

SOCIAL SECURITY FRAUD ACT (NORTHERN IRELAND) 2001

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Social Security Fraud Act (Northern Ireland) 2001 (“the Act”). They have been prepared by the Department for Social Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Act makes provision for Northern Ireland corresponding to provisions of the Social Security Fraud Act 2001 (c.11). It is estimated that on a UK-wide basis fraud in social security benefits costs the taxpayer at least £2 billion every year. The Act seeks to implement proposals on tackling benefit fraud.
4. There are four main elements in the Act:

Obtaining and sharing information

- introduction of additional powers to obtain information from specified private and public sector organisations to tackle benefit fraud and error;
- changing the requirement on the Housing Executive to supply information to the Department or the Secretary of State for Work and Pensions from one based in regulations to one based on directions.

Loss of Benefit Provisions

- introduction of powers to reduce or withdraw specified benefits where an offender is convicted twice of benefit offences within a period of three years.

Penalties as an alternative to Prosecution

- introduction of a new discretionary power which will allow the Department and the authorities administering HB to offer a financial administrative penalty to an employer as an alternative to prosecution;
- introduction of powers to facilitate closer working between the Department and the authorities administering HB in the operation of the administrative penalty system.

Offences

- clarification of the offence of failing to notify a change of circumstances.

The current position

5. Benefit fraud occurs because people lie about their circumstances, or deliberately fail to tell the Department or the authorities administering HB about a relevant change. Cross-checking the information that claimants provide against independent sources of information helps to detect benefit fraud.
6. The Department already has powers to check information against that held by other government Departments for example, the Inland Revenue to detect fraud committed by people working whilst claiming means-tested benefits. The Department also has powers to obtain information from employers. However, if a person is working and claiming benefit, he may wish to conceal his earnings from the Inland Revenue as well as from the Department, or his employer may be colluding in his benefit fraud. Hence, the Act provides powers to cross-check information with additional independent sources, for example, with banks.
7. Information can already be obtained from independent sources with a claimant's consent, but people who lie to obtain benefit are unlikely to give this consent. Where benefit fraud is suspected, investigating officers can also ask organisations to provide them with any information for the purpose of the prevention and detection of crime under an exemption to data protection legislation set out in section 29 of the Data Protection Act 1998. However, they cannot compel organisations to provide information under the exemption. Many organisations are bound by a duty of confidentiality to their customers and are therefore uncertain whether they should provide information on this basis. Consequently, investigating officers obtain very little information in this way.

CONSULTATION

8. Prior to the introduction of the Westminster Social Security Fraud Bill there was a UK-wide consultation on the document “Safeguarding Social Security: Getting the information we need”. The responses, including those received from Northern Ireland, were taken into account when developing the provisions of that Bill. Consequently they are reflected in the content of this Act.

OVERVIEW

9. The Act has 18 sections. It makes amendments to the Administration Act and also minor and consequential amendments to the Child Support, Pensions and Social Security Act and the Social Security (Northern Ireland) Order 1998.

COMMENTARY ON SECTIONS

Section 1: Additional powers to obtain information

The measures in the Act will provide for officers authorised under sections 103A and 104A of the Administration Act to require information about individuals from specified private and public sector organisations. Information may be obtained where it is reasonable for the purposes set out at sections 103A(2) and 104A(2). The list of specified private and public sector organisations that can be required to provide information can be extended by order subject to the confirmatory procedure in the Assembly.

The measures also provide for specifically authorised officers to require general information from utility companies about the quantity of services supplied to residential properties. The Department intends to match this information electronically with benefit records in order to detect fraud. For example, if a person was claiming IS at a particular address and was consuming no electricity at that address this could indicate that he does not, in fact, live there and that his claim may be fraudulent. The measures do not provide for the bulk acquisition of individuals’ names, only details of utilities supplied to residential addresses.

If those from whom information has been requested fail to comply with authorised officers’ requests they can be prosecuted under the current section 105 of the Administration Act. They may be fined up to £1,000 plus £40 for each day after this that they continue to fail to provide the information requested.

Section 1 amends and adds to the investigator’s powers in sections 103A, 103B, 103C and 104A of the Administration Act.

Section 103A provides for the Department to authorise officers to use the powers in sections 103B and 103C for the purposes set out in section 103A(2):

- ascertaining whether a social security benefit is or was payable in an individual case;
- investigating the circumstances of accidents, injuries or diseases giving rise to claims for Industrial Injuries Benefit and other benefits;
- ascertaining whether the provisions of the relevant social security legislation have been, are being, or are likely to be contravened (in cases involving particular individuals as well as more generally);
- preventing, detecting and securing evidence of the commission of criminal offences in relation to the relevant social security legislation (either by particular individuals or more generally).

Section 104A allows the Housing Executive with the consent of the Department to authorise officers to use the powers in sections 103B and 103C for the purposes set out in section 104A(2):

- ascertaining whether HB is or was payable in an individual case;
- ascertaining whether the provisions of the relevant social security legislation regarding HB have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
- preventing, detecting and securing evidence of the commission of criminal offences in relation to HB (either by particular individuals or more generally).

Section 103B provides a power for authorised officers to require those listed in section 103B(2) to provide information requested by written notice where this is reasonable in relation to one or more of the purposes set out in section 103A(2).

