



Social Security Fraud Act (Northern Ireland) 2001

CHAPTER 17

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Social Security Fraud Act (Northern Ireland) 2001

2001 CHAPTER 17

An Act to make provision, for the purposes of the law relating to social security, about the obtaining and disclosure of information; and to make provision for restricting the payment of social security benefits in the case of persons convicted of offences relating to such benefits and about the institution of proceedings for such offences; and for connected purposes. [15th November 2001]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Obtaining and sharing information

Additional powers to obtain information

1.—(1) The Social Security Administration (Northern Ireland) Act 1992 (c. 8) (in this Act referred to as “the Administration Act”) shall be amended as follows.

(2) In subsection (1)(a) of section 103B (power to require information), after “subsection (2)” there shall be inserted “or (2A)”; and after subsection (2) (persons from whom information may be obtained) there shall be inserted—

“(2A) The persons who fall within this subsection are—

- (a) any bank;
- (b) any person carrying on a business the whole or a significant part of which consists in the provision of credit (whether secured or unsecured) to members of the public;
- (c) any insurance company (within the meaning of the Insurance Companies Act 1982);
- (d) any credit reference agency (within the meaning given by section 145(8) of the Consumer Credit Act 1974);

- (e) any body the principal activity of which is to facilitate the exchange of information for the purpose of preventing or detecting fraud;
- (f) any person carrying on a business the whole or a significant part of which consists in the provision to members of the public of a service for transferring money from place to place;
- (g) any person who (within the meaning of the Gas (Northern Ireland) Order 1996) supplies gas conveyed through pipes;
- (h) any person who (within the meaning of the Electricity (Northern Ireland) Order 1992) supplies electricity conveyed by distribution systems;
- (i) any person who provides a telecommunications service;
- (j) any person conducting any educational establishment or institution;
- (k) any body the principal activity of which is to provide services in connection with admissions to educational establishments or institutions;
- (l) any body to whom functions are delegated by arrangements made under Article 4(3) of the Education (Student Support) (Northern Ireland) Order 1998;
- (m) any servant or agent of any person mentioned in any of the preceding paragraphs.

(2B) Subject to the following provisions of this section, the powers conferred by this section on an authorised officer to require information from any person by virtue of his falling within subsection (2A) above shall be exercisable for the purpose only of obtaining information relating to a particular person identified (by name or description) by the officer.

(2C) An authorised officer shall not, in exercise of those powers, require any information from any person by virtue of his falling within subsection (2A) above unless it appears to that officer that there are reasonable grounds for believing that the identified person to whom it relates is—

- (a) a person who has committed, is committing or intends to commit a benefit offence; or
- (b) a person who (within the meaning of Part VII of the Contributions and Benefits Act) is a member of the family of a person falling within paragraph (a) above.

(2D) Nothing in subsection (2B) or (2C) above shall prevent an authorised officer who is an official of a government department and whose authorisation states that his authorisation applies for the purposes of this subsection from exercising the powers conferred by this section for obtaining from—

- (a) any person who (within the meaning of the Gas (Northern Ireland) Order 1996) supplies gas conveyed through pipes,

(b) any person who (within the meaning of the Electricity (Northern Ireland) Order 1992) supplies electricity conveyed by distribution systems, or

(c) any servant or agent of a person mentioned in either of the preceding paragraphs,

any information which relates exclusively to whether and in what quantities gas or electricity are being or have been supplied to residential premises specified or described in the notice by which the information is required.

(2E) The powers conferred by this section shall not be exercisable for obtaining from any person providing a telecommunications service any information other than information which (within the meaning of section 21 of the Regulation of Investigatory Powers Act 2000) is communications data but not traffic data.

(2F) Nothing in subsection (2B) or (2C) above shall prevent an authorised officer from exercising the powers conferred by this section for requiring information, from a person who provides a telecommunications service, about the identity and postal address of a person identified by the authorised officer solely by reference to a telephone number or electronic address used in connection with the provision of such a service.”.

(3) For subsection (5) of that section (protection from self-incrimination) there shall be substituted—

“(5) No one shall be required under this section to provide—

(a) any information that tends to incriminate either himself or, in the case of a person who is married, his spouse; or

(b) any information in respect of which a claim to legal professional privilege would be successful in any proceedings;

and for the purposes of this subsection it is immaterial whether the information is in documentary form or not.”.

(4) After that subsection there shall be added—

“(6) Provision may be made by order—

(a) adding any person to the list of persons falling within subsection (2A) above;

(b) removing any person from the list of persons falling within that subsection;

(c) modifying that subsection for the purpose of taking account of any change to the name of any person for the time being falling within that subsection.

