STATUTORY INSTRUMENTS

2015 No. 2006

The Welfare Reform (Northern Ireland) Order 2015

PART 6

Social security: general

Benefit cap

Benefit cap

101.—(1) Regulations may provide for a benefit cap to be applied to the welfare benefits to which a single person or couple is entitled.

(2) For the purposes of this Article, applying a benefit cap to welfare benefits means securing that, where a single person's or couple's total entitlement to welfare benefits in respect of the reference period exceeds the relevant amount, their entitlement to welfare benefits in respect of any period of the same duration as the reference period is reduced by an amount up to or equalling the excess.

(3) In paragraph (2) the "reference period" means a period of a prescribed duration.

(4) Regulations under this Article may in particular—

(a) make provision as to the manner in which total entitlement to welfare benefits for any period, or the amount of any reduction, is to be determined;

(b) make provision as to the welfare benefit or benefits from which a reduction is to be made;

(c) provide for exceptions to the application of the benefit cap;

(d) make provision as to the intervals at which the benefit cap is to be applied;

(e) make provision as to the relationship between application of the benefit cap and any other reduction in respect of a welfare benefit;

(f) provide that where in consequence of a change in the relevant amount, entitlement to a welfare benefit increases or decreases, that increase or decrease has effect without any further decision of the Department;

(g) make supplementary and consequential provision.

(5) In this Article the "relevant amount" is an amount specified in regulations.

(6) The amount specified under paragraph (5) is to be determined by reference to estimated average earnings.

(7) In this Article—

"couple" means two persons of a prescribed description;

"estimated average earnings" has the same meaning as in section 96 of the Welfare Reform Act 2012;

"single person" means a person who is not a member of a couple;

"welfare benefit" means any prescribed benefit, allowance, payment or credit.

(8) Regulations under paragraph (7) may not prescribe as welfare benefits—

(a) state pension under Part 1 of the Pensions Act (Northern Ireland) 2015,

(b) state pension credit under the State Pension Credit Act (Northern Ireland) 2002, or

(c) retirement pensions under Part 2 or 3 of the Contributions and Benefits Act.

Commencement Information

I1 Art. 101 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(a)**

Benefit cap: supplementary and consequential

102.—(1) Regulations under Article 101 are subject to negative resolution.

(2) In Schedule 2 to the Social Security (Northern Ireland) Order 1998 (decisions against which no appeal lies) after paragraph 8 insert—

"Reduction on application of benefit cap

8A. A decision to apply the benefit cap in accordance with regulations under Article 101 of the Welfare Reform (Northern Ireland) Order 2015."

(3) In Schedule 12 to the Pensions Act (Northern Ireland) 2015 (state pension: amendments), omit paragraph 44.

Commencement Information

I2 Art. 102 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(a)**

VALID FROM 02/05/2016

Claims and awards

Claims and awards

103.—(1) Section 5(1) of the Administration Act (regulations about claims and payments) is amended as follows.

(2) In paragraph (d) (conditional awards), for the words from "the condition" to the end substitute—

"(i) the condition that the requirements for entitlement are satisfied at a prescribed time after the making of the award, or

(ii) other prescribed conditions;".

(3) In paragraph (e), for "those requirements" substitute " the conditions referred to in paragraph (d) ".

(4) In paragraph (g) (claims made on behalf of another), after "applies" insert " (including in particular, in the case of a benefit to be claimed by persons jointly, enabling one person to claim for such persons jointly) ".

(5) In paragraph (k) (notice of change of circumstances etc.), at the end insert " or of any other change of circumstance of a prescribed description ".

Powers to require information relating to claims and awards

104.—(1) Section 5 of the Administration Act (regulations about claims and payments) is amended as follows.

(2) In subsection (1), paragraphs (h) and (hh) (powers to make provision requiring the furnishing of information or evidence) are repealed.

(3) After that subsection insert—

"(1A) Regulations may make provision for requiring a person of a prescribed description to supply any information or evidence which is, or could be, relevant to—

(a) a claim or award relating to a benefit to which this section applies, or

(b) potential claims or awards relating to such a benefit."

(4) Subsection (2A) is repealed.

(5) In Article 22 of the Social Security (Northern Ireland) Order 1998 (suspension for failure to furnish information, etc), in paragraph (3), for "subsection (1)(hh) of section 5" substitute " section 5(1A) ".

VALID FROM 02/05/2016

Payments

Payments to joint claimants

105. In section 5 of the Administration Act (regulations about claims and payments), after subsection (2A) insert—

"(2B) The power in subsection (1)(j) to make provision for the person to whom a benefit is to be paid includes, in the case of a benefit awarded to persons jointly, power to make provision for the Department to determine to which of them all or any part of a payment should be made, and in particular for the Department—

(a) to determine that payment should be made to whichever of those persons they themselves nominate, or

(b) to determine that payment should be made to one of them irrespective of any nomination by them."

Payments on account

106.—(1) In section 5(1) of the Administration Act (regulations about claims and payments), for paragraph (s) substitute—

"(s) for the making of a payment on account of such a benefit—

(i) in cases where it is impracticable for a claim to be made or determined immediately, or for an award to be determined or paid in full immediately,

(ii) in cases of need, or

(iii) in cases where the Department considers in accordance with prescribed criteria that the payment can reasonably be expected to be recovered;".

(2) Section 18 of the Welfare Reform Act (Northern Ireland) 2010 (payments on account), which has not been brought into operation, is repealed.

VALID FROM 17/03/2016

Appeals

Power to require consideration of revision before appeal

107.—(1) The Social Security (Northern Ireland) Order 1998 is amended as follows.

