

## Issue 117 April 2017

---

<b>What's new?</b>	<b>1</b>
<b>Article</b> TDP 10 years on	<b>2</b>
<b>Feature</b> Equality duty	<b>4</b>
<b>Article</b> Housing options for offenders	<b>6</b>
<b>Leaflet</b> Prisoners: keeping your home	<b>8</b>

Shelter helps over a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place.

We're here so no-one has to fight bad housing or homelessness on their own.

Please support us at [shelter.org.uk](http://shelter.org.uk)

**Until there's a home for everyone**

Shelter  
88 Old Street  
London  
EC1V 9HU

Telephone **0300 330 1234**

[shelter.org.uk](http://shelter.org.uk)

© Shelter. All rights reserved.

The National Campaign for Homeless People Limited.  
Registered charity in England and Wales (263710) and  
in Scotland (SC002327). RH 465.63

### Housing matters

*Housing matters* is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

#### Published by:

Shelter, 88 Old Street, London EC1V 9HU

Tel: 0344 515 2148

[shelter.org.uk](http://shelter.org.uk)

**Edited by:** Jackie Lees

**Contributors:** Zoe Knighton, Anna Socci,  
Paul Billard, Tony Benjamin

*Housing matters* welcomes contributions from NHAS members. If you would like to provide an article or update for

*Housing matters* please email

[JackieL@shelter.org.uk](mailto:JackieL@shelter.org.uk)

### National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at [www.nhas.org.uk](http://www.nhas.org.uk)

**The NHAS provides the following to local authorities, local citizens advice and around 100 other advice agencies in England:**

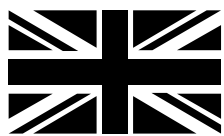
- a national telephone housing advice consultancy service for local authorities, local citizens advice and around 100 other advice agencies in England. Call **0300 330 0517** 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](http://www.nhas.org.uk)
- housing debt casework - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- free basic housing advice training courses to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- written briefings, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- support in the implementation of new homeless prevention initiatives.

### Contact details

For more information about NHAS training, please email [JoanneK@shelter.org.uk](mailto:JoanneK@shelter.org.uk) or call **0344 515 1676**.

For general enquiries about the NHAS service, please email [nhas@shelter.org.uk](mailto:nhas@shelter.org.uk) or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at [www.nhas.org.uk](http://www.nhas.org.uk)



Funded by  
UK Government

Shelter

Registered charity in England and Wales (263710)  
and in Scotland (SC002327).



Registered charity number 279057.

# What's new?

---

## Homelessness Reduction Bill

The Homelessness Reduction Bill has gone through Parliament's approval and is due to become law soon. When implemented, the Act will amend Part 7 of the Housing Act 1996 to extend existing duties on local authorities and introduce new ones, including:

- **prevention duty** – a new duty to take reasonable steps to prevent homelessness of applicants who are eligible for assistance and threatened with homelessness within 56 days, regardless of priority need, local connection or intentionality
- **relief duty** – a new duty to take steps to relieve the homelessness of anyone who is homeless, eligible for assistance and has a local connection to the authority's area
- **duty to cooperate** – new provisions aimed at ensuring that applicants take reasonable steps to resolve their own homelessness
- **duty to refer** – a new duty on other public bodies to refer homeless people, or people threatened with homelessness, to local housing authorities.

DCLG has published various [policy factsheets](#) to provide background information and guidance on the changes.

For further discussions about the Bill and its provisions, see the [Shelter policy blog](#).

## Size criteria rules: HB and UC

With effect from 1 April 2017, the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 SI 2017/213 make changes to size-criteria rules to allow an extra bedroom where:

- a couple is unable to share a bedroom because of a disability
- a disabled child or disabled non-dependant adult requires overnight care from a non-resident carer(s).

These Regulations apply to claimants of housing benefit (HB) and the housing costs element of universal credit (UC) living in both the private and social rented sectors.

