



## PRISONERS' PENSION RIGHTS

**A response by the Prison Reform Trust to the White Paper '*Security in retirement: towards a new pensions system*', published by the Department for Work and Pensions in May 2006.**

### FOREWORD

For all older people reliant on the state pension, the system can be unfair and inadequate. In common with much mainstream policy, the needs of people in prison, and people who have been in prison, have been overlooked. Therefore we welcome the discussion in this report and hope that it leads to and informs subsequent debate.

Age Concern has worked with the Prison Reform Trust and other organisations on a number of initiatives relating to older people in the prison system. We share a serious concern about the inadequacy of arrangements, ranging from the lack of appropriate services and support in prison itself, to the lack of help to ensure that people who leave prison in older age are given the opportunity to contribute as valued members of society.

The state pension is integral to these concerns. This report highlights how older people deprived of any independent income and unable to work in prison, may be unable to afford the 'extras' which constitute quality of life in a prison environment. We also share concerns about the impact a stay in prison has on someone's ability to contribute to the state pension. In effect their punishment may be carried on into older age in the form of inadequate retirement income, potentially affecting their rehabilitation into the community. The report also highlights that prison can have a financial impact on family members, and we are worried by the fact that adult dependents can be disadvantaged. These are usually wives who are not entitled to the state pension in their own right despite years of service caring for families, and who believed they could rely on their husbands for financial support. These women are innocent of any crime.

Calls for improved state pension rights for prisoners are likely to be controversial but these are issues that need to be considered particularly in the context of a growing number of older people in prison. England and Wales also appear to be out of step with most other European Union countries. While Age Concern has not necessarily taken a position on the issues set out in this report we believe that this is a subject that needs to be debated. We therefore welcome this report as providing a very useful contribution and starting point for that debate.

A handwritten signature in black ink, which appears to read 'Gordon Lishman'. The signature is fluid and cursive, with a long horizontal line extending from the bottom of the name.

Gordon Lishman  
Director General  
Age Concern England

*The Prison Reform Trust works to create a just, effective and humane penal system. We inquire into the system, inform prisoners, staff and the wider public and seek to influence Government towards reform.*

## **Acknowledgements**

The Prison Reform Trust (PRT) is grateful to the Nuffield Foundation for kindly supporting the work on which this report is based. The research was conducted by Stuart Ware and we would like to thank him for his diligence in gathering the information and drafting the report. Samantha Hamilton, solicitor and Alison Pursehouse of the National Pensioners Convention made important contributions, for which PRT is indebted. Useful information was provided by the Department for Work and Pensions and correspondents from twenty Member States in the European Union.

The preparation of this response was greatly helped by comments and advice from Sally West and Ryan Sampson of Age Concern England.

## 1.0 Key Facts and Figures

- Since the 1911 National Insurance Act sentenced prisoners of pensionable age have not been entitled to the UK State Pension. Most other European Union countries, such as the Czech Republic, Belgium, France, Germany, The Netherlands, Norway, Portugal, Spain and Sweden operate a variety of schemes that ensure their pensioners are paid during their custodial sentence.
- Many UK prisoners who are eligible for a private or occupational pension will continue to have this pension paid into their account during their sentence.
- The basic retirement State Pension was introduced in 1948 through the National Insurance Act 1946 that amended previous legislation. It is not means-tested, but the amount is dependent on the number of qualifying years National Insurance contributions have been paid.
- In the 1970s it was considered that there was too high a dependency on means-tested supplementary benefits. Consequently, the Social Security Pensions Act 1975 introduced an earnings-related element (SERPS) to complement the flat rate. Payment of SERPS, which from 2002 onwards was changed to become the State Second Pension, is dependent on the amount of contributions made to the scheme whilst working and the level of earnings whilst employed. A pension that consists of both the flat basic rate and state additional pension is known as a Category A pension.
- In England and Wales sentenced male prisoners over 60 years of age have more than trebled over a ten-year period, from 442 in 1992 to 1359 in 2002, whereas women prisoners over 50 years of age have more than doubled during the same period from 60 to 156. By 2005 the figure for the over 60s in custody had reached 1,789.
- England and Wales has the highest number of life sentenced prisoners in Europe.
- Older people in prison have been identified as having particular health care needs and specific problems in adjusting to prison life. Many have social problems in relating to others that continue when they are released.
- Most elderly prisoners with age-related health problems cannot afford to pay for additional medication or complementary health treatment.
- These multiple health and social issues are compounded when they are released, making it difficult to resettle. Many will be too frail and vulnerable to support themselves and will require community or residential care.