(2) In Article 13 (appeal to appeal tribunal), in paragraph (2)—

(a) the words from "in relation to" to the end become sub-paragraph (a), and

(b) after that sub-paragraph insert—

", or

(b) where regulations under paragraph (3A) so provide."

(3) After paragraph (3) of that Article insert—

"(3A) Regulations may provide that, in such cases or circumstances as may be prescribed, there is a right of appeal under paragraph (2) in relation to a decision only if the Department has considered whether to revise the decision under Article 10.

(3B) The regulations may in particular provide that that condition is met only where—

(a) the consideration by the Department was on an application,

(b) the Department considered issues of a specified description, or

(c) the consideration by the Department satisfied any other condition specified in the regulations.

(3C) The references in paragraphs (3A) and (3B) to regulations and to the Department are subject to any statutory provision under or by virtue of which the functions under this Chapter are transferred to or otherwise made exercisable by a person other than the Department."

(4) After paragraph (5) of that Article insert—

"(5A) Regulations may provide that, where in accordance with regulations under paragraph (3A) there is no right of appeal against a decision, any purported appeal may be treated as an application for revision under Article 10."

(5) In Article 75(2)(a) (confirmatory procedure for certain regulations) after "13(2)" insert " or (3A) ".

(6) Schedule 11 contains similar amendments to other legislation.

(7) Paragraph (8) applies where regulations under a provision mentioned in paragraph (9) are made so as to have effect in relation to a limited area (by virtue of provision made under Article 2(3)).

(8) Any power to make, in connection with those regulations, provision as respects decisions and appeals may be exercised so that that provision applies only in relation to the area mentioned in paragraph (7).

(9) The provisions referred to in paragraph (7) are—

(a) Article 13(3A) of the Social Security (Northern Ireland) Order 1998;

(b) paragraph (2A) of Article 22 of the Child Support (Northern Ireland) Order 1991 (as substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000);

(c) paragraph (3A) of Article 22 of the Child Support (Northern Ireland) Order 1991 (as it has effect apart from section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000);

(d) Article 13(2A) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;

(e) paragraph 6(5A) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000;

(f) section 5(1A) of the Mesothelioma, etc., Act (Northern Ireland) 2008.

VALID FROM 02/05/2016

Electronic communications

Electronic communications

108.—(1) In section 165 of the Administration Act (regulations and orders - general), after subsection (5) insert—

"(5A) The provision referred to in subsection (5) includes, in a case where regulations under this Act require or authorise the use of electronic communications, provision referred to in sections 1(4) and (5) and 2(5) of the Electronic Communications Act (Northern Ireland) 2001.

(5B) For the purposes of subsection (5A), references in sections 1(4) and (5) and 2(5) of the Electronic Communications Act (Northern Ireland) 2001 to an order under section 1 of that Act are to be read as references to regulations under this Act; and references to anything authorised by such an order are to be read as references to anything required or authorised by such regulations."

(2) In Article 74 of the Social Security (Northern Ireland) Order 1998 (regulations and orders), after paragraph (5) insert—

"(5A) The provision referred to in paragraph (5) includes, in a case where regulations under this Order require or authorise the use of electronic communications, provision referred to in sections 1(4) and (5) and 2(5) of the Electronic Communications Act (Northern Ireland) 2001.

(5B) For the purposes of paragraph (5A), references in sections 1(4) and (5) and 2(5) of the Electronic Communications Act (Northern Ireland) 2001 to an order under section 2 of that Act are to be read as references to regulations under this Order; and references to anything authorised by such an order are to be read as references to anything required or authorised by such regulations."

Recovery of benefits

VALID FROM 04/04/2016

Recovery of benefit payments

109.—(1) In the Administration Act, after section 69ZA insert—

"Recovery of benefit payments

69ZB Recovery of overpayments of certain benefits

(1) The Department may recover any amount of the following paid in excess of entitlement—

(a) universal credit,

(b) jobseeker's allowance,

(c) employment and support allowance, and

(d) except in prescribed circumstances, housing credit (within the meaning of the State Pension Credit Act (Northern Ireland) 2002).

(2) An amount recoverable under this section is recoverable from—

(a) the person to whom it was paid, or

(b) such other person (in addition to or instead of the person to whom it was paid) as may be prescribed.

(3) An amount paid in pursuance of a determination is not recoverable under this section unless the determination has been—

(a) reversed or varied on an appeal, or

(b) revised or superseded under Article 10 or Article 11 of the Social Security (Northern Ireland) Order 1998,

except where regulations otherwise provide.

(4) Regulations may provide that amounts recoverable under this section are to be calculated or estimated in a prescribed manner.

(5) Where an amount of universal credit is paid for the sole reason that a payment by way of prescribed income is made after the date which is the prescribed date for payment of that income, that amount is for the purposes of this section paid in excess of entitlement.

(6) In the case of a benefit referred to in subsection (1) which is awarded to persons jointly, an amount paid to one of those persons may for the purposes of this section be regarded as paid to the other.

(7) An amount recoverable under this section may (without prejudice to any other means of recovery) be recovered—

(a) by deduction from benefit (section 69ZC);

(b) by deduction from earnings (section 69ZD);

(c) through the courts etc (section 69ZE);

(d) by adjustment of benefit (section 69ZF).

69ZC Deduction from benefit

(1) An amount recoverable from a person under section 69ZB may be recovered by deducting the amount from payments of prescribed benefit.

