

# Chapter E3: Special cases

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# Chapter E3: Special Cases

## Restrictions on entitlement

### Introduction

- E3001 This chapter explains about the restrictions on entitlement to UC where people are
1. members of religious orders (see E3010)
  2. prisoners (see E3030)
  3. imprisoned in hospital<sup>1</sup> (see E3050).

*1 UC Regs, reg 19*

E3002 – E3009

## Members of religious orders

### Definition

- E3010 A religious order is
1. a group of people who are
    - 1.1 bound by vows living under the same religious, moral and social regulations observing a discipline according to a particular rule **and**
    - 1.2 offering their services free for the benefit of the order **and**
  2. committed to providing all that its members need for their maintenance.

**Note:** Monks and nuns (of the Roman Catholic, Buddhist or any other religion) are the most common examples, but there may be others.

### Member fully maintained

- E3011 A claimant is not entitled<sup>1</sup> to UC where they are
1. a member of a religious order **and**
  2. fully maintained by their order<sup>2</sup>, that is, if the order provides full board and lodging, clothing and other needs.

*1 UC Regs, reg 19(1)(a); 2 CPC/3725/07;*

### Example 1

Ted is a missionary for a group of priests that refer to themselves as a congregation. The priests give up their personal possessions on joining the congregation and are bound by religious vows. They are not allowed to do any paid work outside and are provided with all their needs. Because of his failing health Ted moves to a care home that caters for ill priests of the congregation and he claims UC. The order continues to provide all that Ted needs in the care home, although they say that it is becoming increasingly difficult to do so. But what matters is whether the order is fully maintaining Ted, not whether they find it difficult to do so.

Ted is not entitled to UC because he is a member of a religious order who is being fully maintained by his order.

### Example 2

Isobel is a 58 year old nun who is a member of the Poor Clare Religious Order. The local Poor Clare community group to which Isobel belongs does not receive support from the Order's central funds instead she is supported from the group's community funds derived from donations, legacies and the proceeds from the sale of small items made by the nuns. Isobel is fully maintained by the order and is not entitled to UC.

- E3012 The commitment to a religious order is often for life. So for example, a person who retires but remains with the order and continues to be fully maintained by it is still not entitled to UC. But UC could be claimed and calculated in the normal way if a person ceases to be maintained by the order.

## Member not fully maintained - amount payable

- E3013 UC may be awarded if a member of a religious order

1. leaves the order's premises, for example to nurse a sick relative **and**
2. is not fully maintained by the order during the absence.

The fact that the member has been fully maintained by the order in the past does not affect the new decision.

- E3014 Claims may be received from members of a religious order whose

1. physical or mental health is very poor **and**
2. monastery or convent can no longer provide proper care **and**
3. order can no longer afford to maintain them.

Such people may be living in a care home or private hospital being run by a religious order. Entitlement should be considered in the normal way if they are not being fully maintained by their order.

## Example

Sarah is a 60 year old nun who has been a member of, and fully maintained by, a religious order for 40 years. She is suffering from Multiple Sclerosis and her order is no longer able to care for her properly. The LA find her a place in a care home run by another order. Sarah is expected to contribute to the fees and claims UC.

The order continues to provide suitable clothing for Sarah but cannot afford to maintain her in the care home and makes no financial contribution to her needs. The DM decides that Sarah is no longer being fully maintained by the order, and awards UC.

## Member has some funds

E3015 A member of a religious order may still be fully maintained by the order even though they have some funds of their own (for example earnings) out of which they may be contributing to the order<sup>1</sup>.

*1 [2011] EWCA Civ 103*

## Member has no funds

E3016 A member of a religious order may have no apparent income or capital of their own. But the DM should consider whether the rules of the order allow

1. a member to ask for financial support **or**
2. the return of money given to the order on admission.

This information can be obtained from the trust deed of the order, but enquiries should not be made into the order's financial affairs. The DM should submit cases of doubt to DMA Leeds.

E3017 – E3029

## Prisoners

### General rule

E3030 Prisoners generally have no entitlement to UC other than described at E3040<sup>1</sup>.

*1 UC Regs, reg 19(1)(b)*

### Definitions

E3031 A prisoner<sup>1</sup> is a person

1. detained in custody following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person
  - 1.1 temporarily removed from prison to hospital, unless E3050 applies **or**

- 1.2 living outside the prison under a pre-release employment scheme<sup>2</sup> **or**
- 1.3 released on temporary licence which may be allowed for a variety of reasons including
  - 1.3.a home leave **or**
  - 1.3.b attendance at rehabilitation courses **or**
  - 1.3.c work during the daytime **or**
2. detained in custody on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital (unless ADM E3050 applies).
3. released early under the End of Custody Licence arrangements.

*1 UC Regs, reg 2; 2 R(1) 9/75*

E3032 The definition of prisoner does not include a person

1. under suspended sentence **or**
2. sentenced to community service **or**
3. transferred from court or prison to hospital and who is detained under mental health legislation<sup>1</sup>
4. released on licence **or**
5. who is on a
  - 5.1 home detention curfew **or**
  - 5.2 court ordered curfew **or**
  - 5.3 restriction of Liberty Order **or**
  - 5.4 community payback order **or**
  - 5.5 mandatory probation service programme.

