



# Social Security Administration (Fraud) Act 1997

## 1997 CHAPTER 47

*Administration of housing benefit and council tax benefit*

### **5** **Overseeing of administration by Secretary of State**

After section 139 of the Social Security Administration Act 1992 insert—

#### *“Reports*

#### **139A Persons to report on administration**

- (1) The Secretary of State may authorise persons to consider and report to him on the administration by authorities of housing benefit and council tax benefit and, in particular, their performance in the prevention and detection of fraud relating to those benefits.
- (2) A person may be authorised under subsection (1) above on such terms and for such period as the Secretary of State thinks fit and may be authorised to act generally or in relation to a specified authority or authorities.
- (3) In sections 139B and 139C below—
  - “benefit” means housing benefit or council tax benefit; and
  - “authority” means an authority which is administering either of those benefits.

#### **139B Powers of investigation**

- (1) A person authorised under section 139A(1) above—
  - (a) has a right of access at all reasonable times to any document relating to the administration of benefit;

- (b) is entitled to require from any person holding or accountable for any such document such information and explanation as he thinks necessary; and
  - (c) is entitled, if he thinks it necessary, to require any such person to produce any such document or to attend before him in person to give such information or explanation.
- (2) A person authorised under section 139A(1) above is entitled to require any officer or member of an authority or any person involved in the administration of benefit for an authority—
- (a) to give him such information and explanation relating to the administration of benefit as he thinks necessary; and
  - (b) if he thinks it necessary, to require any such person to attend before him in person to give the information or explanation.
- (3) A person who without reasonable excuse fails to comply with a requirement under subsection (1) or (2) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) A person authorised under section 139A(1) above may—
- (a) require any document or information which is to be given to him under subsection (1) or (2) above to be given in any form reasonably specified by him; and
  - (b) take copies of any document produced to him.
- (5) In this section “document” means anything in which information of any description is recorded.

### **139C Reports**

- (1) A report about an authority by a person authorised under section 139A(1) above may include recommendations about improvements which could be made by that authority in its administration of benefit and, in particular, in the prevention and detection of fraud relating to benefit.
- (2) When the Secretary of State receives a report about an authority from a person authorised under section 139A(1) above, he shall send a copy to the authority.”

## **6 Role of Audit Commission**

- (1) The Local Government Finance Act 1982 is amended as follows.
- (2) After section 28AA insert—

### **“28AB Studies of benefit administration at request of Secretary of State**

- (1) The Secretary of State may request the Commission to conduct or assist the Secretary of State in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance in the discharge by local authorities of functions relating to the administration of housing benefit and council tax benefit.

- (2) In the following provisions of this section “study” means a study which the Commission is requested to conduct, or assist the Secretary of State in conducting, under subsection (1) above.
  - (3) If the Commission requires—
    - (a) any local authority included in a study; or
    - (b) any officer or member of such an authority,to supply the Commission or an authorised person with such information as is needed for the purposes of the study, the authority or officer or member shall supply the information.
  - (4) If the Commission requires any local authority included in a study to make available for inspection by the Commission or an authorised person documents which relate to the authority and are needed for the purposes of the study, the authority shall make the documents available.
  - (5) Any information obtained under a requirement under subsection (3) or (4) above may be disclosed by the Commission to the Secretary of State for the purposes of any functions of his which are connected with housing benefit or council tax benefit.
  - (6) In subsections (3) and (4) above “authorised person” means a person authorised by the Commission for the purposes of this section.
  - (7) The Commission shall send to the Secretary of State a copy of any report of a study; and the Secretary of State or the Commission may send a copy of a report of a study to any local authority to which the study relates.
  - (8) Any report of a study may be published by the Secretary of State in conjunction with the Commission.
  - (9) The Commission shall not conduct, or assist the Secretary of State in conducting, a study unless, before it does so, the Secretary of State has made arrangements for the payment of such reasonable amount as may be agreed between him and the Commission in respect of the study.”
- (3) After that section insert—

**“28AC References and reports to Secretary of State**

- (1) The Commission or an auditor may refer to the Secretary of State any matter arising from an audit or study under this Part of this Act if it appears that it may be relevant for the purposes of any of the functions of the Secretary of State relating to social security.
  - (2) The Commission may send to the Secretary of State a copy of any report of which a copy is sent to the Commission under section 18(4) above and which contains observations on the administration by a local authority of housing benefit or council tax benefit.”
- (4) In subsection (1) of section 30 (restriction on disclosure of information by Audit Commission), after paragraph (b) insert—
- “(ba) for the purposes of the functions of the Secretary of State relating to social security; or”.

(5) After that section insert—

**“30A Supply of benefit information to Commission**

The Secretary of State may supply to the Commission any information held by him which relates to housing benefit or council tax benefit and which appears to him to be relevant to the exercise of any function of the Commission.”