(7) In this section—

“bank” means—

(a) any institution for the time being authorised under a provision of the Banking Act 1987;

(b) any person for the time being specified in any of paragraphs 2 to 10 of Schedule 2 to that Act (exempted persons);

- (c) any person for the time being entitled by virtue of the Banking Co-ordination (Second Council Directive) Regulations 1992 to accept deposits (within the meaning of that Act) in the United Kingdom;

“credit” includes a cash loan or any form of financial accommodation, including the cashing of a cheque;

“residential premises”, in relation to a supply of gas or electricity, means any premises which—

- (a) at the time of the supply were premises occupied wholly or partly for residential purposes, or
 (b) are premises to which that supply was provided as if they were so occupied; and

“telecommunications service” has the same meaning as in the Regulation of Investigatory Powers Act 2000.”.

(5) In section 104A(7) (authorisations by the Housing Executive), after paragraph (b) there shall be added “; and

(c) with the omission of section 103B(2D) above.”.

(6) In section 105(1)(a) (offence of obstruction), for “inspector” there shall be substituted “authorised officer”.

(7) In section 115CA(5) (interpretation of Part VI), for the definition of “benefit offence” there shall be substituted—

““benefit offence” means—

- (a) any criminal offence in connection with a claim for a relevant social security benefit;
 (b) any criminal offence in connection with the receipt or payment of any amount by way of such a benefit;
 (c) any criminal offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
 (d) any attempt or conspiracy to commit a benefit offence;”.

(8) In section 115CA after subsection (6) there shall be added—

“(7) In this section “relevant social security benefit” means a benefit under any provision of the relevant social security legislation.”.

(9) In section 166(2) (Assembly, etc. control of orders and regulations) after paragraph (aa) there shall be inserted—

“(ab) to any order containing provision adding any person to the list of persons falling within section 103B(2A) above;”.

Electronic access to information

2.—(1) After section 103B of the Administration Act there shall be inserted—

“Power of Department to require electronic access to information

103BA.—(1) Subject to subsection (2) below, where it appears to the Department—

- (a) that a person falling within section 103B(2A) above keeps any electronic records,
- (b) that the records contain or are likely, from time to time, to contain information about any matter that is relevant for any one or more of the purposes mentioned in section 103A(2) above, and
- (c) that facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,

the Department may require that person to enter into arrangements under which authorised officers are allowed such access to those records.

(2) An authorised officer—

- (a) shall be entitled to obtain information in accordance with arrangements entered into under subsection (1) above only if his authorisation states that his authorisation applies for the purposes of that subsection; and
- (b) shall not seek to obtain any information in accordance with any such arrangements other than information which relates to a particular person and could be the subject of a requirement under section 103B above.

(3) The matters that may be included in the arrangements that a person is required to enter into under subsection (1) above may include—

- (a) requirements as to the electronic access to records that is to be made available to authorised officers;
- (b) requirements as to the keeping of records of the use that is made of the arrangements;
- (c) requirements restricting the disclosure of information about the use that is made of the arrangements; and
- (d) such other incidental requirements as the Department considers appropriate in connection with allowing access to records to authorised officers.

(4) An authorised officer who is allowed access in accordance with any arrangements entered into under subsection (1) above shall be entitled to make copies of, and to take extracts from, any records containing information which he is entitled to require under section 103B above.”.

(2) After section 104A of that Act there shall be inserted—

“Power of Housing Executive to require electronic access to information

104AA.—(1) Subject to subsection (2) below, where it appears to the Housing Executive—

- (a) that a person falling within section 103B(2A) above keeps any electronic records,
- (b) that the records contain or are likely, from time to time, to contain information about any matter that is relevant for any one or more of the purposes mentioned in section 104A(2) above, and

- (c) that facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,

the Housing Executive may require that person to enter into arrangements under which authorised officers are allowed such access to those records.

(2) An authorised officer—

- (a) shall be entitled to obtain information in accordance with arrangements entered into under subsection (1) above only if his authorisation states that his authorisation applies for the purposes of that subsection; and
- (b) shall not seek to obtain any information in accordance with any such arrangements other than information which—
 - (i) relates to a particular person; and
 - (ii) could be the subject of any such requirement under section 103B above as may be imposed in exercise of the powers conferred by section 104A(7) above.

(3) The matters that may be included in the arrangements that a person is required to enter into under subsection (1) above may include—

- (a) requirements as to the electronic access to records that is to be made available to authorised officers;
- (b) requirements as to the keeping of records of the use that is made of the arrangements;
- (c) requirements restricting the disclosure of information about the use that is made of the arrangements; and
- (d) such other incidental requirements as the Housing Executive considers appropriate in connection with allowing access to records to authorised officers.

(4) An authorised officer who is allowed access in accordance with any arrangements entered into under subsection (1) above shall be entitled to make copies of, and to take extracts from, any records containing information which he is entitled to make the subject of a requirement such as is mentioned in subsection (2)(b) above.