(2) Where an amount recoverable from a person under section 69ZB was paid to the person on behalf of another, subsection (1) authorises its recovery from the person by deduction—

(a) from prescribed benefits to which the person is entitled,

(b) from prescribed benefits paid to the person to discharge (in whole or in part) an obligation owed to that person by the person on whose behalf the recoverable amount was paid, or

(c) from prescribed benefits paid to the person to discharge (in whole or in part) an obligation owed to that person by any other person.

(3) Where an amount is recovered as mentioned in paragraph (b) of subsection (2), the obligation specified in that paragraph shall in prescribed circumstances be taken to be discharged by the amount of the deduction.

(4) Where an amount is recovered as mentioned in paragraph (c) of subsection (2), the obligation specified in that paragraph shall in all cases be taken to be so discharged.

69ZD Deduction from earnings

(1) Regulations may provide for amounts recoverable under section 69ZB to be recovered by deductions from earnings.

(2) In this section "earnings" has such meaning as may be prescribed.

(3) Regulations under subsection (1) may include provision—

(a) requiring the person from whom an amount is recoverable ("the beneficiary") to disclose details of their employer, and any change of employer, to the Department;

(b) requiring the employer, on being served with a notice by the Department, to make deductions from the earnings of the beneficiary and to pay corresponding amounts to the Department;

(c) as to the matters to be contained in such a notice and the period for which a notice is to have effect;

(d) as to how payment is to be made to the Department;

(e) as to a level of earnings below which earnings must not be reduced;

(f) allowing the employer, where the employer makes deductions, to deduct a prescribed sum from the beneficiary's earnings in respect of the employer's administrative costs;

(g) requiring the employer to keep records of deductions;

(h) requiring the employer to notify the Department if the beneficiary is not, or ceases to be, employed by the employer;

(i) creating a criminal offence for non-compliance with the regulations, punishable on summary conviction by a fine not exceeding level 3 on the standard scale;

(j) with respect to the priority as between a requirement to deduct from earnings under this section and—

(i) any other such requirement;

(ii) an order under any other statutory provision which requires deduction from the beneficiary's earnings.

69ZE Court action etc.

(1) An amount recoverable under section 69ZB is, if the county court so orders, recoverable as if it were payable under an order of that court.

(2) Any costs of the Department in recovering an amount of benefit under this section may be recovered by it as if they were amounts recoverable under section 69ZB.

69ZF Adjustment of benefit

69ZF. Regulations may for the purpose of the recovery of amounts recoverable under section 69ZB make provision—

(a) for treating any amount paid to a person under an award which it is subsequently determined was not payable—

(i) as properly paid, or

(ii) as paid on account of a payment which it is determined should be or should have been made,

and for reducing or withholding arrears payable by virtue of the subsequent determination;

(b) for treating any amount paid to one person in respect of another as properly paid for any period for which it is not payable in cases where in consequence of a subsequent determination—

(i) the other person is entitled to a payment for that period, or

(ii) a third person is entitled in priority to the payee to a payment for that period in respect of the other person,

and by reducing or withholding any arrears payable for that period by virtue of the subsequent determination.

69ZG Recovery of payments on account

(1) The Department may recover any amount paid under section 5(1)(s) (payments on account).

(2) An amount recoverable under this section is recoverable from—

(a) the person to whom it was paid, or

(b) such other person (in addition to or instead of the person to whom it was paid) as may be prescribed.

(3) Regulations may provide that amounts recoverable under this section are to be calculated or estimated in a prescribed manner.

(4) In the case of a payment on account of a benefit which is awarded to persons jointly, an amount paid to one of those persons may for the purposes of this section be regarded as paid to the other.

(5) Sections 69ZC, 69ZD and 69ZE apply in relation to amounts recoverable under this section as to amounts recoverable under section 69ZB.

69ZH Recovery of hardship payments etc.

(1) The Department may recover any amount paid by way of—

(a) payment under Article 33 of the Welfare Reform (Northern Ireland) Order 2015 (universal credit hardship payments) which is recoverable under that Article,

(b) a payment under Article 21C of the Jobseekers Order (jobseeker's allowance hardship payments) which is recoverable under that Article,

(c) a payment of a jobseeker's allowance under paragraph 8 or 8A of Schedule 1 to that Order (exemptions), where the allowance is payable at a prescribed rate under paragraph 9 of that Schedule and is recoverable under that paragraph,

(d) a payment of a jobseeker's allowance under paragraph 10 of that Schedule (claims yet to be determined etc.) which is recoverable under that paragraph, or

(e) a payment which is recoverable under section 5B(5A)(d) or (7)(d), 6(2A)(d) or (4)(d), 7(3)(aa) or (4)(d) or 8(2A)(d) or (4)(d) of the Social Security Fraud Act (Northern Ireland) 2001.

(2) An amount recoverable under this section is recoverable from—

(a) the person to whom it was paid, or

(b) such other person (in addition to or instead of the person to whom it was paid) as may be prescribed.

(3) Regulations may provide that amounts recoverable under this section are to be calculated or estimated in a prescribed manner.

(4) Where universal credit or a jobseeker's allowance is claimed by persons jointly, an amount paid to one claimant may for the purposes of this section be regarded as paid to the other.

(5) Sections 69ZC to 69ZF apply in relation to amounts recoverable under this section as to amounts recoverable under section 69ZB.”

(2) In section 69 of that Act (overpayments - general), in subsection (11)(ab), at the end insert “ excluding housing credit (see section 69ZB) ”.

(3) In section 109A of that Act (penalty as alternative to prosecution), in subsection (1), after “69” insert “ , 69ZB ”.