## 2.0 The Profile of Older People of Pensionable Age in Prison

2.1 In England and Wales there are 1,789 older people in prison who are over 60 years of age, of whom 31 are women. 365 are aged over 70 years.

*(Prison Service July 2005).*

2.2 Some older prisoners are more vulnerable than others, suffering from mental or physical ageing problems and are in need of specialist care and support. Many people in prison have aged prematurely or become disabled as a result of drug or alcohol addiction and rough sleeping. HMP Norwich has a fifteen bed healthcare unit and is the only one of its kind in England and Wales that specialises in caring for the elderly infirmed.

*“I cannot climb the many stairs on our prison wing, without another inmate helping me. If nobody is around, I have to wait for help.”* (68 years old first-time offender).

2.3 The Prison Service is unable to meet the specific needs of elderly inmates. Over 80 per cent of older prisoners have a long-standing chronic illness or disability. Of these, more than a third suffer from cardiovascular disease and more than a fifth suffer from a respiratory disease, with nearly a third suffering depression. (*Growing Old in Prison*, 2003).

*“Without friends on the outside, who send me money on occasions, I would not be able to afford to pay for the additional medication I need to help me survive the long days and nights.”* (72 years old lifer with circulatory and respiratory health problems).

2.4 Older prisoners feel more vulnerable. They have specific social and rehabilitative needs and are unable to access services that are available to younger prisoners

*“I would love to keep active, but there is no room for me to exercise in the gym. The younger guys take up all the space and hassle me. This means that when I get out I will be physically worse than when I went in eighteen months ago”* (65 years old first-time offender)

2.5 HM Chief Inspector of Prisons ‘Thematic Review’ of older prisoners states:

- *There was no guidance on pay for retired prisoners. Prison Service Order 4460 states that, ‘prisoners of state retirement age are not normally required to work. They ...can, however, be required to participate in other purposeful activity as identified by sentence/training plan or learning plan.’ The PSO sets a mandatory minimum payment of £3.25per week but does not specify an optimum or range of pay* (2.9).
- *In practice we found wide variations in retirement pay across establishments. Weekly retirement pay ranged from £10 at Frankland to £3.25 at Elmley and Hull. Most other prisons paid between £3.50 and £5.50, although higher rates were paid at Leyhill (£7) and at Parc (£8.50). Prisoners’ weekly pay was reduced by 50p or £1 for in-cell TV. The exceptions to this were E wing at Kingston and at Rye Hill where older prisoners were not charged for their TVs’* (2.10).
- *In no prison did we find any provision or specific preparation for retirement or recognition by managers that this was an aspect of resettlement and reintegration* (2.12).

(‘No problems – old and quiet’: Older prisoners in England and Wales, 2004)

*“Because I can’t work, I can’t earn any dosh [money] to buy extras from the canteen, like toothpaste, chocolate and fags...I have to pay £1 a week for my TV...Sometimes younger guys bully me to get extras for themselves from the canteen from my £4 a week prison pension, so that I have nothing to buy for myself...Some who work can put aside some dosh they have earned inside to use when they get out”*  
(68 years old repeat offender).

2.6 Some older prisoners have to rely on family and friends for financial support:

*“I’ve been told I have breast cancer...I sometimes receive a bit of money from my sister to help me buy extras... When I get out in three months time I will have no*

*home, money or clothes of my own, except what the prison gives me on the day of my release. I will have to rely on my sisters' family for handouts and on [means-tested] benefits". (63 years old first time offender woman prisoner)*

2.7 Examples of advocacy work that have resulted in pensions being reinstated:

*"A person sentenced to prison had his pension book mislaid prior to sentencing and was unable to access the amount still due him. An advocate was able to raise the issue with the local pensions office and he was offered the backdated amount".*

*"A prisoner had his private pension stopped on entering prison. He did not think he was entitled to it. An advocate took up his case with the insurance company and his pension was reinstated". (Advocacy Co-ordinator, MIND, Bristol)*

### **3.0 UK Legislation Prohibits Payments of State Pension to Convicted Prisoners**

3.1 Convicted Prisoners are not entitled to Social Security Benefits -

This includes State pensions, even where people have contributed to them for many years. Since the National Insurance Act 1911 convicted prisoners of pensionable age have not been entitled to receive their State Pension during the term of their prison sentence. It applies irrespective of whether the claimant is imprisoned in this country or anywhere else in the world. The National Offender Management Service states: 'Entitlement to benefits whilst in custody is a matter for the DWP. However, the general rule is that convicted prisoners in the United Kingdom do not get any Social Security Benefits at all, although payment of certain War pensions and Industrial Disablement Benefits are suspended for up to a year and paid on release' (NOMS, September 2005).