**7 Role of Accounts Commission for Scotland**

(1) Part VII (Finance) of the Local Government (Scotland) Act 1973 is amended as follows.

(2) In section 97 (Accounts Commission for Scotland), after subsection (4D) insert—

“(4E) The Secretary of State may supply to the Commission any information held by him which relates to housing benefit or council tax benefit and which appears to him to be relevant to the exercise of any of the functions of the Commission.”

(3) After section 101 (right to inspect and object to accounts) insert—

**“101A Reference of social security matters to Secretary of State**

The Commission or an auditor may refer to the Secretary of State any matter arising from an audit or study under this Part of this Act if it appears that it may be relevant for the purposes of any of the functions of the Secretary of State relating to social security.”

(4) After section 105 (regulations as to accounts) insert—

**“105A Studies of benefit administration at request of Secretary of State**

(1) The Secretary of State may request the Commission to conduct or assist the Secretary of State in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance in the discharge by local authorities of functions relating to the administration of housing benefit and council tax benefit.

(2) In the following provisions of this section “study” means a study which the Commission are requested to conduct, or assist the Secretary of State in conducting, under subsection (1) above.

(3) If the Commission require—

- (a) any local authority included in a study; or
- (b) any officer or member of such an authority,

to supply the Commission or an authorised person with such information as is needed for the purposes of the study, the authority or officer or member shall supply the information.

(4) If the Commission require any local authority included in a study to make available for inspection by the Commission or an authorised person

documents which relate to the authority and are needed for the purposes of the study, the authority shall make the documents available.

- (5) Any information obtained under a requirement under subsection (3) or (4) above may be disclosed by the Commission to the Secretary of State for the purposes of any functions of his which are connected with housing benefit or council tax benefit.
- (6) In subsections (3) and (4) above “authorised person” means a person authorised by the Commission for the purposes of this section.
- (7) The Commission shall send to the Secretary of State a copy of any report of a study; and the Secretary of State or the Commission may send a copy of a report of a study to any local authority to which the study relates.
- (8) Any report of a study may be published by the Secretary of State in conjunction with the Commission.
- (9) The Commission shall not conduct, or assist the Secretary of State in conducting, a study unless, before they do so, the Secretary of State has made arrangements for the payment of such reasonable amount as may be agreed between him and the Commission in respect of the study.”

## **8 Directions by Secretary of State**

After section 139C of the Social Security Administration Act 1992 (inserted by section 5) insert—

### *“Directions by Secretary of State*

#### **139D Directions**

- (1) This section applies where—
  - (a) a copy of a report has been sent to an authority under section 139C(2) above;
  - (b) a copy of a report has been sent to an authority under section 18(3) of the Local Government Finance Act 1982 and to the Secretary of State under section 28AC(2) of that Act;
  - (c) a copy of a report relating to the administration of benefit has been sent to a local authority under section 102(2) of the Local Government (Scotland) Act 1973 and to the Secretary of State and section 103(1) of that Act has been complied with; or
  - (d) a copy of a report has been sent to an authority under section 28AB(7) of the Local Government Finance Act 1982 or section 105A(7) of the Local Government (Scotland) Act 1973.
- (2) The Secretary of State may invite the authority to consider the report and to submit proposals for—
  - (a) improving its performance in relation to the prevention and detection of fraud relating to benefit or otherwise in relation to the administration of benefit; and
  - (b) remedying any failings identified by the report.

- (3) After considering the report and any proposals made by the authority in response to it, the Secretary of State may give directions to the authority as to—
  - (a) standards which the authority is to attain in the prevention and detection of fraud relating to benefit or otherwise in the administration of benefit; and
  - (b) the time within which the standards are to be attained.
- (4) When giving directions to an authority under subsection (3) above, the Secretary of State may make recommendations to the authority setting out any course of action which he thinks it might take to attain the standards which it is directed to attain.
- (5) In this section “benefit” means housing benefit or council tax benefit.”

## 9 Enforcement of directions

After section 139D of the Social Security Administration Act 1992 (inserted by section 8) insert—

### “139E Information about attainment of standards

- (1) Where directions have been given to an authority under section 139D(3) above, the Secretary of State may require the authority to supply to him any information which he considers may assist him in deciding—
  - (a) whether the authority has attained the standards which it has been directed to attain; or
  - (b) whether the authority is likely to attain those standards within the time specified in the directions.
- (2) Information shall be supplied under subsection (1) above in such manner and form as the Secretary of State may require.