DWP has issued [HB Circular A3/2017](#) to provide guidance on the changes which were made in order to comply with the Supreme Court judgment in *R (MA & others) v Secretary of State for Work and Pensions [2016] UKSC 58*.

## UC housing costs for 18-21 year olds

With effect from 1 April 2017, the Universal Credit (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations 2017 SI 2017/213 provide that single claimants aged 18 to 21 in a full (digital) service area will not be entitled to the housing costs element of UC to help pay their rent. There are several exemptions, including for those:

- who are disabled, or responsible for a child
- who left care before their 18th birthday
- who are ex-offenders subject to multi-agency public protection arrangements
- in temporary accommodation secured by a local authority under homelessness duties
- who are victims of domestic violence
- whose earned income is equal to, or over a prescribed amount.

The 2017 Regulations only apply to claimants living in an area where the [UC full digital service](#) is operating (ie areas where there are no restrictions on who can claim universal credit).

## Rent repayment orders

With effect from 6 April 2017, the Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017 SI 2017/281 bring into force the rent repayment provisions in sections 40 to 52 of the 2016 Act. A tenant, or a local authority, can apply to the First-tier Tribunal for an order requiring repayment of rent to the tenant, or benefit paid in respect of housing costs to the authority, where a landlord has committed one of the following offences on or after 6 April:

- using or threatening violence for securing entry into any premises (s.6 Criminal Law Act 1977)
- unlawful eviction or harassment (s.1 Protection from Eviction Act 1977)
- failure to comply with an improvement notice (s.30 Housing Act 2004)
- failure to comply with a prohibition order (s.32 Housing Act 2004)
- having control of, or managing, an unlicensed house in multiple occupation (s.72 Housing Act 2004)
- having control of, or managing, an unlicensed house or flat (s.95 Housing Act 2004).

# TDP 10 years on

**In this article, Zoe Knighton summarises the current rules about tenancy deposit protection and deposit return at the end of the tenancy.**

**Zoe Knighton is Digital Marketing Executive at the Tenancy Deposit Scheme (TDS).**

Since April 2007 tenancy deposit schemes have protected both the tenant's deposit and the landlord's interest in the deposit.

Currently, all tenancy deposits must be protected with a government authorised scheme within 30 days of receipt.<sup>1</sup>

In this article, any reference to a landlord includes a reference to an agent acting on the landlord's behalf.

## **Schemes and services**

When it comes to tenancy deposit protection (TDP), landlords can choose either an insured or a custodial service.

There are 3 approved schemes, all of which currently offer both custodial and insured deposit protection. These are:

- Tenancy Deposit Scheme (TDS) which also runs the DepositGuard insurance-backed scheme for Residential Landlords Association (RLA) members only
- Deposit Protection Service (DPS)
- MyDeposits which includes all deposits previously protected by Capita.

In addition to providing protection, each scheme offers an 'alternative dispute resolution' (ADR) service which can resolve disputes over the return of the deposit in a fair and unbiased way.

## **TDP development and growth**

The TDP legislation celebrates its 10-year anniversary on 7 April 2017. Since its establishment, the number of disputes has grown, along with the number of deposits held. In 2015-16, the three tenancy deposit schemes completed 28,100 adjudications, compared to just 458 in 2007-08.

Despite this growth, the percentage of disputes over deposits protected remains fairly low. Disputes are raised in less than 1% (0.82% as of March 2016) of all tenancies, and where a tenancy does end in dispute the most common reasons are deductions for cleaning, damage or redecoration.

Before the TDP legislation was introduced, a report from Citizens Advice<sup>2</sup> found that 48% of tenants had reported having their deposit unreasonably withheld, and only one in six of these ever got their money back.

## **Return process under the schemes**

The type of protection the landlord has chosen (insured or custodial) dictates how the deposit is repaid.

Insurance-backed schemes allow landlords to keep the deposit, and requests for repayment should be made directly to them. Landlords should return the deposit within 10 working days of a request.

