

SOCIAL SECURITY FRAUD ACT 2001

EXPLANATORY NOTES

PENALTIES AS AN ALTERNATIVE TO PROSECUTION

Clause 14

Delegation of functions

Background

145. Section 15 of the Social Security Administration (Fraud) Act 1997 introduced a new administrative penalty, with the insertion of new section 115A into the Social Security Administration Act 1992. The provision applies “where an overpayment is recoverable from a person by, or due from a person to, the Secretary of State or an authority that administers Housing Benefit or Council Tax Benefit (as defined in the Social Security Administration Act 1992) and it appears to the Secretary of State or authority that administers Housing Benefit or Council Tax Benefit 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.”
146. Where the provisions in sub-section (1) apply, then 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.”
147. The structure of these provisions is based on the premise that the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit will act independently of each other in the administration of the penalty system. This reflects the fact that they have statutory responsibility for different benefits. In particular, sections 134 and 139 Social Security Administration Act 1992 confer a statutory duty upon authorities administering Housing Benefit or Council Tax Benefit to administer Housing Benefit and Council Tax Benefit respectively.

The measures in the Act

148. The policy is to introduce powers that will facilitate closer working between the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit in the operation of the administrative penalty system. At present, where a benefit offence results in overpayments of Housing Benefit or Council Tax Benefit and another benefit and both the Benefits Agency and the authorities administering Housing Benefit or Council Tax Benefit decide to offer an administrative penalty, each will handle the process separately. This means two interviews and two sets of papers for the claimant.

*These notes refer to the Social Security Fraud Act 2001
(c.11) which received Royal Assent on 11 May 2001*

149. The aim is both to make the system easier for those persons who may be subject to more than one penalty, and to streamline administrative procedures by enabling the Department and the relevant authority to act together in offering the penalty. This means one interview, not two, and one gross sum recovered. However, the process of recovery will still be the business of DSS and the authority respectively.