



Social Security Administration (Northern Ireland) Act 1992

1992 CHAPTER 8

PART VI

ENFORCEMENT

Inspection

[^{F1}109B Penalty as alternative to prosecution: colluding employers, etc.

- (1) This section applies where it appears to the Department or the Housing Executive—
 - (a) that there are grounds for instituting proceedings against any person (“the responsible person” for an offence (whether or not under this Act) in respect of any conduct; and
 - (b) that the conduct in respect of which there are grounds for instituting the proceedings is conduct falling within subsection (2) below.
- (2) Conduct in respect of which there appear to be grounds for instituting proceedings falls within this subsection if—
 - (a) those proceedings would be for an offence under this Act in connection with an inquiry relating to the employment of relevant employees or of any one or more particular relevant employees; or
 - (b) it is conduct which was such as to facilitate the commission of a benefit offence by a relevant employee (whether or not such an offence was in fact committed).
- (3) The Department or the Housing Executive may give to the responsible person a written notice —
 - (a) specifying or describing the conduct in question;
 - (b) stating that he may be invited to agree to pay a penalty in respect of that conduct;

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- (c) stating that, if he does so in the manner specified by the Department or the Housing Executive, no criminal proceedings will be instituted against him in respect of that conduct; and
 - (d) containing such information relating to the operation of this section as may be prescribed.
- [^{F2}(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).]
- (5) The amount of the penalty shall be—
- (a) in a case in which the conduct in question falls within paragraph (a) of subsection (2) above but not within paragraph (b) of that subsection, £1,000;
 - (b) in a case in which that conduct falls within paragraph (b) of that subsection and the number of relevant employees by reference to whom it falls within that subsection is five or more, £5,000; and
 - (c) in any other case, the amount obtained by multiplying £1,000 by the number of relevant employees by reference to whom that conduct falls within that subsection.
- (6) The responsible person may withdraw his agreement to pay a penalty under this section by notifying the Department or the Housing Executive, in the manner specified by the Department or the Housing Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it.
- (7) Where the responsible person withdraws his agreement in accordance with subsection (6) above—
- (a) so much of the penalty as has already been recovered shall be repaid; and
 - (b) subsection (4)(b) above shall not apply.
- (8) For the purposes of this section an individual is a relevant employee in relation to any conduct of the responsible person if—
- (a) that conduct was at or in relation to a time when that individual was an employee of the responsible person;
 - (b) that conduct was at or in relation to a time when that individual was an employee of a body corporate of which the responsible person is or has been a director; or
 - (c) the responsible person, in engaging in that conduct, was acting or purporting to act on behalf of, in the interests of or otherwise by reason of his connection with, any person by whom that individual is or has been employed.
- ^{F3}(9) In this section —
- “conduct” includes acts, omissions and statements;
 - “the Department” also includes the Department of Finance and Personnel;
 - “director”—

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- (a) in relation to a company [^{F4}(as defined in section 1(1) of the Companies Act 2006)] , includes a shadow director;
- (b) in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company; and
- (c) in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate;
- “employee” means any person who—
- (a) is employed under a contract of service or apprenticeship, or in an office (including an elective office), or
- (b) carries out any work under any contract under which he has undertaken to provide his work,
- and “employment” shall be construed accordingly;
- ^{F3} ...
- “shadow director” means a shadow director as defined in [^{F5}section 251 of the Companies Act 2006] ;
- “subsidiary” means a subsidiary as defined in [^{F6}section 1159 of the Companies Act 2006] .]

Textual Amendments

- F1** S. 109B inserted (1.5.2002) by 2001 c. 17, ss. 14(1), 17(1); S.R. 2002/165, **art. 2**
- F2** Ss. 109B(4)-(4A) substituted for s. 109B(4) (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(4)(a)**; 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** Words in s. 109B(9) repealed (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(4)(b)**; 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)
- F4** Words in s. 109B(9) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 130(2)** (with art. 10)
- F5** Words in s. 109B(9) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 69** (with art. 12)
- F6** Words in s. 109B(9) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 130(3)** (with art. 10)

Changes to legislation:

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[View outstanding changes](#)

Changes and effects yet to be applied to :

- s. 109B(1) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109B(3) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109B(3)(c) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109B(4)(a) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109B(4A) words repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)
- s. 109B(6) words 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](#)