If the landlord uses a custodial service, the tenant must request repayment from the deposit protection scheme which holds the deposit. With TDS Custodial, repayments are made within 5 working days of being notified of an agreement by both tenant and landlord about the sum to be returned.

In both types of scheme, the landlord needs to make a decision based on the check-out report as to whether the condition of the property has deteriorated beyond fair wear and tear, and whether they would like to be compensated. For example, for cleaning, rent arrears or missing furniture.

An itemised deductions list should be used to inform the tenant about the deductions the landlord will be making from the deposit and why. Upon receiving this, the tenant should carefully consider the deductions.

It is important to be realistic and if the tenant forgot to clean the oven, or owes two months' rent, s/he should understand why the landlord is making the deductions. Reaching an agreement is the best option.

If the tenant does not feel the claims are fair, s/he can raise a dispute with the ADR service of the scheme protecting the deposit.

A tenant can only request the return of a deposit after the end of the tenancy.

## **What to do at the start of the tenancy**

When a tenant moves into a new property, an inventory and check-in report should be provided by the landlord. The tenant should ensure the documents accurately reflect the condition of the property.

If the tenant notices any damage or issues with the property, s/he can take photos and inform the landlord in writing that they were caused prior to the start of the tenancy.

Tenants should be sure that they have received all of the prescribed information, and proof that their deposits have been protected in one of the authorised schemes.

Tenants should also read their tenancy agreements very carefully. The agreement should provide them with answers regarding what the deposit can be used for at the end of the tenancy. For example, if the tenancy agreement says that the deposit can be used in the event that the property is returned less clean than it was at the start of the tenancy, the landlord can use the deposit to pay for the property to be cleaned.

During the tenancy, tenants should report damaged or faulty items promptly and keep communication open. It can be easy to slip into an 'us vs them' mentality, but this will only cause more arguments.

### **What to do at the end of the tenancy**

Tenants should prepare thoroughly before leaving the property to ensure that they have given as little cause for the landlord to make a deduction from the deposit as possible.

At the check-out, if something is marked down that was not the tenant's fault (for example, a broken tile caused by a plumber hired by the landlord), the tenant should make the landlord aware of this and show evidence that s/he alerted the landlord when the damage occurred.

With regard to cleanliness, the property should be returned to the landlord as clean as it was when the tenant moved in to the property. It can be difficult to remember just how clean a property was, so both landlord and tenant should refer to the check-in report where the standard of cleanliness should be detailed. It can be surprising to learn just how expensive professional cleaning can be, so it is a good idea for the tenant to carry out extensive cleaning at the end of the tenancy, rather than be liable for cleaning charges after it.

### **Disputes and ADR**

TDS always recommends that tenants should look at their tenancy agreement, check-in and check-out reports, as well as the list of deductions that the landlord wants to make.

Tenants should also refer to any emails or other correspondence during the tenancy which may show that they reported damage or faulty items to the landlord at the time they occurred.

Tenants may have other evidence such as clear, dated photos they took when they moved into the property.

If the tenant and landlord are unable to resolve their differences over the return of the deposit directly, they can ask for the dispute to be resolved by the deposit scheme's ADR. The adjudicator will make a fair and impartial decision based on the tenancy agreement and other documentary evidence provided.

It is important to note that the adjudicator's decision on the amount to be returned is final, and that tenant cannot raise any other claim they may have against the landlord when using the ADR service, for example disrepair. The reason for this is simple: the adjudicator can make a decision about the return of a deposit which is held in security against the tenant's obligations under the tenancy, but cannot consider any alleged breaches of the landlord's obligations. If the tenant has an additional claim against the landlord, s/he should claim the return of the deposit and raise any additional claim in the county court.