Section 103C provides a power for authorised officers to inspect premises where persons are employed, from which a trade, business or pension fund is being carried on or where information about these is stored, where this is reasonable in relation to one or more of the purposes set out at section 103A(2). This section is not amended by the Act.

Section 1(1) provides for the amendment of the Administration Act.

Section 1(2) inserts new subsections (2A) to (2F) into section 103B of the Administration Act.

Subsection (2A) lists organisations from which officers authorised under section 103A and 104A can require information. These organisations include: banks, credit reference agencies; utility providers and education bodies.

Subsection (2B) provides that, subject to the following provisions of the section, the powers to require information shall only be exercisable for making enquiries of persons

listed within subsection (2A) for the purpose only of obtaining information relating to particular persons identified by name or description.

Subsection (2C) provides that an authorised officer shall not exercise those powers to obtain information from persons listed in subsection (2A) unless it appears to him that there are reasonable grounds for believing that the identified person to whom it relates is:

- a person who has committed, is committing, or intends to commit a benefit offence; or
- a person who is a member of the family of a person falling within the above category. (A family member is defined in section 133 of the Contributions and Benefits Act and includes married and unmarried partners and children and dependants whom claimants or their partners are responsible for).

Subsection (2D) provides that, where an authorised officer is an official of a government department and where his authorisation explicitly states that it applies for the purposes of subsection (2D), nothing in subsection (2B) or (2C) shall prevent him from obtaining information relating exclusively to whether, and in what quantities, gas and electricity are supplied to residential premises.

Subsection (2E) provides that the powers in section 103B may only be exercised to obtain information from a telecommunications provider if it is “communications data” but not “traffic data” (as those terms are defined in section 21 of the Regulation of Investigatory Powers Act 2000). Restricting the information to communications data would enable the authorised officer to obtain information about the use made by a person of a telecommunications service or any other information held about subscribers to the service. However it would exclude information about the contents of any communication. The exclusion of traffic data would prevent the authorised officer from obtaining information identifying the person, apparatus or location to or from which a communication is sent.

Subsection (2F) provides a further exception to the requirements in subsections (2B) and (2C) (that is to exercise the powers only in relation to an identified person and where there is reasonable suspicion that the person has committed, is committing or intends to commit a benefit offence). Nothing in those subsections shall prevent an authorised officer from requiring information from a telecommunications provider, about a person’s identity and postal address where the authorised officer has identified the person solely by reference to a telephone number or electronic address.

Section 1(3) substitutes section 103B(5) of the Administration Act.

Subsection (5) sets out two cases where a person is exempt from the requirement to provide information. They are:

- if the information is information which may incriminate that person or that person's spouse; and
- if the information is information which, in any proceedings, would be subject to legal professional privilege.

In both cases it does not matter whether the information is in documentary form or not. These exemptions would apply to information required from persons listed in subsections (2) and (2A). Only the exemption subject to legal privilege is new.

Section 1(4) adds subsections (6) and (7) to section 103B of the Administration Act.

Subsection (6) provides that provision may be made by an order:

- to add to the list of persons at subsection (2A);
- to remove persons from that list;
- to modify subsection (2A) to take account of any changes to the names of persons listed.

Subsection (7) gives definitions of the terms “bank”, “credit”, “residential premises” and “telecommunications service”.

Section 1(5) adds a new paragraph (c) to section 104A(7) of the Administration Act. Section 104A(7) provides that the powers in sections 103B and 103C may be exercised by officers authorised by the Housing Executive. Paragraph (c) excludes section 103B(2D) from this provision.

Section 1(6) amends section 105(1)(a) of the Administration Act (offence of obstruction) by substituting “authorised officer” for “inspector” for the purposes of consistent terminology.

Section 1(7) amends section 115CA(5) of the Administration Act to re-define benefit offences. The new definition now incorporates attempt, conspiracy and collusion to commit benefit offences.

Section 1(8) adds a new subsection (7) to section 115CA of the Administration Act to define “relevant social security benefit” which is a term used in the re-definition of benefit offences above.

Section 1(9) adds the order-making power provided for by the new section 103B(6)(a) to the list of the order-making powers subject to the confirmatory procedure set out in section 166(2) of the Administration Act.

Section 2: Electronic access to information

Section 2 provides that the Department and the Housing Executive can require organisations to enter into arrangements so that the information can be provided electronically on-line where facilities exist to provide such access. For example, credit

reference agencies provide direct on-line access to their databases instead of processing enquiries in writing. The section provides that only those officers especially authorised can use such on-line facilities. This section enables the Department and the Housing Executive to require the provision of audit trail information in the arrangements in order to ensure that officers' use of the system can be thoroughly monitored. The Housing Executive is prevented from requiring an organisation to provide on-line facilities without the consent of the Department. It is also prevented from entering into a voluntary arrangement for on-line access to private information without the Department's consent.

Section 2(1) inserts section 103BA into the Administration Act.

Section 103BA(1) provides that, subject to subsection (2), where it appears to the Department:

- that any person listed in section 103B(2A) keeps any electronic records;
- that those records may contain information relevant to any one or more of the purposes at 103A(2); and
- that electronic access to those records is, or is capable of being, provided;

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

Section 103BA(2)(a) provides that an authorised officer may only obtain information under the arrangements at 103BA(1) if his authorisation explicitly states that it applies for the purposes of that subsection.