3.2 Further supporting legislation for the disqualification of convicted prisoners -

This can be found in the Social Security Contributions and Benefits Act 1992, Sec. 113 (1)(b). The Act lays down the conditions for entitlement to a Category A pension. It also disqualifies a person from receiving benefit under Parts II to V of the Act "for any period during which ..." he or she is undergoing imprisonment or detention in legal custody. Some benefits are exempt from the disqualification in Sec. 113 by virtue of regulation 2 in the Social Security (General Benefit) Regulations 1982. But this does not include State Pension.

3.3 Entitlement as a Beneficiary -

The Social Security Act 1992 also disallows the relevant benefit of a partner being paid where the beneficiary is in prison or in legal custody. A partner of a serving prisoner is not entitled to receive a portion of the prisoner's State Pension. She may be entitled to other benefits, such as Pension Credit, in her own right if aged over 60.

3.4 Prisoners on Remand -

In the case of those remanded in custody, payment of benefit (i.e. State Pension) is suspended pending the outcome of the proceedings. If a custodial sentence is then imposed, any time spent on remand will be included in the disqualification period. If the person is acquitted, given a fine, placed on probation, given a community or suspended sentence, payment of benefit will be reinstated to include remand period.

3.5 On release from prison –

- (i) A prisoner released on licence, or life licence, or who is electronically tagged following release, can claim some benefits, such as Income Support, Pension Credit and ‘benefits to help with housing’ (*DWP GL32*).
- (ii) A person of 60 or over should apply for Pension Credit prior to release from prison. Savings over £6,000 could affect the Pension Credit, but not the prison discharge grant (*DWP GL32*).
- (iii) Although prisoners can make back-payments within six years of their release toward their NI contributions, it would mean a person who has served between 10 to 20 years in prison would have to pay between £3,700 and £7,400 (See also 3.8 below).

### 3.6 Hospitalisation under the Mental Health Act -

A person moved from court or prison to hospital because of a mental disorder, and held under the Mental Health Act 1983, may be treated as a hospital in-patient and entitled to certain benefits. These can include, in principle, Pension Credit (*DWP GL32*).

### 3.7 Attendance Allowance and Disability Living Allowance (DLA) –

Attendance Allowance / Disability Living Allowance are benefits to help with the extra costs of disability for people who fulfil the criteria.

An older person in prison who is under 65 years of age and has had this disability for at least six months may be entitled to a DLA, providing the criteria for entitlement is fulfilled. However, no benefit would be paid during the prison sentence.

*(Age Concern Leicestershire and Rutland)*

### 3.8 National Insurance Contributions -

With the exception of those at the end of their sentence and working outside the prison, prisoners are not liable to pay contributions, but they can make voluntary contributions toward their State Pension. Voluntary contributions can be paid up to six years after the tax year in which they were released from prison. Prisoners who were self-employed before their custodial sentence can continue to pay Class 2 contributions voluntarily.

### 3.9 National Insurance Credits -

National Insurance credits can be awarded to people who are incapacitated or unemployed and regarded as being temporarily out of work. This includes starting credits (for tax years in which they are 16-18 years of age) and autocredits for people aged over 60. This does not apply to convicted prisoners. If their conviction is overturned on appeal, they may get credits for all their time in prison. There are two exceptions: (i) young people can get starting credits for the tax year in which their 16<sup>th</sup> birthday falls, and the two following years; (ii) people can get credits for the tax year in which they reach age 60 and the four subsequent years (*DWP GL32*).