The use of the ADR service is voluntary.<sup>3</sup>

If the landlord or tenant does not agree on the amount to be repaid, and does not consent to use the ADR service, the deposit can only be recovered through the courts. In such cases, after being notified of the final decision of the court, the tenancy deposit scheme will repay it to the landlord and/or tenant in line with the order (and/or, as the case may be in insurance backed schemes, direct the landlord to pay it to the tenant).<sup>4</sup>

### **Conclusion**

TDS and the other approved schemes guard the tenant's deposit, and tenants can ensure they are in the best possible position to receive a full return of their deposit at the end of their tenancy by engaging in the check-in and check-out process and by maintaining open communications with the landlord.

TDS is the longest operating tenancy deposit protection scheme. We are currently running a blog series answering the questions of landlords and tenants every Friday.

If you have a question you would like answered, use the tag **#AskTDS** on social media, and to read previous posts and check out our top tips, visit [our website](#).

## **AdviserNet**

11.1.11.8 Tenancy deposits and premiums

### **Footnotes**

<sup>1</sup> Advice from Shelter on how to get a deposit back if it was not protected is available at [tinyurl.com/ShelterTDP](https://www.tinyurl.com/ShelterTDP)

<sup>2</sup> *Unsafe Deposits*, National Association of Citizens Advice Bureaux, 1998.

<sup>3</sup> para 10(2), Sch.10 Housing Act 2004.

<sup>4</sup> The rules relating to tenancy deposit schemes and dispute resolution procedures are in Sch.10 Housing Act 2004.

# Equality duty

**In this feature, Anna Socci considers the duty of public authorities to promote equality and eliminate unlawful discrimination while exercising their public functions.**

**Anna Socci is a Legal Writer and Editor at Shelter.**

The public sector equality duty (PSED) under the Equality Act 2010 has been in force since April 2011.<sup>1</sup> This replaced the separate equality duties under the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975.

## Who's protected

The PSED is aimed at protecting people at particular disadvantage because of:<sup>2</sup>

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

These are the 'protected characteristics'.

## What's the duty

The PSED requires all public authorities and others carrying out public functions to have 'due regard' to the need to:

- eliminate unlawful discrimination
- advance equality of opportunity, and
- foster good relations between people who share a protected characteristic and people who do not.

These are the general 'aims' of the PSED.

Certain authorities must also demonstrate how they are meeting the PSED by publishing equality objectives and information about people with protected characteristics who are affected by their policies and practices.<sup>3</sup>

## Unlawful discrimination

This covers direct and indirect discrimination, discrimination arising from disability, harassment, victimisation, and any other conduct prohibited under the Equality Act.<sup>4</sup>

## Advance equality of opportunity

The need to advance equality of opportunity requires authorities to remove or minimise disadvantages suffered by people with protected characteristics and meet their specific needs where these are different from the needs of the general public.

## Foster good relations

Fostering good relations between people who share a protected characteristic and people who do not means tackling prejudice and promoting understanding.

## Who's subject to the duty

The public authorities subject to the PSED are listed in Schedule 19 to the Equality Act. The duty applies to the exercise of all public functions and to all of the decisions made in the course of exercising public functions. Local authorities exercising their statutory functions are covered.

Non-public organisations exercising a public function are also subject to the duty. This will cover housing associations and other private bodies carrying out public functions on behalf of a local authority,<sup>5</sup> for example when the authority has contracted out its housing management, allocation or homelessness functions to a private company.

## How to comply with the duty

The Equality Act does not specify the steps a public authority should take to meet the requirements of the PSED, but it does state that compliance might mean treating some people more favourably than others.<sup>6</sup>

The Equality and Human Rights Commission (EHRC) is the body responsible for assessing compliance with the Equality Act and the PSED. It has issued codes of practice and guidance<sup>7</sup> which must be taken into account by the courts when relevant. The guidance states that the PSED requires public authorities to consider how they could positively contribute to the advancement of equality and good relations in their day-to-day activities.

## Due regard

The Equality Act states that a public authority must have due regard to the need to achieve the aims of the PSED, but it does not specify what 'due regard' means in practice.