Section 103BA(2)(b) provides that an authorised officer may only obtain information under the arrangements provided for by subsection (1) where the information relates to a particular person and where it is information that they have the power to obtain under provisions at section 103B.

Section 103BA(3) sets out the matters which may be included in arrangements made under subsection (1).

Section 103BA(4) provides that an authorised officer who is allowed access to electronic records in accordance with any arrangements entered into under subsection (1) may make copies of, and take extracts from, those records.

Section 2(2) inserts section 104AA into the Administration Act.

Section 104AA enables the Housing Executive, with the consent of the Department to make arrangements for electronic access to information in relation to HB claims.

Section 104AA(1) provides that, subject to subsection (2), where it appears to the Housing Executive that:

- any person listed in section 103B(2A) keeps any electronic records;
- that those records may contain information relevant to any one or more of the purposes at 104A(2); and
- that electronic access to those records is, or is capable of being, provided;

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

Section 104AA(2)(a) provides that an authorised officer may only obtain information under the arrangements at subsection (1) if his authorisation explicitly states that it applies for the purposes of that subsection.

Section 104AA(2)(b) provides that the authorised officer may not obtain information under the arrangements at subsection (1) unless the information relates to a particular person and it is information that he has the power to obtain under section 103B as applied to him by section 104A(7).

Section 104AA(3) provides for the matters which may be included in arrangements made under subsection (1).

Section 104AA(4) provides that an authorised officer who is able to access records in accordance with arrangements under subsection (1) may make copies of, and take extracts from, those records.

Section 104AA(5) provides that the Housing Executive may only require a person to enter into arrangements for giving authorised officers electronic access to records if it has the consent of the Department. It also provides that the Housing Executive may not enter into arrangements with a person specified in section 103B(2A) to give persons acting on behalf of the Housing Executive electronic access to private information (otherwise than in accordance with the requirement imposed under this section) unless it has the consent of the Department. In either case, the arrangements entered into may be subject to any conditions imposed by the Department when it gives consent. “Private information” is defined in section 104AA(7) as any information held by a person who is not entitled to disclose it except in compliance with a requirement imposed by the Housing Executive in exercise of its statutory powers.

Section 104AA(6) provides that, for the purposes of subsection (5), consent may be given in relation to a particular case, or to any case that falls within a particular description of cases.

Section 2(3) amends section 105 of the Administration Act.

Section 105(1) provides for any person found guilty of obstruction or delay to be liable on summary conviction to a fine not exceeding level 3 on the standard scale. That is currently up to a £1,000 fine. Section 105(2) provides that, where a person who is convicted under section 105(1)(b) continues to refuse to provide required information or

to answer questions, he will be guilty of a further offence. On summary conviction he will be fined £40 for every day thereafter that the requirement to provide information is not met.

Section 2(3)(a) amends section 105(1) to provide that the offence at section 105 also applies where a person refuses or neglects to comply with any requirements under sections 103BA and 104AA.

Section 2(3)(b) provides that the provisions at section 105(2) apply to requirements under sections 103BA and 104AA.

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.

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.

Section 4: Arrangements for payments in respect of information

Section 4 allows the Department to make payments for the information obtained from credit reference agencies and telecommunications providers. Payments may also be made to utility companies but only for the information they provide about the quantities of services supplied to residential properties. The Department need not make any payments if it does not think that this is appropriate. Any organisation that is added to the list of those who can be required to provide information may also be paid under the same terms.

Section 4(1) provides that it shall be the duty of the Department to ensure that such arrangements as it considers appropriate (if any) are in place to ensure that it can authorise such payments as it thinks appropriate and in cases that it thinks fit, in respect of organisations subject to “relevant obligations”. The organisations that may be paid under these arrangements are credit reference agencies, telecommunications, gas and electricity providers and the servants and agents of the above. Payments may also be made to persons added to the list in section 103B(2A) of the Administration Act by an order under section 1(4) and to their servants and agents.

Section 4(2) defines “relevant obligation” for the purposes of subsection (1).

Section 4(2)(a) provides that, in the case of credit reference agencies, telecommunication providers and persons added to the list at section 103B(2A) by an order, “relevant obligation” means any requirement to provide information under

section 103B by virtue of their falling within the list in section 103B(2A). It also means any requirement to provide access to records in accordance with section 103BA or 104AA.

Section 4(2)(b) provides that, in the case of providers of gas and electricity, “relevant obligation” means any requirements imposed by the exercise of powers in section 103B as mentioned in section 103B(2D).

Section 4(3) provides that the Department may make arrangements for payments to be made from money appropriated by Act of the Assembly in order to comply with its duty under this section.

Section 4(4) provides that the Housing Executive shall be under a duty to comply with any specific or general directions that the Department makes regarding payments in accordance with arrangements made under section 4(1).

Section 5: Supply of information

Section 5 amends section 116D(3) of the Administration Act by replacing the word “prescribed” with “specified in directions given by the Department or, as the case may be, the Secretary of State”. Section 116D enables the Department and the Secretary of State for Work and Pensions to require the Housing Executive to supply to them information relating to housing benefit policy and administration. It is intended that the Department or, as the case may be, the Secretary of State can specify the manner and form in which information is to be supplied under that section (or any other requirements relating to the supply of information) by way of directions rather than by regulations.