(5) The Housing Executive shall not—

- (a) require any person to enter into arrangements for allowing authorised officers to have electronic access to any records; or
- (b) otherwise than in pursuance of a requirement under this section, enter into any arrangements with a person specified in section 103B(2A) above for allowing anyone acting on behalf of the Housing Executive for purposes connected with any benefit to have electronic access to any private information contained in any records,

except with the consent of the Department and subject to any conditions imposed by the Department by the provisions of the consent.

(6) A consent for the purposes of subsection (5) above may be given in relation to a particular case, or in relation to any case that falls within a particular description of cases.

(7) In this section “private information”, in relation to the Housing Executive, means any information held by a person who is not entitled to disclose it to the Housing Executive except in compliance with a requirement imposed by the Housing Executive in exercise of its statutory powers.”.

(3) In section 105 of that Act (offences)—

(a) in subsection (1)(a), for “or” at the end there shall be substituted—

“(ab) refuses or neglects to comply with any requirement under section 103BA or 104AA above or with the requirements of any arrangements entered into in accordance with subsection (1) of that section, or”;

and

(b) in subsection (2), for “subsection (1)(b)” there shall be substituted “subsection (1)(ab) or (b)”.

Code of practice about use of information powers

3.—(1) The Department shall issue a code of practice relating to the exercise of—

(a) the powers that are exercisable by an authorised officer under section 103B of the Administration Act in relation to the persons mentioned in subsection (2A) of that section; and

(b) the powers conferred on an authorised officer by sections 103BA and 104AA of that Act.

(2) The Department may —

(a) revise the whole or any part of the code of practice for the time being in force under this section; and

(b) issue a revised code.

(3) Before issuing or revising the code of practice under this section, the Department shall—

(a) prepare and publish a draft of the code, or of the revised code; and

(b) consider any representations made to it about the draft;

and the Department may incorporate in the code it issues any modifications made by it to its proposals after their publication.

(4) The Department shall lay before the Assembly the code of practice, and every revised code, issued by it under this section.

(5) The code of practice issued under this section and any revisions of the code shall come into force at the time at which the code or, as the case may be, the revised code is issued by the Department.

(6) An authorised officer exercising any power in relation to which provision must be made by the code of practice under this section shall have regard, in doing so, to the provisions (so far as they are applicable) of the code for the time being in force under this section.

(7) A failure on the part of any person to comply with any provision of the code of practice for the time being in force under this section shall not of itself render him liable to any civil or criminal proceedings.

(8) The code of practice for the time being in force under this section shall be admissible in evidence in any civil or criminal proceedings.

(9) In this section “authorised officer” has the same meaning as in Part VI of the Administration Act.

Arrangements for payments in respect of information

4.—(1) The Department shall ensure that such arrangements (if any) are in force as it thinks appropriate for requiring or authorising, in such cases as it thinks fit, the making of such payments as it considers appropriate in respect of compliance with relevant obligations by any of the following—

- (a) a credit reference agency (within the meaning given by section 145(8) of the Consumer Credit Act 1974 (c. 39)) or any servant or agent of such an agency;
 - (b) a person providing a telecommunications service (within the meaning of the Regulation of Investigatory Powers Act 2000 (c. 23)) or any servant or agent of such a person;
 - (c) any person who (within the meaning of the Gas (Northern Ireland) Order 1996 (NI 2)) supplies gas conveyed through pipes, or any servant or agent of such a person;
 - (d) any person who (within the meaning of the Electricity (Northern Ireland) Order 1992 (NI 1)) supplies electricity conveyed by distribution systems, or any servant or agent of such a person;
 - (e) any person added to the list of persons falling within subsection (2A) of section 103B of the Administration Act by an order under subsection (6) of that section, or any person’s servant or agent who falls within that subsection by virtue of such an order.
- (2) In subsection (1) “relevant obligation”—
- (a) in relation to a person falling within paragraph (a), (b) or (e) of that subsection, means—
 - (i) an obligation to provide information in pursuance of a requirement imposed on that person under section 103B of the Administration Act by virtue only of his falling within subsection (2A) of that section; or
 - (ii) any obligation to comply, for the purpose of enabling an authorised officer to obtain information which might otherwise be obtained by the imposition of such a requirement, with any requirements imposed on that person under section 103BA or 104AA of that Act;
- and

- (b) in relation to a person falling within paragraph (c) or (d) of that subsection, means any obligation to provide information in pursuance of a requirement imposed by such an exercise of the powers conferred by section 103B of that Act as is mentioned in subsection (2D) of that section.

(3) For the purpose of complying with its duty under this section, the Department may make arrangements for payments to be made out of money appropriated by Act of the Assembly.

(4) The Housing Executive shall comply with such general or specific directions as to the making of payments as may be given by the Department in accordance with any arrangements for the time being in force for the purposes of subsection (1).

