern Ireland **and**

**2.** it would not have been imposed in similar circumstances in Northern Ireland1.

1 BSP Regs (NI), 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 proceedings1 **or**

**2.** imprisonment imposed by a criminal court.

 A claimant sentenced to imprisonment as a result of civil proceedings is not disqualified2.

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 proceedings1 **or**

**4.** abroad2.

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

1 SS (Gen Ben) Regs (NI), reg 2; 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 person1. 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 temporary release.

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 a conviction they are not disqualified for the period of imprisonment or detention in legal custody. See DMG 12057.

Release on licence

12034 Release on licence means release on parole after completion of a specified part of the original sentence. A person released on licence1 is no longer imprisoned or detained in legal custody. The decision maker 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 CJ (NI) Order 2008, Life Sentences (NI) Order 2001; NI (Sentences) Act 1998;
NI (Remission of Sentences) Act 1995

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

**1.** Parole - where the prisoner is released on the recommendation of the Parole Board after completing a specified part of their original sentence.

**2.** 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 day1.

1 CJ (NI) Order 2008, art 26

 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 custody1.

1 CA CAO v Carr; R(I) 9/75

 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 imposed1 (see DMG 12051) **or**

**2.** the person is suffering from mental disorder2 (see DMG 12070 - 12079) **or**

**3.** the person is in receipt of Guardian’s Allowance or death grant3 (see DMG 12088) **or**

**4.** the person is in receipt of Industrial Injuries Disablement Benefit4 (see DMG 12090 - 12091).

1 SS (Gen Ben) Regs (NI), reg 2(2); 2 reg 2(3); 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 a fine default (see DMG 12069)1.

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

Benefits affected

12052 **[See DMG Memo Vol 1/109, 3/97, 5/106, 6/91, 7/45, 8/83, 9/35, 10/73, 12/23, 13/69 & 14/63]** The benefits affected are1

**1.** Incapacity Benefit

**2.** Attendance Allowance

**3.** Disability Living Allowance

**4.** Widow’s Benefit

**5.** Bereavement Benefit

**6.** Child’s Special Allowance

**7.** Maternity Allowance

**8.** Shared Additional Pension

**9.** Retirement Pension

**10.** Severe Disablement Allowance

**11.** Industrial Injuries Disablement Benefit

**12.** Reduced Earnings Allowance

**13.** Industrial Death Benefit

**14.** Carer’s Allowance2

**15.** Retirement Allowance.

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

Meaning of court

12053 Court means1 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 Appeals Court.

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

Meaning of penalty

12054 Penalty1 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 Northern Ireland as a result of any order made under the Colonial Prisoners Removal Act 18842.

1 SS (Gen Ben) Regs (NI), 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 effect1.

 **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 a 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 probation 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 for a relevant change of circumstances and when the decision takes effect.

Suspension

12059 Payment of 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 disqualified1.

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

12060 The suspension covers

**1.** the period of imprisonment or detention in legal custody1 **and**

**2.** any benefit payable during that period even if it is not in respect of that period2.

1 SS (Gen Ben) Regs (NI), 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 Department1.

1 SS (Gen Ben) Regs (NI), 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 legislation1.

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

 12063 – 12068

Imprisonment for non-payment of fines

12069 Imprisonment for non-payment of a fine can be the result of civil proceedings. The decision maker 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 decision maker should

**1.** regard the imprisonment as a criminal offence **and**

**2.** disqualify from benefit1.

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

Mentally disordered persons detained in legal custody

12070 Subject to the exceptions in DMG 12073 disqualification does not apply1 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.

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

12071 Hospital or similar institution means1 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 (NI), 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 completed1. There will be no disqualification.

1 SS (Gen Ben) Regs (NI), reg 2(8)(h)

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

**1.** detained1 (or liable to be detained) under specific legislation2 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.** serving3 a sentence of imprisonment and is then detained in a mental hospital under specific legislation4 which allows the Minister of Justice to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital.

1 SS (Gen Ben) Regs (NI), reg 2(3)(a); 2 MH Act (NI) 61;
3 SS (Gen Ben) Regs (NI), reg 2(3)(b); 4 MH Act (NI) 61

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 from receiving benefits1.

1 SS (Gen Ben) Regs (NI), 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 made1.

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

12077 In Northern Ireland, 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 Department by or on behalf of the prison Governor1. A certificate will not be issued where the prisoner was sentenced to life imprisonment.

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

 12078

12079 For DMG 12077, 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 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 transferred1 to psychiatric hospital for treatment, does not become eligible for benefits when the tariff date has been reached2. Such a person would only become eligible for benefits upon release.

1 MH Act (NI) 61, sec 45A; sec 47; 2 SS (Gen Ben) Regs (NI), reg 2(3), 2(4)

 12084 – 12087

Guardian’s Allowance and Death Grant

12088 There is no disqualification from Guardian’s Allowance or death grant during a period of imprisonment or detention in legal custody1.

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

 12089

Industrial Injuries Disablement Benefit

12090 There is no disqualification from Industrial Injuries Disablement Benefit during a period of imprisonment or detention in legal custody. This includes annual uprating and increases in disablement assessments. However, increases in Industrial Injuries Disablement Benefit such as Constant Attendance Allowance and Exceptionally Severe Disablement Allowance will be subject to disqualification1.

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

12091 Where the sentence of imprisonment is greater than a year, the amount of Industrial Injuries Disablement Benefit payable should be limited to the total amount of Industrial Injuries Disablement Benefit payable for one year1. The decision maker 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 (NI), reg 2(7)

 12092 – 12099

Imprisonment or detention in legal custody abroad

12100 When a person is imprisoned or detained in legal custody abroad1, the same benefit rules apply for

**1.** disqualification

**2.** exception from disqualification.

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

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

 12101 – 12109

Imprisonment or detention of dependants

Spouse or civil partner

12110 The disqualification rules for receiving personal benefit (see DMG 12061 **1.**) 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 custody1 (see DMG 12208 - 12214).

1 SS C&B (NI) Act 92, sec 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 custody1 or

**2.** any week in which the child is in prison or is detained in legal custody (see DMG 12303).

1 SS Ben (Dep) Regs (NI), 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