**Note:** Release on licence means release on parole after completion of a specified part of the original sentence.

*1 MH Act 1983, MH (C & T) (Scot) Act 03, Criminal Procedure (Scotland) Act 1995.*

## **Meaning of detained in custody**

E3033 The word “detains” describes the physical confinement of a person<sup>1</sup>. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison
2. in a remand centre
3. in a police station when used as a remand overflow

4. of a child or young person under the direction of the Secretary of State
5. in a young offender's institution
6. abroad.

*1 R(S) 10/56*

E3034 Detention in custody might be

1. after the start of the proceedings, for example remand in custody<sup>1</sup> **or**
2. after the proceedings have ended, for example sentence to prison.

*1 R(IS) 1/94*

E3035 Detention in custody does not include a period before proceedings begin where the person is released on bail.

E3036 – E3039

## Conditions where a prisoner is entitled to UC

E3040 The restriction on entitlement for prisoners is lifted during the first 6 months that the person is a prisoner where

1. the person was entitled to UC immediately before becoming a prisoner **and**
2. the calculation of their award included an amount for the housing costs element (HCE) **and**
3. the person has not been sentenced to a term in custody expected to extend beyond that 6 months<sup>1</sup>.

*1 UC Regs, reg 19(2)*

E3041 Where E3040 applies and a prisoner remains entitled to UC then the award is comprised only of the HCE<sup>1</sup>.

*1 UC Regs, reg 19(3)*

### Example 1

John is entitled to UC of £564.67 for an assessment period that runs from the 10th of each month, the award is comprised of £314.67 for the standard allowance and £250 for the housing cost element. On 1.4.14 John is sentenced to 10 months in prison. John's UC award is reduced to £250 from 10.3.14. (the first day of the assessment period in which the change occurred) for the duration of his detention.

**Note;** under current detention guidelines, for a sentence of 10 months, a person will not expect their actual term in custody to extend beyond 6 months.

E3042 E3040 does not apply where the person was entitled to a joint award immediately before become a prisoner. In this situation the partner who is not in prison should claim UC as a single person and receive the single standard allowance and the housing element.

**Note:** The couples income and capital are still aggregated.

### Example

Rosie and Jim are entitled to UC of £1247.70 a month, which is comprised of £997.70 for the couple standard allowance including child elements for two children and also £250 for the housing cost element. On 1.4.14 Rosie advises that Jim has been sentenced to 4 months in prison (becoming a prisoner brings the joint claim to an end). As Jim was entitled to a Joint award immediately before becoming a prisoner he cannot now take advantage of the lifting of the restriction on entitlement for prisoners. Rosie (as the person who notified the change) would have to make a new claim as a single person and receive the single standard allowance for herself, the children and the housing element.

E3043 – E3049

## Prisoner admitted to hospital

E3050 The DM should establish the exact legislation used to admit a prisoner to hospital because entitlement to UC is established only if the transfer is made under specified provisions<sup>1</sup> within the Mental Health Act (see E3051 for an exception).

*1 MH Act 83, MH (C & T) (Scot) Act 03, Criminal Procedure (Scotland) Act 1995*

## Serving a sentence of imprisonment detained in hospital

E3051 A person serving a sentence of imprisonment detained in hospital

1. under prescribed legislation<sup>1</sup> **and**
  - 1.1 before the date on which the secretary of state certifies to be that person's release date<sup>2</sup> (tariff date) **or**
2. under prescribed Scottish legislation<sup>3</sup>

is not entitled to UC<sup>4</sup>.

*1 MH Act 83 s 47, s 45A; 2 MH Act 83, s 50(3); 3 MH (C & T) (Scot) Act 03 s 136, Criminal Procedure (Scotland) Act 1995, s 59A; 4 UC Regs, reg 19(4)*

### Example

Adrian is transferred from Wormwood Scrubs prison to Broadmoor under the Mental Health Act. He makes a claim to UC on the basis that Broadmoor is a hospital and he should be treated as a patient not a prisoner. The DM establishes that the transfer was made under section 47 of the 83 MH Act and as such determines that Adrian is not entitled to UC because he is a prisoner serving a sentence of imprisonment detained in hospital.

E3052 A person admitted to hospital as a technical lifer should be treated, for the purposes of entitlement to UC, as though they had been given a hospital order<sup>1</sup> with no term

of imprisonment. This means that a person with technical lifer status is eligible for UC as they are not a prisoner.

*1 MH Act 83, s 37;*

**Note1:** A technical lifer<sup>1</sup> is an administrative classification which was given to certain prisoners with a life sentence. It was given where the Secretary of State for Justice accepted 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.

*1 Regina (EM and others) v SoS for Work and Pensions [2009] EWHC 454 (Admin);*

**Note 2:** The practice of treating prisoners as technical lifers was abandoned in 2005. As a result the current number of technical lifers is fixed and will decrease over time.

## **Tariff date**

E3053 A prisoner who remains in prison beyond their tariff date does not become eligible to make a claim for UC - they are still prisoners. However a prisoner who is transferred to hospital as described in E3050.1 will become eligible to claim UC when the tariff date has been reached.

**Note:** A 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. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a 'whole life order'. It means that a prisoner can never become eligible for a Parole Board review or for release.

E3054 – E3999

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