(4) In section 109B of that Act (penalty as alternative to prosecution: colluding employers, etc)—

(a) for subsection (4) substitute—

“(4) If the recipient of a notice under subsection (3) agrees, in the specified manner, to pay the penalty—

(a) the amount of the penalty shall be recoverable from the recipient by the Department or the Housing Executive; and

(b) no criminal proceedings shall be instituted against the recipient in respect of the conduct to which the notice relates.

(4A) Sections 69ZC, 69ZD and 69ZE apply in relation to amounts recoverable under subsection (4)(a) as to amounts recoverable by the Department under section 69ZB (and, where the notice is given by the Housing Executive, those sections so apply as if references to the Department were to the Housing Executive).”;

(b) in subsection (9), the definition of “relevant benefit” is repealed.

(5) In Schedule 1 to the Jobseekers Order (supplementary provision)—

(a) in paragraph 9, at the end insert—

“(c) as to whether the whole or part of any amount of a jobseeker's allowance which is payable as specified in paragraph (a) is recoverable.”;

(b) in paragraph 10, for sub-paragraph (5)(a) substitute—

"(a) as to whether the whole or part of any amount paid by virtue of sub-paragraph (1) or (2) is recoverable;".

(6) In Article 13 of the Social Security (Northern Ireland) Order 1998 (appeal to appeal tribunal), in paragraph (4), after "69" insert " , 69ZB, 69ZG, 69ZH ".

(7) In Schedule 3 to that Order (decisions against which an appeal lies), after paragraph 6 insert—

"**6A.** A decision as to whether payment of housing credit (within the meaning of the State Pension Credit Act (Northern Ireland) 2002) is recoverable under section 69ZB of the Administration Act.

6B. A decision as to the amount of payment recoverable under section 69ZB, 69ZG or 69ZH of the Administration Act."

VALID FROM 02/05/2016

Deduction from earnings: other cases

110.—(1) In section 69 of the Administration Act (overpayments - general), after subsection (9) insert—

"(9A) Regulations may provide for amounts recoverable under the provisions mentioned in subsection (8) to be recovered by deductions from earnings.

(9B) In subsection (9A) "earnings" has such meaning as may be prescribed.

(9C) Regulations under subsection (9A) may include provision—

(a) requiring the person from whom an amount is recoverable ("the beneficiary") to disclose details of their employer, and any change of employer, to the Department;

(b) requiring the employer, on being served with a notice by the Department, to make deductions from the earnings of the beneficiary and to pay corresponding amounts to the Department;

(c) as to the matters to be contained in such a notice and the period for which a notice is to have effect;

(d) as to how payment is to be made to the Department;

(e) as to a level of earnings below which earnings must not be reduced;

(f) allowing the employer, where the employer makes deductions, to deduct a prescribed sum from the beneficiary's earnings in respect of the employer's administrative costs;

(g) requiring the employer to keep records of deductions;

(h) requiring the employer to notify the Department if the beneficiary is not, or ceases to be, employed by the employer;

(i) creating a criminal offence for non-compliance with the regulations, punishable on summary conviction by a fine not exceeding level 3 on the standard scale;

(j) with respect to the priority as between a requirement to deduct from earnings under this section and—

(i) any other such requirement;

(ii) an order under any other statutory provision which requires deduction from the beneficiary's earnings."

(2) In section 69ZA of that Act (overpayments out of the social fund), before subsection (3) insert—

"(2A) Subsection (9A) of section 69 as it so applies shall have effect as if the reference to amounts recoverable under the provisions mentioned in subsection (8) of that section were to amounts recoverable under subsections (1) and (4) of that section by virtue of subsection (1) above."

(3) In section 73 of that Act (overpayments of housing benefit), at the end insert—

"(8) Regulations may provide for amounts recoverable under this section to be recovered by deductions from earnings.

(9) In subsection (8) "earnings" has such meaning as may be prescribed.

(10) Regulations under subsection (8) may include provision—

(a) requiring the person from whom an amount is recoverable ("the beneficiary") to disclose details of their employer, and any change of employer, to the Department, the Department of Finance and Personnel or the Housing Executive;

(b) requiring the employer, on being served with a notice by the Department, the Department of Finance and Personnel or the Housing Executive, to make deductions from the earnings of the beneficiary and to pay corresponding amounts to the Department, the Department of Finance and Personnel or the Housing Executive;

(c) as to the matters to be contained in such a notice and the period for which a notice is to have effect;

(d) as to how payment is to be made to the Department, the Department of Finance and Personnel or the Housing Executive;

(e) as to a level of earnings below which earnings must not be reduced;

(f) allowing the employer, where the employer makes deductions, to deduct a prescribed sum from the beneficiary's earnings in respect of the employer's administrative costs;

(g) requiring the employer to keep records of deductions;

(h) requiring the employer to notify the Department, the Department of Finance and Personnel or the Housing Executive if the beneficiary is not, or ceases to be, employed by the employer;

(i) creating a criminal offence for non-compliance with the regulations, punishable on summary conviction by a fine not exceeding level 3 on the standard scale;

(j) with respect to the priority as between a requirement to deduct from earnings under this section and—

(i) any other such requirement;

(ii) an order under any other statutory provision which requires deduction from the beneficiary's earnings."

(4) In section 74 of that Act (recovery of social fund awards), after subsection (3A) insert—

"(3B) Regulations may provide for amounts recoverable under subsection (1) from a person specified in subsection (3) to be recovered by deductions from earnings.