Section 6: Loss of benefit for commission of benefit offences

Measures in the Act provide that certain specified benefits shall be reduced or withdrawn where a person is convicted twice of committing offences in relation to specified benefits within the space of three years. The sanction will be for a fixed period of 13 weeks and will begin after conviction for the second offence where benefit is in payment or, if benefit is not in payment, when entitlement first arises in the three-year period following the second conviction. The decision that the sanction applies will carry with it the right of appeal to an appeal tribunal on a question of fact and law.

The measures will apply to offences involving fraud against all social security benefits and War Pension with the exception of Statutory Sick Pay, Statutory Maternity Pay, and Maternity Allowance. Tax Credits are also excluded. Offences relating to joint-claim JSA, Retirement Pension, Graduated Retirement Benefit, Disability Living Allowance, Attendance Allowance, Child Benefit, and Guardian’s Allowance will activate benefit loss but these benefits will not be subject to sanction by removal of payment. Also Social Fund payments and Christmas bonuses will not be subject to sanction. All other benefits will be withdrawn or reduced as a result of a second conviction. Any sanction

against a War Pension would be by virtue of the corresponding provision of the Social Security Fraud Act 2001.

The intention is that while relevant benefits will be sanctioned, an underlying entitlement will remain to ensure that the link between benefits and other entitlements such as free prescriptions and school meals remain. For recipients of both contributory and income-based JSA, the benefit will be withdrawn for the period of the sanction. JSA claimants will also have their HB withdrawn during this period. It is intended that regulations under the powers for which this Act provides will mirror current provisions for hardship payments arising from employment condition sanctions. If a JSA claimant falls into a vulnerable group he could apply for hardship payments from the first day of the sanction. The term “vulnerable group” refers to the group of people specified in regulation 140(1) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996. Those who do not fall into a vulnerable group will be eligible to apply for hardship payments from the 15th day of the sanction.

Claimants will retain an underlying entitlement to JSA throughout the period of the sanction whether or not they are entitled to hardship payments, ensuring that the “passporting” back on to HB is maintained. If hardship is established under the regulations, and the claimant satisfies the other conditions of entitlement, they will be awarded a reduced payment of income-based JSA. The rate of reduction will be prescribed in regulations, but the intention is that the reduction will normally be 40 per cent. of the single person’s allowance, although where someone in the family is seriously ill or pregnant, the reduction will be 20 per cent.

Section 6 contains provisions to remove or reduce benefit from offenders who have been convicted twice of benefit fraud within a period of three years.

Section 6(1) provides for benefit to be reduced or withdrawn where an offender is convicted on more than one occasion of specified benefit offences. Benefit withdrawal or reduction is triggered when an offender is convicted of one or more benefit offences in each of two separate sets of proceedings. The offence for which the second set of proceedings has been brought must occur within a period of three years of the date on which the offender was convicted for the first offence. Where this happens the offender will have all sanctionable benefits in payment withdrawn or reduced for the period of the sanction.

Section 6(2) introduces a “disqualification period”, which is the time for which the benefit will be reduced or withdrawn. Subsection (6) further prescribes the period as beginning at a prescribed time after conviction for the second offence.

Section 6(3) provides for IS to be paid at a reduced rate for the prescribed period rather than withdrawn completely. Details of the reduction will be prescribed in regulations. The broad intention is that the reduction will be similar to that which will apply in JSA cases where hardship is established.

Section 6(4) enables regulations to be made to provide that JSA claimants may be eligible for a reduced rate of benefit during the prescribed period providing they satisfy certain conditions. The intention is that these conditions will be similar to the hardship provisions that currently apply with JSA.

Section 6(5) enables regulations to be made to provide that HB claimants will be eligible for a reduced rate of benefit during all or part of any disqualifying period. The intention is that a person entitled to HB who becomes subject to sanction under the new sections should, if any IS or JSA remains payable under subsections (3) and (4), remain entitled to full HB. Where these benefits are not payable, the HB entitlement will be reduced by a sum specified in regulations.

Section 6(6) provides that where an offender has been convicted twice of benefit fraud within the period specified within subsection (1), the sanction will be a period of 13 weeks commencing at the prescribed time after conviction for the second offence.

Section 6(7) provides that in the event of a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Section 6(8) sets out definitions of the terms used within this provision.

Section 6(9) provides further definition of the meaning of conviction as used within this provision.

Section 6(10) provides that the sanction shall not take effect under this section where it has already taken effect for the same convictions under the equivalent Great Britain legislation. It also allows a sanction to be imposed where a previous sanction took effect for a period within the same disqualifying period (e.g. where it has taken effect for part of that period in relation to a relative under section 7 and then takes effect in relation to the offender himself for the rest of the period).

Section 7: Effect of offence on joint-claim Jobseeker's Allowance

Section 7 sets out how the fraud sanction provisions will apply to joint-claim JSA as introduced by Article 56 of, and Schedule 7 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999. The requirement to make a joint claim for JSA impacts on couples without children where one or both of the partners is in the 18-24 years age range on 19 March 2001. Coverage will apply to those born on or after a certain date, so older couples without children will be included as time passes. Under joint claims, both members of the couple will have to claim JSA and both will have to meet JSA labour market conditions.

It is intended to prescribe in regulations that in cases where couples without dependants are in receipt of joint-claim JSA, and one member of the couple is subject to the

sanction, the non-convicted member will continue to receive the equivalent of the rate of JSA which is applicable to a single person during the period of the sanction.