### 3.10 Implications of Civil Partnership Act 2004 -

There could be implications for same-sex couples as a result of the Act, which came into force in December 2005, where one of the partners is given a custodial sentence. According to the Act, people of the same sex who have formed a civil partnership will be treated, as far as possible, in the same way as a married couple. Same-sex couples who are living together as civil partners (but have not formed a civil partnership) will be treated in the same way as unmarried couples.

### 3.11 Private and Occupational Pensions -

Entitlement to private or occupational pension funds is dependent upon the precise terms of the each pension scheme. There is no UK legislation that prohibits such pension payments being made to convicted prisoners. However, there is legislation in relation to occupational pension schemes that have opted out of Second Pensions (SERPS). Under Sec. 21 (2) of the Pension Schemes Act 1993 and Regulation 35 of the Occupational Pension Schemes Act (Contracting Out) Regulations 1984 allowance is made for an employer to cease paying that pension during a period of imprisonment, if it so chooses.

#### **4.0 State Pension Rights for UK Citizens Serving Non-Custodial Sentences**

4.1 Offenders given non-custodial sentences have the same entitlements as all pensioners. Apart from State Pensions, they may be entitled to child and maternity benefits, disability and carer benefits, housing and incapacity benefits, or tax credits.

4.2 Women who have reached the age of 60 and men who are 65 or over, will find their entitlement to State Pension dependent on the contributions made during their working lives, or credited while they were registered unemployed or incapacitated or caring.

4.3 For the year April 2006/07 the full basic pension is £84.25 per week.

4.4 From 6 April 2020 the State Pension age for women will be 65, the same as for men. From 2010 women's State Pension age will be between 60 and 65, depending on date of birth.

4.5 An eligible person must claim their State Pension and a claim pack is usually sent out four months prior to reaching pensionable age.

4.6 Although the state additional pension is earnings-related and dependent on National Insurance contributions, under S2P from 2002 onwards it also allows some carers and those with long-term illnesses or disabilities to build up entitlement to an additional pension during periods when they cannot work

4.7 A married woman who has not paid enough National Insurance contributions to earn a basic State Pension of her own, may use her husband's contribution record when the Pension Service works out her pension (as long as he has reached State Pension age and claimed his pension). This could give her a pension of up to 60% of the full basic State Retirement Pension. She does not have to be living with her husband to get this pension. (See 'State Pensions – Your Guide' ISBN:1-85197-998-0)

4.8 For divorced couples, pension sharing does not apply to the basic State Retirement Pension, as the divorced couple can already replace their own contribution record with their spouse's record for the period of their marriage. It only applies to divorce proceedings that started before 1 December 2000. It does not apply to couples who are separated but not divorced.

4.9 A bereaved person who is entitled to the State Pension of their late spouse, may also be entitled to receive up to 50% of their State Second Pension and up to 100% of his or her SERPS.

4.10 Pension Credit is an income-related ('means tested') benefit for people aged 60 and over. It contributes to a guaranteed weekly income of at least £114.05 (single) or £174.05 (couple). Further amounts can be added for those with caring responsibilities or severely disabled.

4.11 UK Government policy is that both the flat-rate pension and the earnings-related element are financed out of the National Insurance Fund and made up of contributions from employers and employees in a given year, plus an Exchequer grant from general taxation, to cover any shortfall. This is used to finance pensions paid out in that same year. It is not a fund consisting of contributions built up over the working life of a person to pay a pension on retirement.

## 5.0 UK Government Current Position

5.1 Correspondence with officials of the Pensions Group, Department for Works and Pensions elicited the following statements in 2004 about convicted prisoners and their State Pension rights.

- *'There are two distinct but mutually reinforcing arguments in support of this long-standing policy. In the first place, the Government considers that payment of benefit to prisoners is unnecessary. They are already being maintained at considerable public expense and, to pay benefit, would amount to double provision'.*
- *'Secondly, the idea of prisoners receiving payments from public funds at a time when they are generally considered to be repaying a debt to society is widely felt to be morally repugnant. Forfeiting benefit to which they may have contributed is commonly regarded as being a legitimate aspect of the punishment'.*
- *'The point made earlier about society's general view on the inappropriateness of paying state benefits to prisoners, applies equally to other advantages available under the social security system, such as the award of National Insurance credits'.*