Supply of information

5. In section 116D(3) of the Administration Act (supply of information by the Housing Executive), for “prescribed” there shall be substituted “specified in directions given by the Department or, as the case may be, the Secretary of State”.

Loss of benefit provisions

Loss of benefit for commission of benefit offences

6.—(1) If—

- (a) a person (“the offender”) is convicted of one or more benefit offences in each of two separate sets of proceedings,
- (b) the benefit offence, or one of the benefit offences, of which he is convicted in the later proceedings is one committed within the period of three years after the date, or any of the dates, on which he was convicted of a benefit offence in the earlier proceedings,
- (c) the later set of proceedings has not been taken into account for the purposes of any previous application of this section or section 7 or 8 in relation to the offender or any person who was then a member of his family,
- (d) the earlier set of proceedings has not been taken into account as the earlier set of proceedings for the purposes of any previous application of this section or either of those sections in relation to the offender or any person who was then a member of his family, and
- (e) the offender is a person with respect to whom the conditions for an entitlement to a sanctionable benefit are or become satisfied at any time within the disqualification period,

then, even though those conditions are satisfied, the following restrictions shall apply in relation to the payment of that benefit in the offender’s case.

(2) Subject to subsections (3) to (5), the sanctionable benefit shall not be payable in the offender’s case for any period comprised in the disqualification period.

(3) Where the sanctionable benefit is income support, the benefit shall be payable in the offender’s case for any period comprised in the disqualification period as if the applicable amount used for the determination under section 123(4)

of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (in this Act referred to as “the Contributions and Benefits Act”) of the amount of the offender’s entitlement for that period were reduced in such manner as may be prescribed.

(4) The Department may by regulations provide that, where the sanctionable benefit is jobseeker’s allowance, any income-based jobseeker’s allowance shall be payable, during the whole or a part of any period comprised in the disqualification period, as if one or more of the following applied—

- (a) the rate of the allowance were such reduced rate as may be prescribed;
- (b) the allowance were payable only if there is compliance by the offender with such obligations with respect to the provision of information as may be imposed by the regulations;
- (c) the allowance were payable only if the circumstances are otherwise such as may be prescribed.

(5) The Department may by regulations provide that, where the sanctionable benefit is housing benefit, that benefit shall be payable, during the whole or a part of any period comprised in the disqualification period, as if one or both of the following applied—

- (a) the rate of the benefit were reduced in such manner as may be prescribed;
- (b) the benefit were payable only if the circumstances are such as may be prescribed.

(6) For the purposes of this section the disqualification period, in relation to the conviction of a person of one or more benefit offences in each of two separate sets of proceedings, means the period of thirteen weeks beginning with and including such date, falling after the date of the conviction in the later set of proceedings, as may be determined by or in accordance with regulations made by the Department.

(7) Where—

- (a) the conviction of any person of any offence is taken into account for the purposes of the application of this section in relation to that person, and
- (b) that conviction is subsequently quashed,

all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under this section that could not have been imposed if the conviction had not taken place.

(8) In this section—

“benefit offence” means—

- (a) any post-commencement offence in connection with a claim for a disqualifying benefit;
- (b) any post-commencement offence in connection with the receipt or payment of any amount by way of such a benefit;
- (c) any post-commencement offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
- (d) any post-commencement offence consisting in an attempt or conspiracy to commit a benefit offence;

“disqualifying benefit” means (subject to any regulations under section 9(1))—

- (a) any benefit under the Jobseekers (Northern Ireland) Order 1995 (NI 15) (in this Act referred to as “the Jobseekers Order”) or the Jobseekers Act 1995 (c. 18);
- (b) any benefit under the Contributions and Benefits Act or the Social Security Contributions and Benefits Act 1992 (c. 4) other than—
 - (i) maternity allowance;
 - (ii) working families’ tax credit;
 - (iii) disabled person’s tax credit; and
 - (iv) statutory sick pay and statutory maternity pay;
- (c) any war pension;

“sanctionable benefit” means (subject to any regulations under section 9(1))—

- (a) any benefit under the Jobseekers Order other than joint-claim jobseeker’s allowance;
- (b) any benefit under the Contributions and Benefits Act which is a disqualifying benefit other than—
 - (i) any retirement pension;
 - (ii) graduated retirement benefit;
 - (iii) disability living allowance;
 - (iv) attendance allowance;
 - (v) child benefit;
 - (vi) guardian’s allowance;
 - (vii) a payment out of the social fund in accordance with Part VIII of the Contributions and Benefits Act;
 - (viii) a payment under Part X of that Act (Christmas bonus for pensioners).