For IS claimants the effect of the sanction will be to reduce the amount of benefit in payment, rather than withdraw the benefit in its entirety. It is intended that the effect of this measure will be to reduce benefits in line with the calculation of JSA payments i.e. by 40 per cent. of the single person's allowance, or 20 per cent. where a member of the family is pregnant or seriously ill. The reduction will always leave a minimum of 10p IS in payment to enable HB as well as other "passported" benefit entitlements to remain.

Where the sanctioned benefit is neither IS nor income-based JSA, a claimant may claim such benefits under normal rules. Such benefits will be subject to sanctions but the claimant may still be entitled to payments of these benefits under the hardship regime. Entitlement to a hardship payment will also provide entitlement to HB (even where it has been sanctioned).

In any case where a claimant is neither eligible for IS nor income-based JSA under normal rules (e.g. if their income, capital or hours worked excludes them from these benefits), it is intended to prescribe in regulations that HB entitlement will be reduced by a specified amount similar to that used in IS cases. This would be by 20 per cent. of the IS personal allowance where a member of the family is pregnant or seriously ill and 40 per cent. in all other cases. The decision whether to award hardship payments and the amount of the award will in all cases each carry the right of appeal to an appeal tribunal on a question of fact and law.

Section 7(1) provides for the provisions of subsections (2) and (3) to apply where a joint-claim couple are entitled, or become entitled to joint-claim JSA and the fraud sanction is applicable to at least one of the couple.

Section 7(2) provides that no joint-claim JSA will be payable where both members of the couple are subject to a fraud sanction, or where one member is subject to a fraud sanction and the other is already subject to a sanction pursuant to Article 22A of the Jobseekers Order, or to a community sentence sanction as detailed in section 53(2) of the Child Support, Pensions and Social Security Act.

Section 7(3) provides that where only one member of a couple is subject to a fraud sanction and the other member is not subject to any sanction, the amount of JSA payable will be reduced to an amount calculated in a prescribed way and will be paid to the other member of the couple who is not subject to the sanction.

Section 7(4) provides for hardship payments to be made in cases where both members of a joint-claim couple for JSA are subject to a fraud sanction, or where one member is subject to a fraud sanction and the other is sanctioned for employment-related reasons imposed under Article 22A of the Jobseekers Order, or the restriction introduced in section 53(2) of the Child Support, Pensions and Social Security Act.

Section 7(5) prescribes that the reduced amount payable, referred to in subsection (3), will be calculated in the same way as prescribed in Article 22A of the Jobseekers Order.

Section 7(6) provides that in the event of a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Section 8: Effect of offence on benefits for members of offender's family

Section 8 allows the Department to prescribe in regulations that certain benefits shall be lost or reduced where a member of an offender's family claims benefit in respect of the offender during the period of disqualification.

The provisions for members of an offender's family only apply when one of the specified income-related benefits is to be sanctioned - IS, income-based JSA and HB as these are the only benefits where it is possible for a couple to choose which of them makes the claim.

With JSA, the effect of the sanction, as prescribed in regulations, would be to reduce the level of JSA by removing the element of personal allowance paid in respect of the offender. The partner may receive any allowances and premiums in respect of themselves and their dependants. Hardship provisions similar to those which currently apply with joint-claim JSA will also be put in place to protect families in vulnerable circumstances.

Section 8(1) prescribes the income-related benefits to which the section relates.

Section 8(2) prescribes the cases in respect of which such regulations may be made under this section. These are cases where a member of the offender's family becomes entitled to, and would be paid, one of the benefits listed in subsection (1) during the disqualification period and entitlement to, or the amount of that benefit, is determined by reference to the offender.

Section 8(3), as in section 6(3), prescribes that where the offender's family member is entitled to IS, regulations may be made reducing his applicable amount in the prescribed manner. The intention is that the reduction will be similar to that which will apply in JSA cases where hardship is established.

Section 8(4) prescribes that where the offender's family member is entitled to JSA, regulations may be made reducing the rate of the allowance providing that it shall only be payable on compliance with certain obligations in relation to the provision of information. The broad intent is that the partner may receive any allowances in respect of themselves and their dependants but any personal allowance payable for the offender will be withdrawn during the prescribed period.

Section 8(5), as in section 6(5), prescribes that where the offender's family member is entitled to HB, regulations may be made reducing the rate of the benefit and providing that benefit shall only be payable in prescribed circumstances. The intention is that where an underlying entitlement to JSA or IS remains, either for the offender, partner or any dependants, full HB will remain payable. Where these benefits are not payable, the HB entitlement will be reduced by a sum specified in regulations.

Section 8(6) provides that in the event of a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made.

Section 9: Power to supplement and mitigate loss of benefit provisions

Section 9 contains definitions and further regulation-making powers enabling the scheme of benefit offence sanctions to be modified.

There will be a number of occasions when a claimant will have deductions taken from their benefit to pay for items such as fuel arrears, court fines, and Social Fund loans. Under current arrangements, a claimant has to agree with the Department which payments to third parties should remain 'deductible' during a period of sanction. There will be times when it is either in the claimant's best interests to continue third party payments (i.e. where money is being deducted to pay for essential fuel costs), or where it is in an innocent third party's interest to have the payments maintained (i.e. child maintenance deductions introduced by the Child Support, Pensions and Social Security Act). The provisions will allow a certain amount of flexibility to the current system and the powers in section 9(2) allow the Department to prescribe in regulations which circumstances this may apply to.