The courts have developed case law principles, for example they held that:

- 'due regard' means such regard as it is appropriate in all the circumstance<sup>8</sup>
- the 'duty to have due regard' is not a duty to achieve a particular outcome,

rather it is a process duty which requires public authorities to think hard about the equality implications of their decisions<sup>9</sup>

- public authorities must demonstrate a conscious consideration of the PSED, during the decision-making process, the design of policies (including internal policies), and the delivery of services.<sup>10</sup>

The EHRC's [Essential Guide to the Public Sector Equality Duty](#) lists further examples.

### Homelessness functions

When exercising homelessness functions under Part 7 of the Housing Act 1996, local authorities must comply with the PSED and demonstrate compliance in decision letters. Complying with the PSED should involve investigating whether there are any protected characteristics within the wider homelessness investigation, and a series of decisions about the extent, effect and impact of any such characteristic within the overall homelessness decision.

When a homeless applicant or another member of the household has a protected characteristic, and this is relevant to the question that the local authority has to decide, the court will expect a higher standard of reasoning to justify any adverse decision.<sup>11</sup> Such reasoning will have to show a sharp focus on the relevant protected characteristic and its potential impact on the decision in question, although the issues can be addressed without express reference to the PSED or Equality Act.

Challenges can arise where, for example:

- the wrong legal test has been applied
- inadequate enquiries have been made into the applicant's situation
- there is no or insufficient evidence to support the factual findings
- the relevant factors have not been taken properly into account
- the reasons for the decision are inadequate.

Non-compliance with the PSED has been invoked several times in cases concerning the standard of homelessness investigations, evidence and information gathering, duty to make enquiries, affordability, suitability, intentional homelessness, and vulnerability.<sup>12</sup>

### PSED and vulnerability decisions

In the context of the enquiries into whether an applicant 'is vulnerable as a result of

old age, mental illness or handicap or physical disability or other special reason' under section 189(1)(c) of the Housing Act 1996, the Supreme Court held that the PSED requires decision makers to focus very sharply on:<sup>13</sup>

- whether the applicant has a disability or other protected characteristic
- the extent of such disability/characteristic
- the likely effect of the disability/characteristic, when taken together with any other relevant circumstances, on the applicant if and when homeless, and
- whether the applicant is vulnerable.

### PSED and suitability decisions

More recently, the Court of Appeal held that the four-stage approach outlined above is only applicable to decisions on vulnerability, whereas when deciding on the suitability of accommodation offered to an applicant already assessed as vulnerable, the PSED requires decision makers to:<sup>14</sup>

- recognise the applicant's disability/protected characteristic
- focus on how the applicant's disability/characteristic is relevant to the suitability of the accommodation
- focus on the disadvantages that such an applicant might suffer when compared with someone without disability/characteristic
- focus on the applicant's accommodation needs arising from the disability/characteristic
- recognise that such an applicant might be required to be treated more favourably than applicants without disability/characteristic, and
- review the accommodation's suitability in light of those matters.

While some have welcomed this clarification from the Court of Appeal, the Supreme Court is due to hand down its judgment on an appeal against a review officer's decision that accommodation offered to a homeless applicant in discharge of the main housing duty was objectively suitable and subjectively reasonable to accept.<sup>15</sup> The points under scrutiny are the scope of the enquiries required of a local authority when making decisions in homelessness cases to which the PSED applies, and the standard of review to be applied by the courts when reviewing local authorities' decisions in such cases.

### AdviserNet

7.33.0.5 What's the public sector equality duty?

### Footnotes

<sup>1</sup> s.149 Equality Act 2010.

<sup>2</sup> s.149(7) Equality Act 2010.

<sup>3</sup> see Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 SI 2017/353.

<sup>4</sup> see ss.13, 15, 19, 26 and 27 Equality Act 2010 respectively.

<sup>5</sup> R (Weaver) v London & Quadrant Housing Trust [2009] EWCA Civ 587; Poplar HARCA v Donoghue [2001] EWCA Civ 595; Essential Guide to the Public Sector Equality Duty, EHRC, 2014.