(9) For the purposes of this section—

- (a) the date of a person’s conviction in any proceedings of a benefit offence shall be taken to be the date on which he was found guilty of that offence in those proceedings (whenever he was sentenced); and
- (b) references to a conviction include references to a conviction in relation to which the court makes an order for conditional discharge and to a conviction in Great Britain (including a conviction in relation to which a court in Scotland makes a probation order).

(10) In this section references to any previous application of this section or section 7 or 8—

- (a) include references to any previous application of section 7, 8 or 9 of the Social Security Fraud Act 2001 (c. 11); but
- (b) do not include references to any previous application of this section, or of section 7 or 8, the effect of which was to impose a restriction for a period comprised in the same disqualification period.

Effect of offence on joint-claim jobseeker's allowance

7.—(1) Subsections (2) and (3) shall have effect, subject to the other provisions of this section, where—

- (a) the conditions for the entitlement of any joint-claim couple to a joint-claim jobseeker's allowance are or become satisfied at any time; and
- (b) the restriction in subsection (2) of section 6 would apply in the case of at least one of the members of the couple if the entitlement were an entitlement of that member to a sanctionable benefit.

(2) The allowance shall not be payable in the couple's case for so much of any period comprised in the disqualification period as is a period for which—

- (a) in the case of each of the members of the couple, the restriction in subsection (2) of section 6 would apply if the entitlement were an entitlement of that member to a sanctionable benefit; or
- (b) that restriction would so apply in the case of one of the members of the couple and the other member of the couple—
 - (i) is subject to sanctions for the purposes of Article 22A of the Jobseekers Order (denial or reduction of joint-claim jobseeker's allowance); or
 - (ii) is a person in whose case the restriction in subsection (2) of section 53 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) would apply if the entitlement were an entitlement to a relevant benefit (within the meaning of that section).

(3) For any part of any period comprised in the disqualification period for which subsection (2) does not apply, the allowance—

- (a) shall be payable in the couple's case as if the amount of the allowance were reduced to an amount calculated using the method prescribed for the purposes of this subsection; but
- (b) shall be payable only to the member of the couple who is not the person by reference to whose convictions section 6 would apply.

(4) The Department may by regulations provide in relation to cases to which subsection (2) would otherwise apply that joint-claim jobseeker's allowance shall be payable in a couple's case, during the whole or a part of so much of any period comprised in the disqualification period as falls within paragraph (a) or (b) of that subsection, as if one or more of the following applied—

- (a) the rate of the allowance were such reduced rate as may be prescribed;
- (b) the allowance were payable only if there is compliance by each of the members of the couple with such obligations with respect to the provision of information as may be imposed by the regulations;
- (c) the allowance were payable only if the circumstances are otherwise such as may be prescribed.

(5) Paragraph (6) of Article 22A of the Jobseekers Order (calculation of reduced amount) shall apply for the purposes of subsection (3) as it applies for the purposes of paragraph (5) of that Article.

(6) Where—

(a) the conviction of any member of a couple for any offence is taken into account for the purposes of the application of this section in relation to that couple, and

(b) that conviction is subsequently quashed,

all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under this section that could not have been imposed had the conviction not taken place.

Effect of offence on benefits for members of offender's family

8.—(1) This section applies to—

(a) income support;

(b) jobseeker's allowance; and

(c) housing benefit.

(2) The Department may by regulations make provision in accordance with the following provisions of this section in relation to any case in which—

(a) the conditions for entitlement to any benefit to which this section applies are or become satisfied in the case of any person (“the offender’s family member”);

(b) that benefit falls to be paid in that person’s case for the whole or any part of a period comprised in a period (“the relevant period”) which is the disqualification period in relation to restrictions imposed under section 6 in the case of a member of that person’s family; or

(c) that member of that family (“the offender”) is a person by reference to whom—

(i) the conditions for the entitlement of the offender’s family member to the benefit in question are satisfied; or

(ii) the amount of benefit payable in the case of the offender’s family member would fall (apart from any provision made under this section) to be determined.

(3) In relation to cases in which the benefit is income support, the provision that may be made by virtue of subsection (2) is provision that, in the case of the offender’s family member, the benefit shall be payable for the whole or any part of any period comprised in the relevant period as if the applicable amount used for the determination under section 123(4) of the Contributions and Benefits Act of the amount of the offender’s entitlement for that period were reduced in such manner as may be prescribed.

(4) In relation to cases in which the benefit is jobseeker’s allowance, the provision that may be made by virtue of subsection (2) is provision that, in the case of the offender’s family member, any income-based jobseeker’s allowance shall be payable, during the whole or a part of any period comprised in the relevant period, as if one or more of the following applied—

(a) the rate of the allowance were such reduced rate as may be prescribed;

(b) the allowance were payable only if there is compliance by the offender or the offender’s family member, or both of them, with such obligations with

respect to the provision of information as may be imposed by the regulations;

- (c) the allowance were payable only if the circumstances are otherwise such as may be prescribed.