Section 9(1) allows the Department to provide by regulations that certain benefits shall be disqualifying but not sanctionable benefits. It is intended to provide the Department with the flexibility to change the scope of the scheme where it is appropriate to do so.

Section 9(2) allows the Department to prescribe in regulations for certain parts of a claimant's benefit to be exempted from restriction, where that part is already being deducted from benefit and paid to a third party. For example, the Child Support reforms brought in under the Child Support, Pensions and Social Security Act introduced compulsory deductions from the benefits of non-resident parents. These are then passed on to the parent with care. In circumstances such as these, the intention is that benefit payment is withdrawn or reduced apart from amounts subject to the amount of compulsory maintenance deductions which are to be paid over to the parents with care in the normal way.

Section 9(3) sets out definitions of the terms used within this provision.

Section 10: Loss of benefit regulations

Section 10 contains provisions about the making of regulations by the Department.

Section 10(1) defines the term ‘prescribed’ to mean prescribed by, or in accordance with, regulations made by the Department.

Section 10(2) provides for all regulations under these provisions, other than those regulations referred to in subsection (3), to be made subject to negative resolution.

Section 10(3) lists the regulations that are subject to the confirmatory procedure. These are:

- regulations that prescribe any additional benefits that are to be treated as disqualifying but not sanctionable benefits for the purposes of section 6;
- regulations to prescribe a reduced amount of IS to be paid to a claimant, or a member of the offender's family, who is subject to a fraud sanction;
- regulations prescribing the circumstances in which reduced hardship payments are to be made, and the amount, where the sanction applies to a single claimant on JSA, or where both members of a joint-claim couple are subject to a sanction. This subsection also applies to regulations prescribing a reduced amount of JSA to be paid to a member of the offender's family and to regulations prescribing a reduced amount of HB to be paid to a claimant, or member of the offender's family, who is subject to a fraud sanction;
- regulations prescribing a reduced amount of a joint-claim JSA where one member of a couple is subject to sanction.

Section 10(4) applies technical provisions of the Social Security (Northern Ireland) Order 1998 to the regulation-making powers in sections 6 to 9, for example, to enable the regulations to include incidental, consequential and transitional provisions.

Section 10(5) provides that regulations under these measures can include different provision for different areas.

Section 11: Consequential amendments

Section 11 makes consequential amendments to other legislation.

Section 11(1) makes a consequential amendment to the ‘breach of Community Order’ provisions in the Child Support, Pensions and Social Security Act in relation to joint claims to JSA. It allows sanctions under this Act to be taken into account when determining the sanction to which a joint-claim couple is subject under that Act.

Section 11(2) makes a consequential amendment to the Social Security (Northern Ireland) Order 1998 to create a right of appeal against the decision that a benefit has to be reduced or withdrawn.

Section 11(3) adds provisions of the Social Security Fraud Act (Northern Ireland) 2001 to the definitions of “relevant enactments” in section 149 of the Administration Act (functions of the Social Security Advisory Committee in relation to legislation and regulations).

Section 12: Interpretation of sections 6 to 11

Section 12 contains a number of further definitions.

Section 13: Delegation of functions

Article 14 of the Fraud Order introduced a new administrative penalty, with the insertion of new section 109A into the Administration Act. The provision applies where an overpayment is recoverable from a person by, or due from a person to, the Department or the authorities administering HB and it appears to the Department or those authorities that:

- the making of the overpayment was attributable to an act or omission on the part of that person; and
- there are grounds for instituting against him proceedings for an offence (under this Act or any other enactment) relating to the overpayment.

Where the provisions in section 109A(1) apply, then the Department or the authorities administering HB may give to the person a written notice:

- stating that he may be invited to agree to pay a penalty and that, if he does so in the manner specified by the Department or authorities administering housing benefit, no such proceedings will be instituted against him; and
- containing such information relating to the operation of this section as may be prescribed.

The structure of these provisions is based on the premise that the Department and the authorities administering HB 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, section 73 of the Administration Act confers a statutory duty upon the Housing Executive to administer HB.

The policy is to introduce powers that will facilitate closer working between the Department and the authorities administering HB in the operation of the administrative penalty system. At present, where a benefit offence results in overpayments of HB and another benefit and both the Social Security Agency and the authorities administering HB decide to offer an administrative penalty, each will handle the process separately. This means two interviews and two sets of papers for the claimant.

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 authorities administering HB 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 the Department and the authorities respectively.

Section 13 inserts new subsections (7A) and (7B) into section 109A of the Administration Act.

Subsection (7A) allows the Department and the authorities administering HB to agree to exercise functions under section 109A on each other's behalf or to act together in exercising those functions.

Subsection (7B) precludes the Department or the authorities administering HB from deciding on the other's behalf to offer an administrative penalty.

Section 14: Colluding Employers

Section 14 introduces a new discretionary power, which provides for the payment of a financial penalty, as an alternative to prosecution in circumstances where the Department or the authorities administering HB have sufficient evidence to institute proceedings against an employer for either of the following kinds of offence:

- the first kind of offence is one committed in connection with an inquiry into the employment of one or more employees. It will involve the hindering of an investigation. In these circumstances the employer may be offered a penalty of £1,000 as an alternative to prosecution.
- the second kind of offence may involve particular claimants, and will relate to acts or omissions that help those claimants to commit offences. In these circumstances the employer may be offered a higher penalty, as an alternative to prosecution, of £1,000 multiplied by the number of employees involved in the fraud, up to a maximum sum of £5,000.