<sup>6</sup> s.149(6) Equality Act 2010.

<sup>7</sup> [tinyurl.com/essential-PSED](http://tinyurl.com/essential-PSED)

<sup>8</sup> R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin); R (Baker) v Secretary of State for Communities and Local Government [2008] EWCA Civ 141.

<sup>9</sup> R (MA) v Secretary of State for Work and Pensions [2013] EWHC 2213 (Admin); R (Rajput and Shamji) v Waltham Forest LBC : R (Tiller) v East Sussex CC [2011] EWCA Civ 1577.

<sup>10</sup> Barnsley MBC v Norton [2011] EWCA Civ 834; Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345.

<sup>11</sup> Pieretti v Enfield LBC [2010] EWCA Civ 1104.

<sup>12</sup> see *Equal but different* by Mark Robinson, Adviser 179, January/February 2017.

<sup>13</sup> Hotak v Southwark LBC : Kanu v Southwark LBC : Johnson v Solihull MBC [2015] UKSC 30.

<sup>14</sup> Hackney LBC v Haque [2017] EWCA Civ 4.

<sup>15</sup> on appeal from Poshteh v Kensington and Chelsea RLBC [2015] EWCA Civ 711; see [tinyurl.com/UKSC-Poshteh](http://tinyurl.com/UKSC-Poshteh)

# Housing options for offenders

**The NHAS is due to publish a new guide to help local authorities and their partners to consider key issues in preventing homelessness or seeking accommodation for offenders.**

**In this article, Paul Billard, NHAS Partnership Manager, provides a summary.**

NHAS is about to publish *A guide to housing options for offenders (England)*.<sup>1</sup> The guide promotes good practice and improved access to housing for offenders - including people on remand, those serving community sentences, ex-offenders, and their families.

The guide sets out legislative obligations and provides links to other sites.

## **Remand and sentencing**

The support that offenders can expect whilst in prison or when serving a community sentence depends on the length of sentence, the period on remand and/or any conditions of a community sentence. The guide provides helpful information on bail and remand, how sentencing works, and what happens when someone goes into prison.

For custodial sentences of less than 12 months, the prisoner is normally released automatically at the halfway point of their sentence. For longer sentences, the first half is spent in prison and the second half on licence in the community, with supervision from the Probation Service. Indeterminate sentences, such as life imprisonment, are only given for the most serious crimes.

## **Advice and support in prison**

Depending on the length of sentence, advice and support in prison may come from the Probation Service, or through a Community Rehabilitation Company (CRC).

Where a prisoner is managed by the Probation Service, an Offender Manager will be allocated and will be responsible for the prisoner for the whole of her/his sentence, including any time spent in the community. CRCs usually deal with lower risk prisoners or those serving shorter sentences.

In either case, the primary role of the Probation Service or CRC is to ensure that prisoners serve their term in prison and are prepared for release back into the community. The support provided may relate to tackling debt and money issues, finding suitable accommodation prior to release, and finding training or employment.

## **Keeping a home whilst in prison**

Where someone is at risk of a custodial sentence, it is important they make arrangements in relation to their housing at the earliest opportunity. Priority should be given to keeping up rent or mortgage payments during the period of custody.

For *tenants*, case law has established that even where a prisoner is given a long sentence, if their rent is maintained, the property is looked after, and there is an intention to return, then the tenancy will continue. Keeping up rent payments could be done by arranging for a spouse/partner to continue to pay the rent. In most cases, they have a right to continue paying the rent even if they are not named on the tenancy agreement, and can claim benefits to cover housing costs in their own right. If the landlord agrees, other family members or friends could live in the home as caretakers.

For *owner-occupiers*, where the contractual mortgage payments cannot be met, the lender should be notified as soon as possible. If the sentence is likely to be short, it may be easier to negotiate a temporary solution (such as a period of interest only payments). In some circumstances, prisoners or their spouses/partners may be entitled to receive benefits to pay mortgage interest.