(5) In relation to cases in which the benefit is housing benefit, the provision that may be made by virtue of subsection (2) is provision that, in the case of the offender's family member, the benefit shall be payable, during the whole or a part of any period comprised in the relevant period, as if one or both of the following applied—

- (a) the rate of the benefit were reduced in such manner as may be prescribed;
 (b) the benefit were payable only if the circumstances are such as may be prescribed.

(6) Where—

- (a) the conviction of any member of a person's family for any offence is taken into account for the purposes of any restriction imposed by virtue of any regulations under this section, and
 (b) that conviction is subsequently quashed,

all such payments and other adjustments shall be made in that person's case as would be necessary if no restriction had been imposed that could not have been imposed had the conviction not taken place.

Power to supplement and mitigate loss of benefit provisions

9.—(1) The Department may by regulations provide for any social security benefit to be treated for the purposes of sections 6 to 8—

- (a) as a disqualifying benefit but not a sanctionable benefit; or
 (b) as neither a sanctionable benefit nor a disqualifying benefit.

(2) The Department may by regulations provide for any restriction in section 6, 7 or 8 not to apply in relation to payments of benefit to the extent of any deduction that (if any payment were made) would fall, in pursuance of provision made by or under any statutory provision, to be made from the payments and paid to a person other than the offender or, as the case may be, a member of his family.

(3) In this section "social security benefit" means—

- (a) any benefit under the Contributions and Benefits Act or the Social Security Contributions and Benefits Act 1992 (c. 4);
 (b) any benefit under the Jobseekers Order or the Jobseekers Act 1995 (c. 18);
 or
 (c) any war pension.

Loss of benefit regulations

10.—(1) In sections 6 to 9 "prescribed" means prescribed by or determined in accordance with regulations made by the Department.

(2) Regulations under any of the provisions of sections 6 to 9 shall (except in the case of regulations to which subsection (3) applies) be subject to negative resolution.

- (3) Regulations containing (whether alone or with other provisions)—
- (a) a provision by virtue of which anything is to be treated for the purposes of section 6 as a disqualifying benefit but not a sanctionable benefit,
 - (b) a provision prescribing the manner in which the applicable amount is to be reduced for the purposes of section 6(3) or 8(3),
 - (c) a provision the making of which is authorised by section 6(4) or (5), 7(4) or 8(4) or (5), or
 - (d) a provision prescribing the manner in which the amount of joint-claim jobseeker's allowance is to be reduced for the purposes of section 7(3)(a),

shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(4) Article 74(3) to (6) of the Social Security (Northern Ireland) Order 1998 (NI 10) (regulations and orders) shall apply in relation to a power to make regulations that is conferred by any of the provisions of sections 6 to 9 as it applies in relation to the powers to make regulations that are conferred by that Order.

(5) The provision that may be made in exercise of the powers to make regulations that are conferred by sections 6 to 9 shall include different provision for different areas.

Consequential amendments

11.—(1) For paragraph (b) of section 54(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) (loss of joint-claim jobseeker's allowance) there shall be substituted—

“(b) that restriction would apply in the case of one of the members of the couple and the other member of the couple—

- (i) is subject to sanctions for the purposes of Article 22A of the Jobseekers Order (denial or reduction of joint-claim jobseeker's allowance); or
- (ii) is a person in whose case the restriction in subsection (2) of section 7 of the Social Security Fraud Act (Northern Ireland) 2001 (loss of benefit for offenders) would apply if the entitlement were an entitlement to a sanctionable benefit (within the meaning of that section).”.

(2) In paragraph 3 of Schedule 3 to the Social Security (Northern Ireland) Order 1998 (NI 10) (decisions against which an appeal lies), after sub-paragraph (e) there shall be added “; or

(f) section 6, 7 or 8 of the Social Security Fraud Act (Northern Ireland) 2001.”.

(3) In section 149(5) of the Administration Act (functions of Social Security Advisory Committee in relation to legislation and regulations), in the definition of “the relevant enactments”, after paragraph (af) there shall be inserted—

“(ag) sections 6 to 10 of the Social Security Fraud Act (Northern Ireland) 2001;”.

Interpretation of sections 6 to 11

12. In this section and sections 6 to 11—

“benefit” includes any allowance, payment, credit or loan;

“disqualification period” has the meaning given by section 6(6);

“family” has the same meaning as in Part VII of the Contributions and Benefits Act;

“income-based jobseeker’s allowance”, “joint-claim jobseeker’s allowance” and “joint-claim couple” have the same meanings as in the Jobseekers Order;

“post-commencement offence” means any criminal offence committed after the coming into operation of section 6;

“sanctionable benefit” has the meaning given by section 6(8);

“war pension” has the same meaning as in section 25 of the Social Security Act 1989 (c. 24) (establishment and functions of war pensions committees).