(3C) In subsection (3B) "earnings" has such meaning as may be prescribed.

(3D) Regulations under subsection (3B) may include provision referred to in section 69(9C)."

Application of the Limitation (Northern Ireland) Order 1989

111.—(1) Article 2 of the Limitation (Northern Ireland) Order 1989 (interpretation) is amended as follows.

(2) In paragraph (2), in the definition of "action", at the end insert " (and see paragraph (11)) ".

(3) At the end insert—

"(11) References in this Order to an action do not include any method of recovery of a sum recoverable under—

(a) Part 3 of the Social Security Administration (Northern Ireland) Act 1992,

(b) section 126(c) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, or

(c) Part 1 of the Tax Credits Act 2002, other than a proceeding in a court of law."

(4) The amendments made by this Article have effect as if they had come into operation at the same time as Article 2 of the Limitation (Northern Ireland) Order 1989, except for the purposes of proceedings brought before the coming into operation of this Article.

Commencement Information

I3 Art. 111 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(b)**

Investigation and prosecution of offences

Powers to require information relating to investigations

112. In section 103B of the Administration Act (power to require information), in subsection (2)—

(a) after paragraph (i) (but before the final "and") insert—

"(ia) a person of a prescribed description;";

(b) in paragraph (j), for "(i)" substitute " (ia) ".

Commencement Information

I4 Art. 112 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(c)**

Time limits for legal proceedings

113. In section 110 of the Administration Act (legal proceedings), in subsection (2)—

(a) in paragraph (a), for "other than an offence relating to housing benefit" substitute " (other than proceedings to which paragraph (b) applies) ";

(b) in paragraph (b), after "proceedings" insert " brought by the Department of Finance and Personnel or the Housing Executive ".

Commencement Information

I5 Art. 113 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(d)**

PROSPECTIVE

Prosecution powers of the Housing Executive

114.—(1) The Administration Act is amended as follows.

(2) After section 110 insert—

"**110ZA Housing Executive powers to prosecute housing benefit fraud**

(1) The Housing Executive may not bring proceedings against a person for a benefit offence relating to housing benefit unless—

(a) the Housing Executive has already started an investigation in relation to that person in respect of the offence,

(b) the proceedings arise in prescribed circumstances or are of a prescribed description, or

(c) the Department has directed that the Housing Executive may bring the proceedings.

(2) The Department may direct that in prescribed circumstances the Housing Executive may not bring proceedings by virtue of subsection (1)(a) despite the requirements in that provision being met.

(3) A direction under subsection (1)(c) or (2) may relate to particular proceedings or any description of proceedings.

(4) If the Department prescribes conditions for the purposes of this section, the Housing Executive may bring proceedings in accordance with this section only if any such condition is satisfied.

(5) The Department may continue proceedings which have been brought by the Housing Executive in accordance with this section as if the proceedings had been brought in the Department's name or it may discontinue the proceedings if—

(a) the proceedings were brought by virtue of subsection (1)(a),

(b) the Department makes provision under subsection (1)(b) which has the effect that the Housing Executive would no longer be entitled to bring the proceedings in accordance with this section,

(c) the Department withdraws a direction under subsection (1)(c) in relation to the proceedings, or

(d) a condition prescribed under subsection (4) ceases to be satisfied in relation to the proceedings.

(6) In exercising a power to bring proceedings in accordance with this section, the Housing Executive must have regard to the code of practice for prosecutors published by the Director of Public Prosecutions for Northern Ireland under section 37 of the Justice (Northern Ireland) Act 2002—

(a) in determining whether the proceedings should be instituted;

(b) in determining what charges should be preferred;

(c) in considering what representations to make to a magistrates' court about mode of trial;

(d) in determining whether to discontinue proceedings.

(7) Regulations shall define "an investigation in respect of a benefit offence" for the purposes of this section."

(3) Section 110A (Housing Executive powers to prosecute benefit fraud) (as inserted by section 43 of the Welfare Reform Act (Northern Ireland) 2007) is amended as follows.

(4) In the heading, after "prosecute" insert " other ".

(5) In subsection (2)—

(a) for "unless" substitute " only if ";

(b) in paragraph (b), for "must not", substitute " may ".

(6) In subsection (4)(b), for "gives" substitute " withdraws ".

VALID FROM 04/04/2016

Penalties as alternative to prosecution

Penalty in respect of benefit fraud not resulting in overpayment

115.—(1) Section 109A of the Administration Act (penalty as alternative to prosecution) is amended as follows.

(2) After subsection (1) insert—

"(1A) This section also applies where—

(a) it appears to the Department or the Housing Executive that there are grounds for instituting proceedings against a person for an offence (under this Act or any other statutory provision) relating to an act or omission on the part of that person in relation to any benefit, and

(b) if an overpayment attributable to the act or omission had been made, the overpayment would have been recoverable from the person by, or due from the person to, the Department or the Housing Executive under or by virtue of section 69, 69ZB, 69A or 73."

(3) In subsection (2)(a) for "such proceedings" substitute " proceedings referred to in subsection (1) or (1A) ".

(4) In subsection (4)—

(a) in paragraph (a), after "is" insert " or would have been ";

(b) in paragraph (b), at the end insert " or to the act or omission referred to in subsection (1A)(a). "

(5) In subsections (6) and (7), at the beginning insert " In a case referred to in subsection (1) ".

(6) In subsection (7B)(a), after "is", in both places, insert " or would have been ".

(7) In subsection (8) after "subsection (1)(a)" insert " or (1A)(b) ".