5.2 In March 2005 further correspondence from the Pensions Group contained the following statements:

- *'Of course there are those who take the view that the loss of liberty should be the limit of the debt a prisoner owes to society. We would however suggest that the wider view within society is that it is entirely inappropriate to pay benefits to prisoners. As I believe you would recognise, the typical tax-payer and National Insurance contributor would object in very strong terms to the idea that they should work in order to provide income to those who had broken the nation's laws and who were being kept by the state whilst in prison. And whilst it is not the function of Government to pander to populist notions, there is a genuine sense of a social contract in these matters. We would say that the voice of the majority has a legitimate place if the social security system in general is to hold the confidence of the nation. This has been the view of successive Governments'.*
- *'I should explain that the National Insurance scheme operates as a "pay-as-you-go" scheme so that today's contributors are paying for today's social security entitlements and pensions, and those paying contributions previously were paying for the pensioners of that time. In other words, contributors do not accumulate an individual pension fund of actual monies they have paid, which is personal to them. Instead, payment of contributions entitles them or,*

*in certain circumstances, their spouses, to a range of social security entitlements which are available on the basis of the rules applicable at the time of the claim’.*

5.3 In January 2006 further clarification was received from the Department for Work and Pensions:

- *‘You ask about the position of a non-prisoner being entitled to a portion of the State Pension of the prisoner. In this case, a personal benefit for the individual concerned cannot be transferred to his wife, although she may be eligible for other benefits such as Pension Credit, in her own right’.*
- *‘Section 13(2) of the Prison Act 1952 provides that “a prisoner shall be deemed to be in legal custody while he is confined in, or is taken to or from, any prison and while he is working, or is for any reason, outside the prison in the custody or under the control of an officer of the prison....” The Social Security Commissioner in R(I) 9/75 held that this provision of the Act was wide enough to cover a prisoner who was on a pre-release employment scheme. He was clearly not subject to the same level of control as he was when confined in prison, but neither was he entirely free. In a similar way a prisoner released on temporary licence can have that licence withdrawn should he fail to comply with the required conditions. In other words, the evidence is that there is a measure of control and that he too is not entirely free. On that basis he would come within the scope of section 13(2) of the Prison Act. Any dispute as to whether a person remains under the control of prison officer whilst on temporary release, should be taken up with the decision-maker in the first instance. If this fails to resolve the question, there is a right of appeal to an independent appeal tribunal’.*

**5.4 In April 2006 further clarification was given with regard to the position of spouses and adult dependents:**

- *‘There is a clear distinction to be drawn between a wife’s entitlement to a category B State Pension and her husband’s entitlement to an increase of benefit for her as an “adult dependent”. The wife is entitled to a Category B pension in her own right albeit based on her husband’s National Insurance contribution record. Thus the fact that her husband is serving a term of imprisonment does not affect her entitlement.’*
- *‘An increase of benefit in respect of an adult dependent is on the one hand payable to the husband in respect of his wife on the basis that she is financially dependent on him – it is his, not his wife’s entitlement. Thus any disqualification in respect of a term of imprisonment applies equally to any adult dependency increase to which a man was receiving prior to imprisonment. In this event it would be open to his wife to make a claim in her own right for a benefit such as income support or jobseeker’s allowance.’*

## **6.0 European Court of Human Rights Rulings**

6.1 Two test cases have been considered by the European Court of Human Rights and heard together on 23 October 1997: Applications Nos. 27004/95 and 27011/95 by Josef SZRABJER and Walter Kenneth CLARKE against the United Kingdom.

6.2 Mr Szrabjer paid contributions throughout his working life to the State Pension. When he reached pensionable age (11 February 1987) he was entitled to draw a

pension of approximately £128 a week, made up of £58 basic pension, £35 additional pension (SERPS) and £35 as a payment for his wife as a dependent. He was sentenced to a term of imprisonment from March 1993 to 23 September 1994 and was not entitled to his pension, although his wife continued to receive her benefit payment.

6.3 Mr Clarke reached pensionable age on 26 July 1991. He also was entitled to draw Category A State Pension. He continued to receive his pension until his eight years custodial sentence from 1 April 1993. Prior to his sentence he received £78.99 pension per week, made up of £56.99 basic and £22 additional.

6.4 Applicants Complaint One: *‘The suspension of payment of the earnings-related element of their State Pensions during their imprisonment, amounted to a deprivation of property in breach of Article 1 of Protocol No.1 (P1-1) of the Convention of Human Rights’*

[‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by general principles of international law’].

