



Social Security Administration (Northern Ireland) Act 1992

1992 CHAPTER 8

PART VI

ENFORCEMENT

Inspection

^{F1}[109A Penalty as alternative to prosecution.

- (1) This section applies where an overpayment is recoverable from a person by, or due from a person to, the Department or the Housing Executive under or by virtue of section 69 [^{F2}, 69ZB], 69A or 73 above and it appears to the Department or the Executive 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 statutory provision) relating to the overpayment.

[This section also applies where—

- ^{F3}(1A) (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.]

- (2) The Department or the Housing Executive may give to the person a written notice—

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- (a) stating that he may be invited to agree to pay a penalty and that, if he does so in the manner specified by the Department or the Executive, no ^{F4}proceedings referred to in subsection (1) or (1A)] will be instituted against him; and
- (b) containing such information relating to the operation of this section as may be prescribed.

^{F5}(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).]

(4) If the person agrees in the specified manner to pay the penalty—

- (a) the amount of the penalty shall be recoverable by the same methods as those by which the overpayment is ^{F6}or would have been] recoverable; and
- (b) no proceedings will be instituted against him for an offence (under this Act or any other statutory provision) relating to the overpayment ^{F7}or to the act or omission referred to in subsection (1A)(a).]

(5) The person may withdraw his agreement to pay the penalty by notifying the Department or the Housing Executive, in the manner specified by the Department or the Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it; and if he does so—

- (a) so much of the penalty as has already been recovered shall be repaid; and
- (b) subsection (4)(b) above shall not apply.

(6) ^{F8}In a case referred to in subsection (1)] where, after the person has agreed to pay the penalty, it is decided on a review or appeal or in accordance with regulations that the overpayment is not recoverable or due, so much of the penalty as has already been recovered shall be repaid.

(7) ^{F8}In a case referred to in subsection (1)] where, after the person has agreed to pay the penalty, the amount of the overpayment is revised on a review or appeal or in accordance with regulations—

- (a) so much of the penalty as has already been recovered shall be repaid; and
- (b) subsection (4)(b) above shall no longer apply by reason of the agreement;

but if a new agreement is made under this section in relation to the revised overpayment, the amount already recovered by way of penalty, to the extent that it does not exceed the amount of the new penalty, may be treated as recovered under the new agreement instead of being repaid.

^{F9}(7A) [Subject to subsection (7B) below, the Department and the Housing Executive may agree that, to the extent determined by the agreement, one may carry out on the other's behalf, or may join in the carrying out of, any of the other's functions under this section.

(7B) Subsection (7A) above shall not authorise any delegation of-

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- (a) the function of the person by whom any overpayment is [^{F10}or would have been] recoverable, or to whom it is [^{F10}or would have been] due, of determining whether or not a notice should be given under subsection (2) above in respect of that overpayment; or
- (b) the power to make regulations for the purposes of paragraph (b) of subsection (2) above.]]

(8) In this section “overpayment” means—

- (a) a payment which should not have been made;
- (b) a sum which the Department should have received;
- (c) an amount of benefit paid in excess of entitlement; or
- (d) an amount equal to an excess of benefit allowed;

and the reference in subsection (1)(a) [^{F11}or (1A)(b)] above to the making of the overpayment is to the making of the payment, the failure to receive the sum, the payment of benefit in excess of entitlement or the allowing of an excess of benefit.