(8) In the Social Security Fraud Act (Northern Ireland) 2001—

(a) in section 5B(1)(b), the words "by reference to an overpayment" are repealed and for "the offence mentioned in subsection (1)(b) of the appropriate penalty provision" substitute " the offence to which the notice relates ";

(b) in sections 5C(2)(b) and (3), 7(7)(b) and (8) and 8(7)(b) and (8), for "the overpayment" substitute " any overpayment made ".

Amount of penalty

116.—(1) In section 109A of the Administration Act (penalty as alternative to prosecution), for subsection (3) substitute—

"(3) The amount of the penalty in a case falling within subsection (1) is 50 per cent. of the amount of the overpayment (rounded down to the nearest whole penny), subject to—

(a) a minimum amount of £350, and

(b) a maximum amount of £2000.

(3A) The amount of the penalty in a case falling within subsection (1A) is £350.

(3B) The Department may by order amend—

(a) the percentage for the time being specified in subsection (3);

(b) any figure for the time being specified in subsection (3)(a) or (b) or (3A)."

(2) In section 166 of the Administration Act (Assembly, etc. control of orders and regulations), in subsection (2), before paragraph (a) insert—

"(za) to any order made under section 109A(3B);".

VALID FROM 02/05/2016

Loss of benefit

Benefit offences: period of sanction

117.—(1) The Social Security Fraud Act (Northern Ireland) 2001 is amended as follows.

(2) Section 5B (loss of benefit in case of conviction, penalty or caution for benefit offence) is amended as follows.

(3) In subsection (11), for "the period of four weeks" substitute " the relevant period ".

(4) After subsection (11) insert—

"(11A) For the purposes of subsection (11) the relevant period is—

(a) in a case falling within subsection (1)(a) where the benefit offence, or one of them, is a relevant offence, the period of three years,

(b) in a case falling within subsection (1)(a) (but not within paragraph (a) above), the period of 13 weeks, or

(c) in a case falling within subsection (1)(b) or (c), the period of four weeks."

(5) After subsection (13) insert—

"(14) In this section and section 6 "relevant offence" means—

(a) the common law offence of conspiracy to defraud, or

(b) a prescribed offence which, in the offender's case, is committed in such circumstances as may be prescribed, and which, on conviction—

(i) is found by the court to relate to an overpayment (as defined in section 109A(8) of the Administration Act) of at least £50,000,

(ii) is punished by a custodial sentence of at least one year (including a suspended sentence as defined in section 33(1) of the Treatment of Offenders Act (Northern Ireland) 1968), or

(iii) is found by the court to have been committed over a period of at least two years."

(6) After subsection (14) (inserted by paragraph (5)) insert—

"(15) The Department may by order amend subsection (11A)(a), (b) or (c), or (14)(b)(i), (ii) or (iii) to substitute a different period or amount for that for the time being specified there."

(7) In section 6 (loss of benefit for second or subsequent conviction of benefit offence), after subsection (1) insert—

"(1A) The following restrictions do not apply if the benefit offence referred to in subsection (1)(a), or any of them, is a relevant offence."

(8) In section 10 (loss of benefit regulations)—

(a) in the heading, after "benefit" insert " orders and ";

(b) in subsection (3) after paragraph (d) insert—

"or

(e) a provision prescribing an offence under section 5B(14)(b),";

(c) after subsection (3) insert—

"(3A) An order under section 5B(15) shall be subject to the confirmatory procedure.

(3B) In this section "the confirmatory procedure" means the procedure described in subsection (3).";

(d) in subsection (4) after "make", in both places, insert " an order or ".

Benefit offences: sanctions for repeated benefit fraud

118.—(1) The Social Security Fraud Act (Northern Ireland) 2001 is amended as follows.

(2) In section 5B (loss of benefit in case of conviction, penalty or caution for benefit offence), in subsection (3) for "later" substitute " current ".

(3) Section 6 (loss of benefit for second or subsequent conviction of benefit offence) is amended as follows.

(4) In the heading, for "second or subsequent conviction of benefit offence" substitute " repeated benefit fraud ".

(5) For subsection (1)(a) to (e) substitute—

"(a) a person ("the offender") is convicted of one or more benefit offences in a set of proceedings ("the current set of proceedings"),

(b) within the period of five years ending on the date on which the benefit offence was, or any of them were, committed, one or more disqualifying events occurred in relation to the offender (the event, or the most recent of them, being referred to in this section as "the earlier disqualifying event"),

(c) the current set of proceedings has not been taken into account for the purposes of any previous application of this section or section 7 or 8 in relation to the offender or any person who was then a member of the offender's family,

(d) the earlier disqualifying event has not been taken into account as an earlier disqualifying event for the purposes of any previous application of this section or either of those sections in relation to the offender or any person who was then a member of the offender's family, and

(e) the offender is a person with respect to whom the conditions for an entitlement to a sanctionable benefit are or become satisfied at any time within the disqualification period,".

(6) In subsection (6), for the words from "in relation to" to the end, substitute " in an offender's case, means the relevant period beginning with a prescribed date falling after the date of the conviction in the current set of proceedings ".

(7) After that subsection insert—

"(6A) For the purposes of subsection (6) the relevant period is—

(a) in a case where, within the period of five years ending on the date on which the earlier disqualifying event occurred, a previous disqualifying event occurred in relation to the offender, the period of three years;

(b) in any other case, 26 weeks."

