



Social Security Administration (Fraud) Act 1997

1997 CHAPTER 47

Offences, penalties and overpayments

15 Penalty as alternative to prosecution.

After section 115 of the Social Security Administration Act 1992 insert—

“115A Penalty as alternative to prosecution.

- (1) This section applies where an overpayment is recoverable from a person by, or due from a person to, the Secretary of State or an authority under or by virtue of section 71, 71A, 75 or 76 above and it appears to the Secretary of State or authority that—
 - (a) the making of the overpayment was attributable to an act or omission on the part of that person; and
 - (b) there are grounds for instituting against him proceedings for an offence (under this Act or any other enactment) relating to the overpayment.
- (2) The Secretary of State or authority may give to the person a written notice—
 - (a) stating that he may be invited to agree to pay a penalty and that, if he does so in the manner specified by the Secretary of State or authority, no such proceedings will be instituted against him; and
 - (b) containing such information relating to the operation of this section as may be prescribed.
- (3) The amount of the penalty shall be 30 per cent. of the amount of the overpayment (rounded down to the nearest whole penny).
- (4) If the person agrees in the specified manner to pay the penalty—
 - (a) the amount of the penalty shall be recoverable by the same methods as those by which the overpayment is recoverable; and

Changes to legislation: There are currently no known outstanding effects for the Social Security Administration (Fraud) Act 1997, Section 15. (See end of Document for details)

- (b) no proceedings will be instituted against him for an offence (under this Act or any other enactment) relating to the overpayment.
- (5) The person may withdraw his agreement to pay the penalty by notifying the Secretary of State or authority, in the manner specified by the Secretary of State or authority, at any time during the period of 28 days beginning with the day on which he agrees to pay it; and if he does so—
- (a) so much of the penalty as has already been recovered shall be repaid; and
 - (b) subsection (4)(b) above shall not apply.
- (6) Where, after the person has agreed to pay the penalty, it is decided on a review or appeal or in accordance with regulations that the overpayment is not recoverable or due, so much of the penalty as has already been recovered shall be repaid.
- (7) Where, after the person has agreed to pay the penalty, the amount of the overpayment is revised on a review or appeal or in accordance with regulations—
- (a) so much of the penalty as has already been recovered shall be repaid; and
 - (b) subsection (4)(b) above shall no longer apply by reason of the agreement;
- but if a new agreement is made under this section in relation to the revised overpayment, the amount already recovered by way of penalty, to the extent that it does not exceed the amount of the new penalty, may be treated as recovered under the new agreement instead of being repaid.
- (8) In this section “overpayment” means—
- (a) a payment which should not have been made;
 - (b) a sum which the Secretary of State should have received;
 - (c) an amount of benefit paid in excess of entitlement; or
 - (d) an amount equal to an excess of benefit allowed;
- and the reference in subsection (1)(a) above to the making of the overpayment is to the making of the payment, the failure to receive the sum, the payment of benefit in excess of entitlement or the allowing of an excess of benefit.”

Commencement Information

- II** [S. 15](#) wholly in force; [s. 15](#) not in force at Royal Assent, see [s. 25](#); [s. 15](#) in force at 21.11.1997 for the purpose of regulations and 18.12.1997 for all other purposes by [S.I. 1997/2766](#), [art. 2\(1\)](#)

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