Penalties as an alternative to prosecution

Delegation of functions

13. In section 109A of the Administration Act (penalty as alternative to prosecution), after subsection (7) there shall be inserted—

“(7A) Subject to subsection (7B) below, the Department and the Housing Executive may agree that, to the extent determined by the agreement, one may carry out on the other’s behalf, or may join in the carrying out of, any of the other’s functions under this section.

(7B) Subsection (7A) above shall not authorise any delegation of—

(a) the function of the person by whom any overpayment is recoverable, or to whom it is due, of determining whether or not a notice should be given under subsection (2) above in respect of that overpayment; or

(b) the power to make regulations for the purposes of paragraph (b) of subsection (2) above.”.

Colluding employers

14.—(1) After section 109A of the Administration Act there shall be inserted—

“Penalty as alternative to prosecution: colluding employers, etc.

109B.—(1) This section applies where it appears to the Department or the Housing Executive—

(a) that there are grounds for instituting proceedings against any person (“the responsible person”) for an offence (whether or not under this Act) in respect of any conduct; and

- (b) that the conduct in respect of which there are grounds for instituting the proceedings is conduct falling within subsection (2) below.
- (2) Conduct in respect of which there appear to be grounds for instituting proceedings falls within this subsection if—
- (a) those proceedings would be for an offence under this Act in connection with an inquiry relating to the employment of relevant employees or of any one or more particular relevant employees; or
 - (b) it is conduct which was such as to facilitate the commission of a benefit offence by a relevant employee (whether or not such an offence was in fact committed).
- (3) The Department or the Housing Executive may give to the responsible person a written notice—
- (a) specifying or describing the conduct in question;
 - (b) stating that he may be invited to agree to pay a penalty in respect of that conduct;
 - (c) stating that, if he does so in the manner specified by the Department or the Housing Executive, no criminal proceedings will be instituted against him in respect of that conduct; and
 - (d) containing such information relating to the operation of this section as may be prescribed.
- (4) If the recipient of a notice under subsection (3) above agrees, in the specified manner, to pay the penalty—
- (a) the amount of the penalty shall be recoverable as a civil debt, and shall be capable of being set off against an amount of relevant benefit payable to the recipient of the notice; and
 - (b) no criminal proceedings shall be instituted against him in respect of the conduct to which the notice relates;
- and section 69(10) above shall apply in relation to an amount recoverable by virtue of paragraph (a) above as it applies in relation to an amount recoverable under the provisions mentioned in section 69(8) above.
- (5) The amount of the penalty shall be—
- (a) in a case in which the conduct in question falls within paragraph (a) of subsection (2) above but not within paragraph (b) of that subsection, £1,000;
 - (b) in a case in which that conduct falls within paragraph (b) of that subsection and the number of relevant employees by reference to whom it falls within that subsection is five or more, £5,000; and
 - (c) in any other case, the amount obtained by multiplying £1,000 by the number of relevant employees by reference to whom that conduct falls within that subsection.
- (6) The responsible person may withdraw his agreement to pay a penalty under this section by notifying the Department or the Housing Executive, in the manner specified by the Department or the Housing

Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it.

(7) Where the responsible person withdraws his agreement in accordance with subsection (6) above—

- (a) so much of the penalty as has already been recovered shall be repaid; and
- (b) subsection (4)(b) above shall not apply.

(8) For the purposes of this section an individual is a relevant employee in relation to any conduct of the responsible person if—

- (a) that conduct was at or in relation to a time when that individual was an employee of the responsible person;
- (b) that conduct was at or in relation to a time when that individual was an employee of a body corporate of which the responsible person is or has been a director; or
- (c) the responsible person, in engaging in that conduct, was acting or purporting to act on behalf of, in the interests of or otherwise by reason of his connection with, any person by whom that individual is or has been employed.

(9) In this section—

“conduct” includes acts, omissions and statements;

“the Department” also includes the Department of Finance and Personnel;

“director”—

- (a) in relation to a company (within the meaning of the Companies (Northern Ireland) Order 1986), includes a shadow director;
- (b) in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company; and
- (c) in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate;

“employee” means any person who—

- (a) is employed under a contract of service or apprenticeship, or in an office (including an elective office), or
 - (b) carries out any work under any contract under which he has undertaken to provide his work,
- and “employment” shall be construed accordingly;

“relevant benefit” means benefit prescribed for the purposes of section 69(8) above;

“shadow director” means a shadow director as defined in Article 9(2) of the Companies (Northern Ireland) Order 1986;

“subsidiary” means a subsidiary as defined in Article 4 of the Companies (Northern Ireland) Order 1986.”.

(2) In section 144(8) of the Administration Act (penalties to be paid into the Consolidated Fund) after “109A” there shall be inserted “or 109B”.