6.5 Applicants Complaint Two: *‘Under Article 14 of the Convention taken with Article 1 of Protocol No. 1 (P1-1). They refer to the difference of treatment under occupational pension schemes with a GMP and SERPS. They also consider that they have been discriminated on the grounds of their status as prisoners’*.

[‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status’].

6.6 Commission Findings - Complaint One: *‘There are elements of SERPS that resemble a state benefit as opposed to a private pension... The right to such a pension is dependent on some contribution and therefore does constitute a pecuniary right for the purposes of Article 1 of Protocol No. 1 (P1-1). ...[But] domestic legislation was to deprive the applicants of payments under their state pension, including the earnings-related element, during their imprisonment. The question then arises as to whether such deprivation can be said to be in the public interest. The Commission notes that the state pension is merely suspended during imprisonment; upon release the pension becomes payable again at the appropriate updated level. The Commission further notes that the dependant wife of the first applicant continued to receive “dependant’s benefit” while her husband was in prison. The Commission also notes that whilst SERPS was payable only to those who had made sufficient contributions, the scheme received Government grants and had special solidarity elements.*

*‘The Commission notes that it is clearly set out within the terms of SERPS that in the case of imprisonment pension payments will be suspended. ...The Commission considers in the circumstances it can be considered as being in the public interest that during a period of imprisonment, when prisoners are kept at the public expense of the State, a state pension, including the earnings-related element of the pension, is suspended. To do otherwise would leave the prisoner in an advantageous situation of benefiting from accumulating a lump sum by receiving a regular income, without having any outgoing living expenses. It follows that this part of the application is manifestly ill-founded’.*

6.7 Commission Findings - Complaint Two: *‘The Commission recalls that Article 14 (ART.14) affords protection against discrimination, that is treating differently, without an objective and reasonable justification, persons in “relevantly” similar*

*situations. ...In the present case, a comparison of prisoners with non-prisoners is a comparison of two different factual situations and as such discloses no discrimination under Article 14 (Art.14) of the Convention'.*

## **7.0 Payment of State Pension in Other EU Countries**

7.1 Twenty out of a total number of twenty-five Member States of the European Union were canvassed in order to ascertain their legislation and views on payment of State Pension to their citizens serving prison sentences. Sixteen countries submitted their responses and four did not respond (Estonia, Hungary, Poland and Slovenia).

7.2 Of those that responded, *Austria, Denmark, Ireland and Luxembourg* supported the *United Kingdom* position of not paying State Pension during the duration of the prison sentence. Both Austria and Ireland confirmed that the legislation specifically excluded convicted prisoners from receiving their state pension, but it did not apply to those remanded in custody; dependents could apply to receive a portion of the pension. All countries that responded stated that prisoners would be entitled to their full pension rights on completion of their sentence.

7.3 The following EU countries pay State Pension to prisoners during their sentence:

- *Belgium* – It ‘continues to pay state pensions to sentenced persons of pensionable age while they are serving their custodial sentence’.
- *Czech Republic* – Social Security legislation confirms that ‘state pensions are paid to all eligible persons; that means even those serving prison sentences’.
- *France* – payment is made into their prison account, but ‘10% is deducted and allocated to the prosecution (when applicable)’ and ‘10% is set apart’ and goes toward their release allowance. Those who do paid work whilst serving their prison sentence will have to pay contributions that will be taken into account for calculation of their state pension on their release.
- *Germany* – ‘Elderly prisoners are entitled to receive state pension during the period of their prison sentence’. Those entitled will usually have their pension paid in full into a private bank account.
- *Greece* – confirms it will continue to pay state pensions to convicted prisoners, but those with financial-related convictions, such as fraud, theft, robbery and damage to public property, will be excluded from receiving their state pension.
- *Italy* – It is confirmed that prisoners of pensionable age will continue to receive their state pensions.
- *The Netherlands* – The state pension is paid into a private bank account of convicted prisoners ‘without any restriction to its use. In principle the state does not expect that part of the pension is paid to the prison for the upkeep of the prisoner’.
- *Norway* – ‘The National Insurance Act Sec.3-29, Pensions (Old-age, Disability and Survivors’ Pension) are subject to deductions during the prison service [sentence] according to rules similar to those applying during long term accommodation in health institutions etc. The prisoner will receive reduced payments, which amounts to 25 per cent of the Basic Amount, plus 10 per cent of the supplementary pension. The total benefit shall, nevertheless, at least amount to 45 per cent of the Basic Amount. Supplements to the benefit is furthermore granted if the prisoner is obliged to support children, spouse or ex-spouse. If the prisoner maintains expenses for housing and other necessary

economic obligations, the social insurance authorities may decide not to reduce the pension, or just make a minor adjustment’.