### *Housing benefit (HB)*

Where a tenant is taken into custody and is in receipt of HB to pay the rent, payments can continue for up to:

- 13 weeks, provided there is an expectation to return home within that time (for example, if the sentence is six months or less)
- 52 weeks where a prisoner has not yet been sentenced, or is living in a bail or a probation hostel, or is bailed to live away from home.

### *Universal credit (UC)*

Tenants and/or owner-occupiers taken into custody can continue to receive the housing costs element of UC for up to six months if:



- they were entitled to UC immediately before they became a prisoner
- their entitlement included the housing costs element of UC, and
- if they have been sentenced, the period in custody is expected to last no more than six months.

#### *Support for mortgage interest (SMI)*

A owner-occupier prisoner held on remand who is already in receipt of SMI can continue to receive it for up to 52 weeks.<sup>2</sup> At the point of conviction, entitlement to SMI will end.

#### **Homelessness – priority need**

Under the Homelessness (Priority need for accommodation) (England) Order 2002, a person who has been in custody (or, if under 21, in detention) may be vulnerable, and therefore in priority need.

Authorities must assess each case on its own merits, and pay careful attention to whether the applicant is vulnerable as a result of having been in custody.

There are a number of factors listed in the Homelessness Code of Guidance that can help to assess whether an ex-offender may be vulnerable.<sup>3</sup>

The NHAS has produced the [Vulnerability Assessment Guide](#) for frontline advisers supporting single people making a homeless application where there may be an issue about priority need.

#### **Intentional homelessness**

Where an offender loses the home as a result of going into prison, local authorities will need to decide if the act that led to custodial sentence is relevant in determining if the applicant is homeless intentionally. For a finding of intentional homelessness, all of these considerations must be satisfied:

- the applicant must deliberately have done, or failed to do, something in consequence of which s/he has ceased to occupy accommodation which was available to her/him
- it must have been reasonable for the applicant to continue to occupy the accommodation
- the applicant must have been aware of all the relevant facts before deliberately taking or failing to take the actions. An act or omission in good faith on the part of a person unaware of a relevant fact should not be treated as deliberate.

There have been court cases where offenders have been found to be homeless intentionally either as a direct or indirect result of going into prison. Not everyone who loses their home as a result of going into prison will be homeless intentionally, and the Code of Guidance stresses that there should be no blanket approach.<sup>4</sup>

The accommodation that was lost had to be of a settled nature. Authorities will need to examine any periods in accommodation since the offender was released to determine whether there has been a break in the chain of causation from the offender losing their original home to their current homelessness.

Authorities must also enquire as to whether any accommodation that was lost as a result of going into prison was available for their occupation and was reasonable for the applicant to continue to occupy.

#### **Preventing homelessness**

As a matter of good practice, statutory and voluntary services should engage with an offender's housing needs at the earliest opportunity. This may be with a view to:

- avoiding a build-up of rent or mortgage arrears
- supporting and maintaining a tenancy when in prison, or ending tenancies where they are not sustainable
- working together with the prisoner prior to release to find suitable housing options.

All local authorities are required to prevent homelessness wherever possible and to provide advice and information to those who need it. Waiting until the point of release often means prisoners will have no suitable housing available and will put pressure on local authority resources in finding emergency accommodation. This will also often place unnecessary stress on the prisoners (and their families).

There is evidence to show that without stable housing, there is an increased risk of re-offending. The Homelessness Reduction Bill will introduce a new duty on public services, including Criminal Justice System services, to notify local authorities if they come into contact with people who are homeless or at risk of becoming homeless.

Authorities should work closely with CRCs and the Probation Service in discussing an offender's housing problems as soon as they come to light.

#### **AdviserNet**

11.8.9.5 Prisoners: preserving the home

#### **Footnotes**

<sup>1</sup> when published, the guide will be featured on the news page of the [NHAS website](#) and in the NHAS e-bulletin.