*Offences***Offence of failing to notify a change of circumstances**

15.—(1) In section 105A of the Administration Act (dishonest representations for obtaining benefit etc.)—

(a) in subsection (1), paragraphs (c) and (d) (dishonesty in connection with failures to notify the changes of circumstances that are required to be notified by regulations) shall be omitted and the word “or” shall be inserted at the end of paragraph (a); and

(b) after that subsection there shall be inserted the following subsections—

“(1A) A person shall be guilty of an offence if—

(a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;

(b) the change is not a change that is excluded by regulations from the changes that are required to be notified;

(c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and

(d) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1B) A person shall be guilty of an offence if—

(a) there has been a change of circumstances affecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation;

(b) the change is not a change that is excluded by regulations from the changes that are required to be notified;

(c) he knows that the change affects an entitlement of that other person to such a benefit or other payment or advantage; and

(d) he dishonestly causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1C) This subsection applies where—

(a) there has been a change of circumstances affecting any entitlement of a person (“the claimant”) to any benefit or other payment or advantage under any provision of the relevant social security legislation;

(b) the benefit, payment or advantage is one in respect of which there is another person (“the recipient”) who for the time being has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and

(c) the change is not a change that is excluded by regulations from the changes that are required to be notified.

(1D) In a case where subsection (1C) above applies, the recipient shall be guilty of an offence if—

- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
- (b) the entitlement is one in respect of which he has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
- (c) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1E) In a case where subsection (1C) above applies, a person other than the recipient shall be guilty of an offence if—

- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
- (b) the entitlement is one in respect of which the recipient has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
- (c) he dishonestly causes or allows the recipient to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1F) In any case where subsection (1C) above applies but the right of the recipient is confined to a right, by reason of his being a person to whom the claimant is required to make payments in respect of a dwelling, to receive payments of housing benefit—

- (a) a person shall not be guilty of an offence under subsection (1D) or (1E) above unless the change is one relating to one or both of the following—
 - (i) the claimant's occupation of that dwelling;
 - (ii) the claimant's liability to make payments in respect of that dwelling;
 but
- (b) subsections (1D)(a) and (1E)(a) above shall each have effect as if after "knows" there were inserted "or could reasonably be expected to know".

(1G) For the purposes of subsections (1A) to (1E) above a notification of a change is prompt if, and only if, it is given as soon as reasonably practicable after the change occurs."

(2) For subsection (1A) of section 106 of that Act (false representations for obtaining benefit etc.) there shall be substituted—

"(1A) A person shall be guilty of an offence if—

- (a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;
 - (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
 - (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and
 - (d) he fails to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1B) A person shall be guilty of an offence under this section if—
- (a) there has been a change of circumstances affecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation;
 - (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
 - (c) he knows that the change affects an entitlement of that other person to such a benefit or other payment or advantage; and
 - (d) he causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1C) In a case where subsection (1C) of section 105A above applies, the recipient shall be guilty of an offence if—
- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
 - (b) the entitlement is one in respect of which he has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
 - (c) he fails to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1D) In a case where that subsection applies, a person other than the recipient shall be guilty of an offence if—
- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
 - (b) the entitlement is one in respect of which the recipient has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
 - (c) he causes or allows the recipient to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1E) Subsection (1F) of section 105A above applies in relation to subsections (1C) and (1D) above as it applies in relation to subsections (1D) and (1E) of that section.

(1F) For the purposes of subsections (1A) to (1D) above a notification of a change is prompt if, and only if, it is given as soon as reasonably practicable after the change occurs.”.

Supplemental

Repeals

16. The statutory provisions mentioned in the Schedule are hereby repealed to the extent specified in the second column of that Schedule.

Commencement

17.—(1) Sections 1 to 16 shall come into operation on such day or days as may be appointed by order made by the Department.

(2) The power under this section to appoint a day for the coming into operation of sections 1 and 2 shall not authorise the appointment for those purposes of any day before the issue of the code of practice that must be issued under section 3.

Short title and interpretation

18.—(1) This Act may be cited as the Social Security Fraud Act (Northern Ireland) 2001.

(2) In this Act—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992 (c. 8);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

“the Department” means the Department for Social Development;

“the Jobseekers Order” means the Jobseekers (Northern Ireland) Order 1995 (NI 15);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

SCHEDULE

Section 16.

REPEALS

Short Title	Extent of repeal
The Social Security Administration (Northern Ireland) Act 1992 (c. 8).	In section 104A(7), the word “and” at the end of paragraph (a). In section 105A(1), paragraphs (c) and (d).
The Social Security Administration (Fraud) (Northern Ireland) Order 1997 (NI 11).	Article 13.
The Social Security (Northern Ireland) Order 1998 (NI 10).	In paragraph 3 of Schedule 3, the word “or” at the end of sub-paragraph (d).

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