- *Portugal* – Law Decree 329/93, 25<sup>th</sup> September, annex 1 (Pensions) does not exclude convicted prisoners from receiving their state pension and ‘therefore receive a pension as any other person entitled to such a benefit. The pension is paid in full’.
- *Spain* – Art. 207 Legislative Royal Decree 1994 does not exclude convicted prisoners.
- *Sweden* – ‘Every Swedish citizen is entitled to state pension from 65 years of age. ...A prisoner will lose his pension after 60 days. He will get it back 30 days before release. ...This is the basic state pension. The same rules are applied for persons who have a pension due to illness [and hospitalised]’. Payment ‘is not affected by the fact that the person has been in prison because this is “his own money” and cannot be taken away from him’.

7.4 The European Commissioner for Employment, Social Affairs and Equal Opportunities states that this issue is not the responsibility of the European Commission: ‘*Criminal, social security and civil law of the Member States [are] three areas which fall within the responsibilities of the Member States*’.

## 8.0 Legal and Human Rights Issues

### 8.1 Observations from Samantha Hamilton, Solicitor:

1. *‘Whilst the argument that a prisoner is being maintained at public expense and payment of a benefit would amount to double provision is true of most benefit, the argument does not hold in relation to pensions.*
2. *By the age of 65 a male prisoner may have worked for 50 years prior to imprisonment. Removing this source of income from an elderly prisoner encourages reliance on the small allowances permitted to each prisoner and may necessitate a prisoner who would otherwise be retired to obtain a job within a prison to supplement an income. This is not always possible for older prisoners who are often less fit and well than their counterparts who are not living in prison.*
3. *Many women have not been able to work for enough years to receive a full State Pension. A couple may therefore be reliant on the pension of the husband in order to make ends meet. Removing the husband’s pension if he is in prison may lead to financial difficulties for the wife. Whilst she may qualify for benefits to help with the financial situation even relatively small amounts of savings can effectively rule out state help. This may leave a wife with the only option of depleting life savings in order to maintain herself as the result of her husband’s imprisonment. In these circumstances the husband’s receipt of payment from public funds may not be as “morally repugnant” as it would be if he was a single man.*
4. *For those for whom State Pension or Pension credit would be their only likely income if they were not in prison, depriving them of their pension is likely to ensure that they remain the poorest prisoners. Those prisoners who were able to provide for themselves on a private basis will continue to receive private and occupational pensions as well as having private investment income.*
5. *The policy therefore penalises disproportionately the people who are already amongst the poorest in society. If a parallel is drawn between*

*those who are funded by the State/Local Authority for their nursing home fees with those who are funded by the State whilst in prison, then perhaps a personal allowance could be given to prisoners of pensionable age.*

6. *An average residential home placement costs upwards of £440 per week. A nursing home placement is more likely to be in the region of £600 or more. A person with savings of less than £12,500 would be fully funded by the Local Authority who would receive all their pension income. The resident in these circumstances would receive all their personal allowance of £18.80 to cover their personal needs. I feel it may be fair to do the same for those in prison..*
7. *This may seem only a small increase in the amount already given to prisoners for personal needs but would at least allow a single prisoner with no dependents to cover his personal costs.*
8. *The situation for a prisoner with a family to support may need to be reviewed differently. The benefits available to those family members (who should not be punished for another's wrong doing) may not be sufficient to cover their needs.'*

## 8.2 Observations from the National Pensioners Convention (NPC):

The NPC considers *'the State Pension to be a right rather than a benefit'* and that *'the disqualification provision in section 113 of the Contributions and Benefits Act should be withdrawn from the statutes book'*.