The penalty may be offered to those organisations or people who employ persons to work in any capacity: it will cover all cases in which a claimant works directly for another person, including cases where the claimant is self-employed. The penalty applies not only to the person (or company) who is the actual employer but also to individuals who are within the same organisation and who have a delegated responsibility to appoint staff.

The section includes a regulation-making power to prescribe the information to be included in the written notice which informs the employer that a penalty may be offered.

The employer will not be prosecuted for conduct for which the penalty has been offered where he has made an agreement to pay the penalty. The section includes provision for the employer to withdraw agreement to pay the penalty within 28 days from the date of

the agreement. Non-agreement or withdrawal of agreement may result in prosecution for the conduct for which the penalty was offered.

The measure provides that an unpaid penalty may be recovered as a civil debt, or by deduction from social security benefit where the employer is a claimant and in receipt of benefit.

Section 14(1) inserts a new section 109B into the Administration Act.

Subsection (1) provides for section 109B to apply where the Department or an authority administering HB considers that there are grounds for instituting proceedings against a person for an offence in respect of conduct of a type defined in subsection (2). The person is referred to in section 109B as “the responsible person”.

Subsection (2) defines the conduct for the purposes of subsection (1). This is either:

- conduct which constitutes an offence under the Administration Act in connection with an investigation into the employment of one or more employees, or
- conduct, which is such as to assist an employee to commit a benefit offence, whether an actual offence occurred or not.

Subsection (3) defines how the Department or an authority administering HB offers the invitation to pay a financial penalty and the information it must supply when it does so: the Department issues a written notice, which informs the ‘responsible person’ that he may be invited to agree to pay a penalty and that, if he does so in the specified manner, he will not be prosecuted for an offence for conduct described in subsection (2). This subsection also includes a regulation-making power to prescribe other information, which the Department must supply.

Subsection (4) provides that if the penalty is accepted it may under subsection (4)(a) be recovered as a civil debt and by deduction from benefit in circumstances where the recipient of the penalty notice is in receipt of a relevant social security benefit. Subsection (4)(b) provides that if the penalty is accepted no criminal proceedings for the specific conduct to which the penalty relates will be instituted. Section 69(10) of the Administration Act (which relates to benefit overpayments) will apply in relation to penalties recoverable under section 109B. This will enable the penalty to be recovered as if it were an amount payable under a court order.

Subsection (5) fixes the amount of the penalty. Subsection (5)(a) provides for a penalty of £1,000 for conduct which falls into subsection (2)(a) but not subsection (2)(b). For conduct falling within subsection (2)(b) subsection (5)(b) and (c) provide for a penalty of £1,000 multiplied by the number of employees involved in the fraud up to a maximum of £5,000.

Subsection (6) gives the ‘responsible person’ the right to withdraw agreement to pay a penalty, in a manner specified by the Department or the authority, within 28 days of having accepted it.

Subsection (7)(a) provides for the repayment of any amount of the penalty that has already been paid where the agreement to pay is withdrawn. In such circumstances *subsection (7)(b)* provides that the bar on prosecution will no longer apply.

Subsection (8) defines the different circumstances in which an individual is a ‘relevant employee’ in relation to conduct of the ‘responsible person’ and provides that an individual is a relevant employee where:

- the conduct described in *subsection (2)* occurred when the individual was an employee of the ‘responsible person’; or
- where the conduct described in *subsection (2)* occurred when the individual was an employee of a body corporate of which the ‘responsible person’ was a director; or
- the ‘responsible person’ engages in conduct described in *subsection (2)* whilst claiming to act on behalf of or in the interests of (because of his connection with) any person by whom the individual is employed.

Subsection (9) defines terms used in this section.

Section 14(2) makes provision for penalties under *section 109B* to be paid into the Consolidated Fund.

Section 15: Offence of failing to notify a change of circumstances

Before the Fraud Order the only specific offence for social security fraud was a summary offence of obtaining benefit by making a false statement or producing a false document. The Fraud Order created a new either way offence of dishonestly making a false statement or producing a false document with a view to obtaining benefit.

In addition, the Fraud Order introduced new offences aimed primarily at beneficiaries who receive payment of benefit by automated credit transfer (ACT). Those paid by girocheque or order book sign a statement whenever they obtain payment, to the effect that the circumstances remain unchanged. If it subsequently transpires that the circumstances have indeed changed without being notified to the Department or, as the case may be, authorities administering HB, the person could be charged under the false statement provisions of *section 105A* or *106* of the Administration Act. Those paid by ACT cannot be charged under these provisions because there is no false statement as such – payment is made directly into an individual’s bank account without any signature or other action being required on their part. A similar difficulty arose in cases where the period of fraudulent activity extended over many years. In such cases the evidence afforded by signatures on order book and girocheque counterfoils was commonly no longer available.

The Fraud Order sought to remedy this situation by adding offences of omission to the existing offences of commission. The new approach was to make it an offence under section 105A of the Administration Act to fail to notify a change of circumstances which regulations required the person to notify. The same form of wording was also used in defining the summary offence in section 106(1A). However, problems were identified with this approach. It proved an impossible task to draft regulations which set out the various changes in circumstances which would inevitably affect any individual's entitlement to any given benefit. The Act provides the opportunity to revisit the powers in order to secure the original policy intent.