<sup>2</sup> Where the qualifying benefit for SMI is income-based jobseekers allowance, the prisoner will need to claim income support instead to retain SMI as entitlement to JSA(IB) will cease on being taken into custody. Prisoners on remand qualify for income support: para 22, Sch 1B Income Support (General) Regulations 1989 SI 1987/1967.

<sup>3</sup> see Ch. 10: Priority need, Homelessness code of guidance for local authorities, DCLG, July 2006.

<sup>4</sup> see para 11.6, Homelessness code of guidance for local authorities, DCLG, July 2006.

# Prisoners: keeping your home

**This leaflet considers how you can keep paying your rent or mortgage while you are in prison.**

**Ask if you can get housing advice as soon as possible after you go into prison.**

You might be entitled to benefits to help you pay your rent or mortgage if you are in prison in England, Wales or Scotland.

## **Housing benefit (HB)**

You can only get HB to pay your rent if you intend to return home when you are released from prison. How long you can get HB for depends on your circumstances:

**On bail:** you can get HB on your normal home for up to 52 weeks if your bail conditions mean that you have to live away from home - in a bail or probation hostel or anywhere else - until your court hearing.

**On remand:** you can get HB for up to 52 weeks while you are in prison on remand waiting for your trial or sentence.

**Sentenced:** if you are sentenced and are in prison you can get HB for up to 13 weeks. But you must expect to return home within 13 weeks of the date you first went into custody, including time you were on remand.

You will not be entitled to HB for any time you are serving a prison sentence if the length of your sentence means that you will not be returning home within 13 weeks of the date you went into custody.

**Temporary release:** the time you spend at home on temporary release is treated as time in prison.

## **Universal credit (UC)**

If you were getting UC to help pay your rent or a mortgage before you went into prison, you can continue to get UC housing costs payments for up to 6 months. This applies if you are on remand, on bail or sentenced. But if you receive a custodial sentence you won't get UC if you expect to be in prison (including time on remand) for more than 6 months.

You should try to set up a direct debit to pay your UC direct to your landlord.

You cannot make a new claim for UC if you are in prison. However, if you were not getting UC before you went into prison but were entitled to it, you might qualify for backdated payments. You could then get UC for up to 6 months in prison.

## **Can someone else pay your rent?**

If you are serving a prison sentence, your partner (married or not) can claim HB or UC to pay the rent on your home. Another relative or friend might be able to receive HB or UC if they look after your home in your absence. They must be living in the property. They can apply even if the tenancy is in your name only. You should tell your landlord that they will pay the rent on your behalf.

## **Support for mortgage interest (SMI)**

SMI can pay your mortgage interest if you own your home. If you were getting SMI before you went into prison, you can get it for up to 52 weeks while you're on remand or on bail. If you were getting jobseekers allowance before you went into prison, you will have to claim income support instead.

Payment of SMI will end if you are sentenced. If your partner lives in the home, they may be able to claim SMI but will usually be subject to a waiting period.

If you cannot get SMI, you may be able to negotiate with your lender for a period of reduced payments if you will only be in prison for a short time.

## **Report a changes of circumstance**

If you are getting HB, UC or SMI, you must let the authority that is paying you know as soon as possible if you go into prison, receive a custodial sentence, or are released.

## **Subletting a room in your home**

If your landlord agrees, you could consider subletting part of your home to someone else. If you don't get permission your landlord could evict you. If you are a council or housing association tenant it is a criminal offence to sublet your entire property without written permission.

## **Further advice**

You can get further advice from Shelter's free\* housing advice helpline (0808 800 4444), a local Shelter advice service or local Citizens Advice office, or by visiting [shelter.org.uk/advice](https://www.shelter.org.uk/advice) or [adviceguide.org.uk](https://www.adviceguide.org.uk)

\*Calls are free from UK landlines and main mobile networks.



**Note**  
Information contained in this leaflet is correct at the time of publication. Please check details before use.