The NPC also argues that the withholding of State Pension is wrong, because:

1. *'It is based on contributions made to the NI scheme and payments withheld by the State are lost to the individual forever.*
2. *If the argument is that the State is recouping some of the money spent on detaining someone in prison, why are older prisoners the only category subjected to this 'charge'? This is discriminatory.*
3. *Occupational pensions are paid to prisoners whilst in prison.*
4. *The withholding of State Pension to people in hospital is being stopped (this is the only other example of the State withholding the pension that we know of).*
5. *Prisoners have now won the right to vote (removal of a disqualification in another Act).*
6. *This leaves the withholding of the pension as a very antiquated and anomalous form of punishment'*.

The NPC adds that it sees *'only one complication if the pension were paid to prisoners in that relatives claiming means-tested benefits might lose out and become more reliant on the person in prison'*.

## 8.3 Additional observations:

1. The Prison Act 1952 prohibits prisoners paying towards their 'residential costs'. Section 51 states:  
*'All expenses incurred in the maintenance of prisons and in the maintenance of prisoners and all other expenses of the Secretary of State or the Prison Commissioners incurred under this Act shall be defrayed out of moneys provided by Parliament.'*

2. Those with Occupational/Private Pensions are usually in a more advantageous position than those who have been dependent on State Pensions or Pension Credit. Apart from being allowed to receive their pension, some will have been forced to sell their properties, or have them repossessed, and the proceeds invested on their behalf to provide some income during their sentence.
3. Younger and fitter prisoners, who are able to earn money through working in prison, are in a more advantageous position to be able to pay for their basic needs. Older prisoners of pensionable age, especially those who are unable to work, will not be able to afford basic items from their prison canteen. This service is contracted out to private companies, such as Aramark that currently operates in over fifty prisons. Prices for items such as toiletries, are often inflated and cost more than could be obtained for the same items outside. Similarly, a pair of trainers that could be purchased outside for £40 or £50 would be £70 or £80 if purchased through the approved catalogue from which prisoners are allowed to order goods, such as shoes, clothing and permitted electrical items. Prison rules often restrict the source of items that may be purchased.
4. Whilst PSO 4460 places a mandatory requirement that all prison establishments must pay prisoners a minimum rate, it is unclear whether this applies to 'retired' prisoners. It is understood that some prison governors consider this to be discretionary.
5. Family members of a convicted prisoner, who is entitled to a State Pension, may also be punished through reduced benefits. They have committed no crime but are being made to suffer disproportionately to other spouses and families. The wife will, for instance, receive no increase to a Category B State Pension where she is financially dependent on her husband, when he is disqualified by virtue of being a sentenced prisoner.
6. Prisoners now have the right to purchase Premium Bonds. Prior to the beginning of 2006 the ban was covered under a blanket prohibition on gambling that went back to the 1950s. The Treasury-run National Savings & Investments said: *'In current times, where everybody is recognised as an equal whether they are in prison or not, it was a little archaic that they could not buy Premium Bonds'* (Daily Mail, 13 February 2006). However, the Government has now banned day-release prisoners from buying lottery tickets.

## 9.0 Summary

1. The majority of European member states make pension payments to sentenced prisoners.
2. The prohibition on pension payments to sentenced prisoners in the UK results from a refusal to treat state pensions as an entitlement and a decision of Government to withhold the pension as an additional punishment to that imposed by the court.

3. This additional punishment for some prisoners of retirement age impacts most severely on the least well off.
4. Current arrangements for payment to sentenced prisoners of retirement age who cannot or who chose not to work are often insufficient to meet basic living expenses and the variations between establishments lack any rationale.
5. Younger, active prisoners receive a much higher income than sentenced prisoners of retirement age who cannot or who chose not to work. Prisoners who have contributed to occupational or private pensions receive their income, as do those with other savings.
6. Dependents of sentenced prisoners of retirement age will, in certain circumstances, suffer the loss of direct state benefits as a result of their family member receiving a prison sentence.
7. Other dependents will suffer financially because of the loss of the contribution to living expenses from the person serving a prison sentence.

### **10.0 Recommendations**

1. Sentenced prisoners in the UK, who would if living in the community be eligible for a State Pension, should receive their pension as a right, having paid contributions to it.
2. The “dependent’s benefit”, and any increases associated with the State Pension that would apply if the prisoner was living in the community should, as a right, be paid to dependents who qualify.
3. People in prison should be able to build up pension entitlement through credits, based on notional contributions if they are working or credits where they are unable to work.
4. The entitlement of prisoners to state benefits should be reviewed in the light of the Disability Discrimination Act.

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