Textual Amendments

- F1** S. 109A inserted (21.11.1997 for certain purposes, otherwise 18.12.1997) by S.I. 1997/1182 (N.I. 11), **art. 14** (with art. 1(4)); S.R. 1997/508, **art. 2**
- F2** Words in s. 109A(1) inserted (4.4.2016 for specified purposes, 2.5.2016 for specified purposes, 22.6.2016 otherwise except in relation to universal credit, 27.9.2017 in so far as not already in force) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **109(3)**; S.R. 2016/46, art. 4(a); S.R. 2016/215, arts. 2(6)(b), 3(3); S.R. 2017/190, art. 3(1)(2)(e)
- F3** S. 109A(1A) inserted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(2)**; S.R. 2016/46, art. 4(b)
- F4** Words in s. 109A(2)(a) substituted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(3)**; S.R. 2016/46, art. 4(b)
- F5** Ss. 109A(3)-(3B) substituted for s. 109A(3) (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **116(1)**; S.R. 2016/46, art. 4(b)
- F6** Words in s. 109A(4)(a) inserted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(4)(a)**; S.R. 2016/46, art. 4(b)
- F7** Words in s. 109A(4)(b) inserted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(4)(b)**; S.R. 2016/46, art. 4(b)
- F8** Words in s. 109A(6)(7) inserted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(5)**; S.R. 2016/46, art. 4(b)
- F9** S. 109A(7A)(7B) inserted (1.5.2002) by 2001 c. 17 (N.I.), ss. 13, 17(1); S.R. 2002/165, **art. 2**
- F10** Words in s. 109A(7B)(a) inserted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(6)**; S.R. 2016/46, art. 4(b)
- F11** Words in s. 109A(8) inserted (4.4.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), arts. 2(2), **115(7)**; S.R. 2016/46, art. 4(b)

Modifications etc. (not altering text)

- C1** S. 109A restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), **Sch. 2 Pt. IV para. 15**
S. 109A: functions exercisable by the Department of the Environment for Northern Ireland transferred (26.6.2001) to the Department of Finance and Personnel in Northern Ireland by S.R. 2001/229, **art. 4(1)** (with art. 12)

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Changes and effects yet to be applied to :

- s. 109A(1) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109A(1A) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109A(2) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109A(5) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109A(7A)(7B) repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). [S.I. 2018/1125](#), reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))
- Act modified by [S.R. 2019/211 art. 2\(2\)\(a\)](#) (This amendment not applied to [legislation.gov.uk](#). Affecting Order revoked (19.12.2020) without ever being in force by [S.R. 2020/347](#), arts. 1(1), 2)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 101(1)(4)(5)s. 101(6)(a)(b) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 2A(9) added by [2010 c. 13 \(N.I.\) Sch. 1 para. 24](#)
- s. 2G(1)(d) inserted by [S.I. 2015/2006 \(N.I.\) art. 65\(5\)](#)
- s. 5(1A)-(1C) inserted by [2010 c. 13 \(N.I.\) s. 18\(2\)\(c\)](#)
- s. 31A(1A) words substituted by [S.I. 2015/2006 \(N.I.\) Sch. 4 para. 11\(a\)\(ii\)](#)
- s. 104A(1A)-(1C) inserted by [2007 c. 2 \(N.I.\) s. 42\(3\)](#)
- s. 110A inserted by [2007 c. 2 \(N.I.\) s. 43](#)
- s. 110A repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 110A heading word inserted by [S.I. 2015/2006 \(N.I.\) art. 114\(4\)](#)
- s. 110A(2) words substituted by [S.I. 2015/2006 \(N.I.\) art. 114\(5\)\(a\)](#)
- s. 110A(2)(b) words substituted by [S.I. 2015/2006 \(N.I.\) art. 114\(5\)\(b\)](#)
- s. 110A(4)(b) words substituted by [S.I. 2015/2006 \(N.I.\) art. 114\(6\)](#)
- s. 110ZA inserted by [S.I. 2015/2006 \(N.I.\) art. 114\(2\)](#)
- s. 110ZA repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 116E and cross-heading inserted by [2010 c. 13 \(N.I.\) s. 16\(3\)](#)
- s. 126(2)-(2B) substituted for s. 126(2) by [2007 c. 2 \(N.I.\) s. 35](#)
- s. 130AB inserted by [2008 c. 13 \(N.I.\) Sch. 3 para. 14](#)
- s. 140C inserted by [S.I. 2015/2006 \(N.I.\) Sch. 2 para. 20](#)
- s. 166(2)(ac) inserted by [2010 c. 13 \(N.I.\) s. 17](#)