(8) After subsection (7) insert—

"(7A) Subsection (7B) applies where, after the agreement of any person ("P") to pay a penalty under the appropriate penalty provision is taken into account for the purposes of the application of this section in relation to that person—

(a) P's agreement to pay the penalty is withdrawn under subsection (5) of the appropriate penalty provision,

(b) it is decided on an appeal or in accordance with regulations under the Social Security (Northern Ireland) Order 1998 or the Social Security Act 1998 that any overpayment to which the agreement relates is not recoverable or due, or

(c) the amount of any overpayment to which the penalty relates is revised on an appeal or in accordance with regulations under the Social Security (Northern Ireland) Order 1998 or the Social Security Act 1998 and there is no new agreement by P to pay a penalty under the appropriate penalty provision in relation to the revised overpayment.

(7B) In those circumstances, all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under this section that could not have been imposed if P had not agreed to pay the penalty."

(9) In subsection (8), the following definitions are inserted at the appropriate places—

""appropriate penalty provision" has the meaning given in section 5B(2)(a);";

""disqualifying event" has the meaning given in section 5B(13)."

(10) After that subsection insert—

"(8A) Where a person is convicted of more than one benefit offence in the same set of proceedings, there is to be only one disqualifying event in respect of that set of proceedings for the purposes of this section and—

(a) subsection (1)(b) is satisfied if any of the convictions take place in the five year periods mentioned there;

(b) the event is taken into account for the purposes of subsection (1)(d) if any of the convictions have been taken into account as mentioned there;

(c) in the case of the earlier disqualifying event mentioned in subsection (6A)(a), the reference there to the date on which the earlier disqualifying event occurred is a reference to the date on which any of the convictions take place;

(d) in the case of the previous disqualifying event mentioned in subsection (6A)(a), that provision is satisfied if any of the convictions take place in the five year period mentioned there."

(11) After subsection (10) insert—

"(11) The Department may by order amend subsection (6A) to substitute different periods for those for the time being specified there.

(12) An order under subsection (11) may provide for different periods to apply according to the type of earlier disqualifying event or events occurring in any case."

(12) In section 10 (loss of benefit regulations), in subsection (3A) (as inserted by Article 117(8)(c)), after "5B(15)" insert " or 6(11) ".

PROSPECTIVE

Cautions

119. In section 5B of the Social Security Fraud Act (Northern Ireland) 2001 (loss of benefit in case of conviction, penalty or caution for benefit offence)—

(a) in the heading, for ", penalty or caution" substitute " or penalty ";

(b) in subsection (1), after paragraph (a) insert " or ";

(c) subsection (1)(c) (cautions) and the preceding "or" are repealed;

(d) in subsection (13), in the definition of "disqualifying event", for "(1)(a)," substitute " (1)(a) or ".

Information-sharing

Information-sharing in relation to provision of overnight care etc.

120.—(1) This Article applies where a relevant body holds information falling within paragraph (2) in relation to a person who is receiving or is likely to receive a relevant service.

(2) The information referred to in paragraph (1) is—

(a) information as to the fact of the provision or likely provision of the service;

(b) information about when the provision of the service begins or ends or is likely to do so;

(c) other prescribed information relating to the service provided and how it is funded (including the extent to which it is funded by the recipient).

(3) In this Article "relevant service" means—

(a) a service consisting of overnight care in the individual's own home provided by or on behalf of a relevant body;

(b) a residential care service provided by or on behalf of a relevant body;

(c) a service consisting of overnight accommodation in a hospital provided by a Health and Social Care Trust.

(4) In paragraph (3)(c) "hospital" means hospital within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 but excluding an institution for providing dental treatment maintained in connection with a dental school.

(5) The relevant body may supply the information to a person specified in paragraph (6) for purposes relating to the payment of a relevant benefit to the individual.

(6) The persons referred to in paragraph (5) are—

(a) the Department;

(b) a person providing services to the Department;

(c) the Housing Executive or the Department of Finance and Personnel;

(d) a person authorised to exercise any function of the Housing Executive or that Department relating to a relevant benefit;

(e) a person providing services relating to a relevant benefit to the Housing Executive or that Department.

(7) In this Article "relevant benefit" means—

(a) universal credit;

(b) housing benefit;

(c) any prescribed benefit.

(8) In this Article and Article 121—

"the Housing Executive" means the Northern Ireland Housing Executive;

"relevant body" means—

(a) a Health and Social Care trust;

(b) the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009.

Commencement Information

I6 Art. 120 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(e)**

Information-sharing in relation to welfare services etc.

121.—(1) The Department, or a person providing services to the Department, may supply relevant information to a qualifying person for prescribed purposes relating to welfare services or rates.

(2) A qualifying person who holds relevant information for a prescribed purpose relating to welfare services may supply that information to—

(a) the Department, or

(b) a person providing services to the Department,

for a prescribed purpose relating to a relevant social security benefit.

(3) A qualifying person who holds relevant information for a prescribed purpose relating to welfare services, housing benefit or rates may—

(a) use the information for another prescribed purpose relating to welfare services, housing benefit or rates;

(b) supply it to another qualifying person for use in relation to the same or another prescribed purpose relating to welfare services, housing benefit or rates.

(4) Relevant information supplied under paragraph (1) or (3) to a qualifying person may be supplied by that person to a person who provides qualifying welfare services for purposes connected with the provision of those services.

(5) In paragraph (4) services are qualifying welfare services if—

(a) a relevant body, or

(b) a person who is a qualifying person by virtue of paragraph (7)(n), contributes or will contribute to the expenditure incurred in their provision.

(6) Paragraphs (1) to (4) do not apply in a case where the supply or use of information is authorised by Article 120.