### 139F Enforcement notices

- (1) Where directions have been given to an authority under section 139D(3) above and the Secretary of State—
  - (a) is not satisfied that the authority has attained the standards which it has been directed to attain; or
  - (b) is not satisfied that the authority is likely to attain those standards within the time specified in the directions,
 he may serve on the authority a written notice under this section.
- (2) The notice shall—
  - (a) identify the directions and state why the Secretary of State is not satisfied as mentioned in paragraph (a) or (b) of subsection (1) above; and
  - (b) require the authority to submit a written response to the Secretary of State within a time specified in the notice.
- (3) If any person (other than the authority) carrying out work relating to the administration of benefit may be affected by any determination which may be made under section 139G below, the authority shall—

- (a) consult that person before submitting its response; and
  - (b) include in its response any relevant observations made by that person.
- (4) The authority's response shall either—
- (a) state that the authority has attained the standards, or is likely to attain them within the time specified in the directions, and justify that statement; or
  - (b) state that the authority has not attained the standards, or is not likely to attain them within that time, and (if the authority wishes) give reasons why a determination under section 139G below should not be made or should not include any particular provision.
- (5) The notice may relate to any one or more matters covered by the directions.
- (6) The serving of a notice under this section relating to any directions or matter does not prevent the serving of further notices under this section relating to the same directions or matter.
- (7) In this section “benefit” means housing benefit or council tax benefit.

### **139G Enforcement determinations**

- (1) Where, after the time specified in the notice under section 139F above has expired, the Secretary of State—
- (a) is not satisfied that the authority has attained the standards in question; or
  - (b) is not satisfied that the authority is likely to attain those standards within the time specified in the directions,
- he may make a determination under this section.
- (2) The determination may be made whether or not the authority has responded to the notice under section 139F above.
- (3) The determination shall be designed to secure the attainment of the standards in question and—
- (a) shall include provision such as is specified in subsection (4) below; and
  - (b) may also include provision such as is specified in subsection (5) below.
- (4) The provision referred to in paragraph (a) of subsection (3) above is provision that the authority must comply with specified requirements as to inviting, preparing, considering and accepting bids to carry out any work which—
- (a) falls to be carried out in pursuance of the authority's functions relating to the administration of benefit; and
  - (b) is of a description specified in the determination.
- (5) The provision referred to in paragraph (b) of that subsection is provision of any one or more of the following kinds relating to the work, or any specified category of the work, to which the determination relates—
- (a) provision that it may not be carried out by the authority;
  - (b) provision that it may not be carried out by any person (other than the authority) who has been carrying it out; and
  - (c) provision that any contract made by the authority with any person for carrying it out shall include terms requiring a level of performance

which will secure, or contribute to securing, the attainment of the standards in question.

- (6) In this section “benefit” means housing benefit or council tax benefit.

### **139H Enforcement determinations: supplementary**

- (1) The provisions included in a determination under section 139G above shall take effect from a date specified in the determination; and different dates may be specified in relation to different provisions.
- (2) The making of a determination under section 139G above in relation to any directions does not prevent the making of further determinations under that section in relation to the same directions.
- (3) The provision included in a determination by virtue of section 139G(3) above may include—
  - (a) requirements that the Secretary of State be satisfied as to any specified matter; and
  - (b) requirements that the Secretary of State authorise or consent to any specified matter.
- (4) The provision so included may also include provision as to the time at which any contract for the carrying out of work to which the determination relates (and which is not previously discharged) is to be taken to be frustrated by the determination.
- (5) A determination under section 139G above shall have effect in spite of any enactment under or by virtue of which an authority is required or authorised to carry out any work to which the determination relates.
- (6) A determination under section 139G above may make provision having effect, in relation to the work to which it relates, instead of any requirement which (apart from the determination) would have effect in relation to that work under or by virtue of the Local Government Act 1988.”

## **10 Adjustment of subsidy**

In section 140B of the Social Security Administration Act 1992 (calculation of amount of subsidy in respect of housing benefit and council tax benefit), for subsections (4) and (5) substitute—

- “(4) The Secretary of State may—
- (a) pay as part of subsidy an additional amount specified by, or calculated in a manner specified by, the order; or
  - (b) deduct from the amount which would otherwise be payable by way of subsidy an amount specified by, or calculated in a manner specified by, the order.
- (4A) The additional amounts which may be paid by virtue of subsection (4)(a) above include amounts in respect of—
- (a) the costs of administering the relevant benefit; or
  - (b) success in preventing or detecting fraud relating to the relevant benefit or action to be taken with a view to preventing or detecting such fraud.

- (5) The Secretary of State may—
- (a) where an application is made by an authority on his invitation, pay to the authority as part of the subsidy such additional amount as he considers appropriate in respect of—
    - (i) success in preventing or detecting fraud relating to the relevant benefit; or
    - (ii) action to be taken with a view to preventing or detecting such fraud; or
  - (b) deduct from the subsidy which would otherwise be payable to an authority such amount as he considers it unreasonable to pay by way of subsidy.
- (5A) The amounts which may be deducted by virtue of subsection (4)(b) or (5)(b) above include amounts in respect of—
- (a) a failure to comply with directions under section 139D(3) above; and
  - (b) other failures in preventing or detecting fraud relating to the relevant benefit.”