The proposed changes restructure the provision so that the offences are defined in terms of changes that a person knows will affect entitlement to benefit, rather than to changes that regulations require him to report. As increasing numbers of beneficiaries opt to receive payment of social security benefits through ACT, the need for this change has become greater.

Section 15(1) omits paragraphs (c) and (d) from section 105A(1) and inserts new subsections (1A) to (1G).

Subsection (1A) defines the new offence of "dishonestly" failing to give prompt notification of a change of circumstances in relation to the claimant himself.

Subsection (1B) defines the offence in relation to a third party who dishonestly causes or allows another person to fail to give prompt notification of a change in circumstances. This would apply, for example, in the case of a woman whose part-time earnings increase in circumstances where her husband is claiming income support. If she knows that this particular change affects his entitlement to benefit and does not inform him, thereby causing him to fail to notify the change, she is guilty of an offence.

Subsections (1C) and (1D) provide that the offence of dishonestly failing to give a prompt notification of a change in the circumstances of the claimant extends to third parties who have a right to receive payments on behalf of the claimant. This would, for instance, apply in cases where the claimant is unable for the time being to act for himself and, in the absence of any person having been legally appointed to act for him, the Department appoints a person to exercise on behalf of the claimant, any right to which that person may be entitled and to receive and deal on his behalf with any sums payable to him. If the person so appointed dishonestly fails to notify a change in the claimant's circumstances, knowing that the change in question affects benefit, he is guilty of an offence.

Subsection (1E) provides that it is an offence if a third party, knowing that a particular change in circumstances affects the claimant's entitlement to benefit, dishonestly causes or allows a person with the right to receive payments on behalf of the claimant to fail to make a prompt notification of that change. This extends the third party offence of dishonestly causing or allowing a failure on the part of the claimant whose responsibility it is to notify a relevant change in circumstances. It means that the

offence applies equally if another person has been granted the right to receive payments on behalf of the claimant and is caused or allowed, by a third party, to fail to make a prompt notification of a change in the claimant's circumstances.

Subsection (1F) qualifies the extent to which subsections (1C) to (1E) can be applied to the landlord of a tenant entitled to housing benefit. It ensures that a landlord cannot be guilty of an offence under these provisions unless the change in circumstances that the landlord had failed to notify promptly are those which relate to the claimant's occupation of the dwelling or his liability to pay rent. The subsection further provides that the landlord must either know that the change in question is one that affects the claimant's benefit, or be one which he could reasonably be expected to know would do so.

Subsection (1G) provides that a notification is "prompt" if it is given as soon as reasonably practicable after the change occurs.

Section 15(2) makes changes to the summary offence in section 106, which mirror those made to section 105A.

Section 16: Repeals

Section 16 gives effect to the Schedule, which repeals certain existing legislation as a result of the measures in the Act.

Section 17: Commencement

Section 17 provides for the Act to be brought into operation on such day or days as may be appointed by order made by the Department.

Section 18: Short title and interpretation

Section 18 sets out the title of the Act and contains definitions of various expressions used in the Act.

DEFINITIONS

- * *the Administration Act* means the Social Security Administration (Northern Ireland) Act 1992 (c.8) which contains most of the rules and regulation making powers relating to the claiming, payment and administration of social security benefits. It is a consolidation of pre-1992 legislation and has been extensively amended since then.
- * *the Contributions and Benefits Act* means the Contributions and Benefits (Northern Ireland) Act 1992 (c.7), which contains most of the rules relating to social security benefits, with the exception of JSA. It is a consolidation of pre-1992 legislation and has been extensively amended since then.
- * *the Child Support, Pensions and Social Security Act* means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c.4 NI) which amongst other things provided for the reform of the Child Support system, introduced the State Second Pension and introduced measures to withdraw or reduce benefit entitlement where an offender has breached the terms of his community sentence.
- * *the Jobseekers Order* means the Jobseekers (Northern Ireland) Order 1995 (NI 15), which established JSA.
- * *the Fraud Order* means the Social Security Administration (Fraud) Order (Northern Ireland) 1997. It amended the Social Security Administration (Northern Ireland) Act 1992.
- * *the Department* means the Department for Social Development.
- * *authorities administering HB* means the Housing Executive or the RCA.
- * *confirmatory procedure* means the procedure under which regulations and orders are laid before the Assembly after making but must be confirmed by a resolution of the Assembly within 6 months of their operative date, otherwise they cease to have effect.
- * *DFP* means the Department of Finance and Personnel.
- * *HB* means housing benefit, an income-related social security benefit administered by the Housing Executive and the Department of Finance and Personnel (the RCA), to assist people with housing costs.
- * *Housing Executive* means the Northern Ireland Housing Executive.
- * *IS* means income support, an income-related benefit introduced in 1988 as successor to supplementary benefit, to support people not in remunerative work, whose net income is less than a minimum level. Rates are determined by age, family membership and other circumstances.
- * *joint-claim couple* means a married or unmarried couple who are not members of a family which includes a person in respect of whom a member of the couple is entitled to Child Benefit.

- * *JSA* means jobseeker's allowance, a benefit introduced in 1996 to replace contributory Unemployment Benefit and IS for all those needing financial support due to unemployment.
- * *RCA* means the Rate Collection Agency.