(7) In this Article "qualifying person" means—

(a) a relevant body;

(b) the Department of Education;

(c) an education and library board;

(d) the Department for Regional Development;

(e) the Department of Justice;

(f) the Housing Executive;

(g) a person authorised to exercise any function of any of the persons specified in sub-paragraphs (a) to (f) relating to welfare services;

(h) a person providing to any of the persons specified in sub-paragraphs (a) to (f) services relating to welfare services;

(i) DFP;

(j) a person authorised to exercise any function of DFP or the Housing Executive relating to rates;

(k) a person providing to DFP or the Housing Executive services relating to rates;

(l) a person authorised to exercise any function of DFP or the Housing Executive relating to housing benefit;

(m) a person providing to DFP or the Housing Executive services relating to housing benefit;

(n) a prescribed person or a person of a prescribed description.

(8) In this Article—

"DFP" means the Department of Finance and Personnel;

"relevant information" means information relating to—

(a) any relevant social security benefit, or

(b) welfare services;

"relevant social security benefit" has the meaning given in section 115CA(7) of the Administration Act;

"welfare services" includes—

(a) services which provide accommodation, support, assistance, advice or counselling to individuals with particular needs,

(b) any other prescribed services,

and for these purposes "assistance" includes assistance by means of a grant or loan or the provision of goods or services.

Commencement Information

I7 Art. 121 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(f)**

Unlawful disclosure of information

122.—(1) A person to whom paragraph (2) applies is guilty of an offence if the person discloses without lawful authority any information—

(a) which comes to the person by virtue of Article 121(1), (3) or (4), and

(b) which relates to a particular person.

(2) This paragraph applies to—

(a) a person mentioned in Article 121(7)(a), (c), (f), (g), (h), (j) and (k);

(b) a person who provides qualifying welfare services (within the meaning of Article 121);

(c) a person who is or has been a director, member of the committee of management, manager, secretary or other similar officer of a person mentioned in sub-paragraph (a) or (b);

(d) a person who is or has been an employee of a person mentioned in sub-paragraph (b) or Article 121(7)(a) to (k).

(3) A person guilty of an offence under this Article is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

(4) It is not an offence under this Article—

(a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;

(b) to disclose information which has previously been disclosed to the public with lawful authority.

(5) It is a defence for a person ("D") charged with an offence under this Article to prove that at the time of the alleged offence—

(a) D believed that D was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise, or

(b) D believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(6) A disclosure is made with lawful authority if it is so made for the purposes of section 117 of the Administration Act.

(7) This Article does not affect that section.

(8) Regulations under Article 121(7)(n) may include provision for applying the provisions of this Article to—

(a) a person who is a qualifying person within the meaning of Article 121 by virtue of the regulations, or

(b) a person associated with such a qualifying person by reason of the person's office or employment or otherwise.

Commencement Information
I8 Art. 122 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(g)**

Articles 120 to 122: supplementary

123.—(1) In Articles 120 and 121, "benefit" includes any allowance, payment, credit or loan.

(2) Any power to make regulations under Articles 120 and 121 includes power—

(a) without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954, to make different provision for different areas;

(b) to make such incidental, supplemental, consequential, transitional or saving provision as the Department thinks necessary or expedient.

(3) Regulations made under Article 120 and 121 are subject to negative resolution.

(4) Sections 39 (information relating to certain benefits) and 40 (unlawful disclosure of certain information) of the Welfare Reform Act (Northern Ireland) 2007 are repealed but this is subject to paragraph (5).

(5) Notwithstanding paragraph (4), the following provisions of that Act continue to have effect—

(a) section 39 insofar as it permits the use, supply or provision by any person of information which came to that person, by virtue of subsection (1), (2) or (5) of that section, before the day on which subsection (4) comes into operation;

(b) section 40 insofar as it relates to the disclosure by any person of such information.

Commencement Information
I9 Art. 123 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(h)**

Information-sharing for social security or employment purposes etc.

124. In Article 69 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (supply of information for certain purposes), in paragraph (2)(b), after "designated" insert " (specifically or by description) ".

Commencement Information
I10 Art. 124 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(i)**

Reports by Department

Reports by Department

125. In Article 76 of the Social Security (Northern Ireland) Order 1998 (reports by Department) for paragraph (1) substitute—

"(1) The Department shall prepare, either annually or at such times or intervals as may be prescribed, a report on—

(a) the standards achieved by the Department in the making of decisions against which an appeal lies to an appeal tribunal constituted under Chapter 1 of Part 2;

(b) the standards of advice and assistance provided under Article 138 of the Welfare Reform (Northern Ireland) Order 2015; and

(c) the operation of sanctions.

(1A) For the purposes of paragraph (1)(c) a sanction is—

(a) the reduction in the amount of an award of universal credit, a jobseeker's allowance, income support or an employment and support allowance on account of a failure by a person to comply with any requirement or any other conduct of a person;

(b) the loss of, or reduction in the amount of, any sanctionable benefit under the Social Security Fraud Act (Northern Ireland) 2001.

(1B) A report under paragraph (1)(c) must contain details of—

(a) the number of persons affected by sanctions;

(b) the periods for which such persons are affected;

(c) the reasons for which sanctions are imposed;

(d) the benefits or allowances which are reduced or lost.”

Commencement Information

I11 Art. 125 in operation at 17.2.2016 by S.R. 2016/46, **art. 3(4)(j)**

Status:
Point in time view as at 17/02/2016. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
The Welfare Reform (Northern Ireland) Order 2015, PART 6 is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.