

*These notes refer to the Welfare Reform Act (Northern Ireland)
2007 (c.2) which received Royal Assent on 27 June 2007*

Welfare Reform Act (Northern Ireland) 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 3: Social security administration: General

Sharing of social security information

Section 38: Social security information

Section 38 inserts a new section 5B into the Administration Act to provide for the use by a “relevant authority” of social security information in connection with the administration and promotion of claims for benefit and amends section 5A of that Act which deals with the receipt by relevant authorities of claims for benefit and the collection and verification of evidence relating to claims. These measures support joint working arrangements and are intended to improve the take-up and delivery of benefits and other services administered by the Department and relevant authorities.

Currently section 5A of the Administration Act allows regulations to be made which enable the Department and relevant authorities administering housing benefit to perform certain functions on behalf of one another. It enables claims for prescribed benefits administered by the Department to be made to a relevant authority, and claims for housing benefit to be made to the Department. It also allows the Department and relevant authorities to collect and forward information and evidence for each other’s respective benefits as prescribed. Current powers do not expressly permit relevant authorities to verify claims-related evidence and information on behalf of other relevant authorities.

Specific provisions in the Contributions and Benefits Act impose a duty on authorities administering housing benefit to promote the take up of housing benefit. *Section 38*, through the inclusion of a new section 5B in the Administration Act, enables relevant authorities to promote the take up of benefits administered by the Department. For example, the new section will enable a relevant authority to use information obtained on a claim for housing benefit to pre-populate a claim form for pension credit (which is administered by the Department). This partly completed form could then be submitted to the claimant to encourage him to apply for pension credit.

New section 5B(1) enables a relevant authority to use for a relevant purpose, any social security information which it holds. Subsection (3) clarifies that a relevant purpose is activity intended to encourage a claim which is made or could be made for a specified benefit. This power broadens the boundaries governing authorities' use of the information that it holds. The Department has existing powers under section 3 of the Social Security Act 1998 to use information that it holds for one of its functions for another of its functions.

New section 5B(2) allows regulations to specify the procedure to be followed by a relevant authority where it receives information and evidence that has already been used or verified and forwarded by another relevant authority. The purpose of this provision is to reduce claims processing times and the incidences of duplicate requests for information. Regulations under section 5B could ensure that information and evidence that has already been used by the Department, for example, must, subject to certain safeguards, be accepted as correct by the receiving authority for purposes connected with another benefit claim. Without this provision, receiving authorities could opt to continue as before by requesting and verifying the evidence from scratch, thereby duplicating information requests.

Section 5B defines the term "social security information" as covering information relating to social security (including child support and war pensions data), and also evidence obtained in connection with any claims or awards relating to these areas and clarifies that a "specified benefit" (in respect of which this section applies) is to be prescribed in regulations, to provide maximum flexibility in developing these provisions.

Section 39: Information relating to certain benefits

Since April 2003, support services, which assist vulnerable persons to live independently, have been managed by the Housing Executive under the Supporting People programme. Those in receipt of certain income-related benefits automatically qualify under the Supporting People means-test to receive assistance with charges for these services. The Act will enable the Department to confirm to the Housing Executive Supporting People team whether a person is in receipt of one of these benefits, without the Supporting People team having first to obtain that person's consent. It would also enable the Supporting People team to provide certain information to assist with the administration of housing benefit, for example to help identify where it would be appropriate to make payments of housing benefit to the landlord rather than to a claimant. These information exchanges would only be permissible for limited purposes. If a person is a certain person within the Supporting People team or a Supporting People service provider, he would commit a criminal offence if he discloses, without lawful authority, information supplied to him by virtue of one of these powers.

The Supporting People team administers grants paid by the Housing Executive to provide welfare services. These services provide support to assist vulnerable groups in society, including the elderly, people suffering from substance abuse

and people with mental health or learning difficulties, to live in the community. Article 4 of the HSS Order provides a power by which these grants can be paid.

Article 6 of that Order allows information relating to income support and income-based jobseeker's allowance administered by the Department to be supplied to the Supporting People team for purposes connected with applying a grant made under Article 4 towards housing support services. Article 7 of that Order creates an offence concerning disclosure without, lawful authority, of information which was supplied by virtue of Article 6.

Article 6 of the HSS Order enables the supply of information by the Department to the Supporting People team of the Housing Executive. There is presently no power for information to be supplied by the Supporting People team to the Department. *Subsection (1)* would enable a two-way supply of information between the Department and the Supporting People team. Specifically, the subsection would enable the Supporting People team to contact the Department when it receives an application for support services. In common with what presently occurs, this subsection would enable the Department to confirm whether a certain income-related benefit (including the new income-related employment and support allowance) is in payment. This information would be used by the Supporting People team to determine whether the claimant meets the means test in determining the amount of assistance with service charges for the support services. Similarly, the subsection would enable the Department to inform the Supporting People team when payment of a certain income-related benefit (and hence automatic entitlement to full support) ceased.

As grants to support welfare services could in future be made under powers in addition to Article 4 of the HSS Order, to support any shift in funding arrangements, *subsection (1)* creates a freestanding provision that would enable the supply of information concerning grant paid under a relevant statutory provision specified by order under *subsection (7)*.

Subsection (2) will enable certain information held for prescribed purposes by the Supporting People team or by housing benefit teams to be supplied to the other teams for prescribed purposes. The prescribed purposes are limited either to a purpose relating to housing benefit or to a purpose relating to welfare services (*subsection (8)*). This provision would be used, for example, to enable housing benefit teams to consider information relating to the vulnerability of a claimant or the probity of a landlord when considering whether to pay housing benefit to the claimant or to the landlord. For example, in considering whether a payment of housing benefit should be made to the claimant or to the landlord knowing whether the claimant is receiving Supporting People assistance because of a disability and, if so, whether that disability may indicate a level of vulnerability, would contribute to the decision-making process.

