

*These notes refer to the Social Security Fraud Act (Northern Ireland)
2001 (c.17) which received Royal Assent on 15 November 2001*

Social Security Fraud Act (Northern Ireland) 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Code of practice about use of information powers

Section 3 provides for the issue and revision of a statutory Code of Practice relating to the exercise of powers provided for by sections 1 and 2. That is powers to obtain information from independent sources of information such as banks and building societies. It requires the Department to publish a draft of the Code before issuing or revising it and to consider any representation made to it about the draft. It also enables the Department to incorporate any proposed modifications to the draft. The Department must lay the Code and any revisions of it before the Assembly. The Code of Practice will come into force when issued by the Department, as will any revised Codes of Practice. Section 3 requires authorised officers to have regard to the Code of Practice when exercising powers provided for by sections 1 and 2 and would make the Code admissible as evidence in any civil or criminal proceedings. Failure to comply with any of the provisions of the Code would not of itself render the authorised officer liable to prosecution or to any penalty or damages in civil proceedings.

Section 3(1) provides that the Department shall issue a Code of Practice relating to the use of provisions in section 103B of the Administration Act where they are being used to make enquiries of persons listed in subsection (2A) – banks, building societies, credit reference agencies etc. The Code of Practice shall also relate to the use of the powers to obtain electronic access to information contained in the new sections 103BA and 104AA.

Section 3(2) provides that the Department may revise the Code of Practice. The Department intends to review the operation of the Code of Practice to ensure that it is working as intended for both investigators and for business. The Code could be revised if any review demonstrated that this was necessary.

Section 3(3) relates to the consultation on the Code. It provides that the Department shall prepare and publish a draft of the Code of Practice, consider any representations made to it upon the draft, and may make changes it considers appropriate before publishing the final version. It provides for the Department to do the same in relation to any revisions of the Code.

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Section 3(4) provides that the final, and any revised, version of the Code of Practice should be laid before the Assembly.

Section 3(5) provides that the Code of Practice, and any revised version, shall come into force when it is issued by the Department.

Section 3(6) provides that authorised officers must have regard to the Code of Practice currently in force when exercising their powers under the provisions covered by the Code.

Section 3(7) provides that failure on the part of an authorised officer to comply with the Code of Practice would not, in itself, render him liable to civil or criminal proceedings. If authorised officers misuse their powers, they are already liable to proceedings under the Data Protection Act 1998 and the Computer Misuse Act 1990.

Section 3(8) provides that the Code of Practice shall be admissible in any civil or criminal proceedings – for example, if an investigator were charged with misuse of these powers under the offences in the Data Protection Act 1998 or the Computer Misuse Act 1990.

Section 3(9) defines authorised officer. It has the same meaning as in the Administration Act.