Certain information supplied to the Supporting People team could be passed to the welfare service providers when required under *subsection (5)*. This mirrors the provision currently in Article 6(3) of the HSS Order.

The information sharing powers provided for within *this section* and the offence of unlawful disclosure in *section 40* replace those contained in Articles 6 and 7 of the HSS Order, which are omitted.

Section 40: Unlawful disclosure of certain information

Article 7 of the HSS Order makes it an offence for a person to disclose without lawful authority information supplied by virtue of Article 6 of that Order. *Section 40* will create a similar unlawful disclosure provision in relation to information received by virtue of *section 39*.

Subsection (2) sets out that the Supporting People team and those providing welfare services are included within the provision of this section. Relevant persons in the Department are not covered by this provision as there is an existing unlawful disclosure provision which applies to them (section 117 of the Administration Act).

This section complements section 117 of the Administration Act and *subsections (3) to (5)* of this section follow the wording of that section.

Overpayment recovery

Section 41: Recovery of overpaid benefit

A Social Security Commissioner in Great Britain decided that benefit overpayments caused by errors made in the direct credit transfer system can be recovered only where a decision to revise the award and a decision that the overpayment is recoverable are made at the same time.

Section 41 amends section 69 of the Administration Act to ensure that overpayments of benefit are recoverable where a decision to revise the award and a decision that the overpayment is recoverable are made separately.

Benefit fraud

Sections 42 and 43: Housing Executive powers to investigate and prosecute benefit fraud

At present, section 104A of the Administration Act allows the Housing Executive to investigate fraud against housing benefit. However, significant doubt has arisen as to whether this allows it to investigate fraud in connection with benefits administered by the Department. In particular, the doubt exists where benefit entitlement means that a claimant automatically satisfies some eligibility conditions to housing benefit. This reduces the scope for effective joint working between the Housing Executive and the Department to investigate and prosecute fraud cases that involve more than one benefit.

Most cases of benefit fraud will continue to be investigated by the Department. However, the Act provides the Housing Executive with clear powers to

investigate and prosecute offences in relation to benefits, where they already have power to investigate and prosecute offences concerning housing benefit.

Section 42 sets out the scope of the new provisions which give the Housing Executive a wider power to investigate benefit fraud and extends its powers permitting it to obtain information from persons such as employers, pension providers, financial service companies, utilities and educational organisations.

This brings the investigative powers of the Housing Executive generally into line with those available to the Department and allows the Housing Executive to obtain information relating to other social security benefits in addition to housing benefit. However, the Housing Executive will not be able to obtain information about the circumstances of accidents or injuries giving rise to claims for benefit, because such a power would be unnecessary for the investigation of benefit fraud. The measures will not add to the list of persons who may be required to provide information.

Subsection (3) gives the Department power to prescribe in regulations that certain conditions must be satisfied in order for the Housing Executive to make use of these powers. These “prescribed conditions” enable the Department to limit the powers in a way that ensures that only certain benefit offences may be investigated and to provide safeguards against misuse.

Section 43 creates a new power for the Housing Executive to prosecute offences concerning “relevant social security benefits” as defined in section 115CA of the Administration Act, by inserting a new section 110A into that Act.

Subsection (3) of new section 110A gives the Department power to prescribe in regulations that certain conditions must be satisfied before the Housing Executive can prosecute offences against the additional benefits. These conditions allow safeguards to be put in place to ensure that the Housing Executive’s powers are not misused and permit the Department to prevent the prosecution in certain cases on an individual basis.

Section 44: Housing Executive functions relating to benefit: information

Section 44 provides for a number of changes to the information sharing provisions contained in the Administration Act by giving the Housing Executive access to information relating to benefit offences as well as allowing the Department to obtain information from the Housing Executive relating to those offences. These changes are of a consequential nature, in that they are necessary to allow the new investigation and prosecution powers to function effectively.

Currently, section 116C of the Administration Act permits the Department to disclose information to the Housing Executive for purposes relating to the administration of, and offences against, housing benefit. Restricted in such a way, the Housing Executive will not have access to information and evidence held by the Department relating to benefit offences. *Subsection (1)* amends section 116C so as to allow the Department to disclose to the Housing Executive information relating to benefit fraud investigations and prosecutions. This

extension applies to the investigation and prosecution of benefit offences only, and does not extend its power to supply information to the Housing Executive for administrative purposes more generally. This information may include details about the award and payment of benefits as well as copies of claim forms and other signed declarations.

Section 116D of the Administration Act allows the Department to require the Housing Executive to provide it with certain information relating to social security. *Subsection (2)* amends section 116D so as to permit the Department to require the Housing Executive to provide information it had obtained during the investigation or prosecution of a benefit offence.

Subsection (3) makes a consequential amendment to section 119A(8) of the Administration Act so that it reflects the provisions of section 116D as amended by *subsection (2)*.

Section 45: Loss of benefit for commission of benefit offences

Section 45(1) amends section 6 of the Social Security Fraud Act (Northern Ireland) 2001, which enables benefit entitlement to be removed or reduced where a person is convicted of benefit fraud twice and the second offence was committed within three years of the date of conviction for the first offence. This amendment will extend the period between the date of conviction in the earlier proceedings and the date of commission of the offence in the later proceedings from three to five years. This will have the effect that a person's benefit may be withdrawn or reduced if he commits a benefit offence, of which he is later convicted, within five years of a conviction for a previous benefit offence.

Subsection (2) provides that this amendment should be disregarded when considering whether an offence committed before the date that this section comes into operation was committed within the relevant period. Where an offence was committed before the date this section comes into operation the relevant period will remain three years.