



# Social Security Fraud Act 2001

## 2001 CHAPTER 11

### *Obtaining and sharing information*

#### **1 Additional powers to obtain information**

- (1) The Administration Act shall be amended as follows.
- (2) In subsection (1)(a) of section 109B (power to require information), after “subsection (2)” there shall be inserted “or (2A)”; and after subsection (2) (persons from whom information may be obtained) there shall be inserted—
  - “(2A) The persons who fall within this subsection are—
    - (a) any bank;
    - (b) any person carrying on a business the whole or a significant part of which consists in the provision of credit (whether secured or unsecured) to members of the public;
    - (c) any insurance company (within the meaning of the Insurance Companies Act 1982 (c. 50));
    - (d) any credit reference agency (within the meaning given by section 145(8) of the Consumer Credit Act 1974 (c. 39));
    - (e) any body the principal activity of which is to facilitate the exchange of information for the purpose of preventing or detecting fraud;
    - (f) any person carrying on a business the whole or a significant part of which consists in the provision to members of the public of a service for transferring money from place to place;
    - (g) any water undertaker or sewerage undertaker, any water and sewerage authority constituted under section 62 of the Local Government etc. (Scotland) Act 1994 (c. 39) or any authority which is a collecting authority for the purposes of section 79 of that Act;
    - (h) any person who (within the meaning the Gas Act 1986 (c. 44)) supplies gas conveyed through pipes;
    - (i) any person who (within the meaning of the Electricity Act 1989 (c. 29)) supplies electricity conveyed by distribution systems;
    - (j) any person who provides a telecommunications service;

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- (k) any person conducting any educational establishment or institution;
  - (l) any body the principal activity of which is to provide services in connection with admissions to educational establishments or institutions;
  - (m) the Student Loans Company;
  - (n) any servant or agent of any person mentioned in any of the preceding paragraphs.
- (2B) Subject to the following provisions of this section, the powers conferred by this section on an authorised officer to require information from any person by virtue of his falling within subsection (2A) above shall be exercisable for the purpose only of obtaining information relating to a particular person identified (by name or description) by the officer.
- (2C) An authorised officer shall not, in exercise of those powers, require any information from any person by virtue of his falling within subsection (2A) above unless it appears to that officer that there are reasonable grounds for believing that the identified person to whom it relates is—
- (a) a person who has committed, is committing or intends to commit a benefit offence; or
  - (b) a person who (within the meaning of Part 7 of the Contributions and Benefits Act) is a member of the family of a person falling within paragraph (a) above.
- (2D) Nothing in subsection (2B) or (2C) above shall prevent an authorised officer who is an official of a Government department and whose authorisation states that his authorisation applies for the purposes of this subsection from exercising the powers conferred by this section for obtaining from—
- (a) a water undertaker or any water and sewerage authority constituted under section 62 of the Local Government etc. (Scotland) Act 1994,
  - (b) any person who (within the meaning the Gas Act 1986) supplies gas conveyed through pipes,
  - (c) any person who (within the meaning of the Electricity Act 1989) supplies electricity conveyed by distribution systems, or
  - (d) any servant or agent of a person mentioned in any of the preceding paragraphs,
- any information which relates exclusively to whether and in what quantities water, gas or electricity are being or have been supplied to residential premises specified or described in the notice by which the information is required.
- (2E) The powers conferred by this section shall not be exercisable for obtaining from any person providing a telecommunications service any information other than information which (within the meaning of section 21 of the Regulation of Investigatory Powers Act 2000 (c. 23)) is communications data but not traffic data.
- (2F) Nothing in subsection (2B) or (2C) above shall prevent an authorised officer from exercising the powers conferred by this section for requiring information, from a person who provides a telecommunications service, about the identity and postal address of a person identified by the authorised officer solely by reference to a telephone number or electronic address used in connection with the provision of such a service.”

(3) For subsection (5) of that section (protection from self incrimination) there shall be substituted—

“(5) No one shall be required under this section to provide—

- (a) any information that tends to incriminate either himself or, in the case of a person who is married, his spouse; or
  - (b) any information in respect of which a claim to legal professional privilege or, in Scotland, confidentiality as between client and professional legal adviser, would be successful in any proceedings;
- and for the purposes of this subsection it is immaterial whether the information is in documentary form or not.”

(4) After that subsection there shall be inserted—

“(6) Provision may be made by order—

- (a) adding any person to the list of persons falling within subsection (2A) above;
- (b) removing any person from the list of persons falling within that subsection;
- (c) modifying that subsection for the purpose of taking account of any change to the name of any person for the time being falling within that subsection.

(7) In this section—

“bank” means—

- (a) any institution for the time being authorised under a provision of the Banking Act 1987 (c. 22);
- (b) any person for the time being specified in any of paragraphs 2 to 10 of Schedule 2 to that Act (exempted persons);
- (c) any person for the time being entitled by virtue of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) to accept deposits (within the meaning of that Act) in the United Kingdom;

“credit” includes a cash loan or any form of financial accommodation, including the cashing of a cheque;

“residential premises”, in relation to a supply of water, gas or electricity, means any premises which—

- (a) at the time of the supply were premises occupied wholly or partly for residential purposes, or
- (b) are premises to which that supply was provided as if they were so occupied; and

“telecommunications service” has the same meaning as in the Regulation of Investigatory Powers Act 2000 (c. 23).”

(5) In section 110A(8) (modifications for the application of sections 109B and 109C in the case of persons authorised by authorities administering housing benefit or council tax benefit), after paragraph (b) there shall be inserted “;and

(c) with the omission of section 109B(2D).”

(6) In section 111(1)(a) (offence of obstruction), for “inspector” there shall be substituted “authorised officer”.

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(7) In section 121DA(5) (interpretation of Part 6), for the definition of “benefit offence” there shall be substituted—

““benefit offence” means—

- (a) any criminal offence in connection with a claim for a relevant social security benefit;
- (b) any criminal offence in connection with the receipt or payment of any amount by way of such a benefit;
- (c) any criminal offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
- (d) any attempt or conspiracy to commit a benefit offence;”.

(8) In section 121DA(7) (definitions for the purposes of section 121DA), after “section” there shall be inserted—

““relevant social security benefit” means a benefit under any provision of the relevant social security legislation; and”.

(9) In section 190(1) (instruments subject to affirmative Parliamentary procedure), after paragraph (a) there shall be inserted—

“(aza) any order containing provision adding any person to the list of persons falling within section 109B(2A) above;”.

## 2 Electronic access to information

(1) After section 109B of the Administration Act there shall be inserted—

### **“109B A Power of Secretary of State to require electronic access to information**

(1) Subject to subsection (2) below, where it appears to the Secretary of State—

- (a) that a person falling within section 109B(2A) keeps any electronic records,
- (b) that the records contain or are likely, from time to time, to contain information about any matter that is relevant for any one or more of the purposes mentioned in section 109A(2) above, and
- (c) that facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,

the Secretary of State may require that person to enter into arrangements under which authorised officers are allowed such access to those records.

(2) An authorised officer—

- (a) shall be entitled to obtain information in accordance with arrangements entered into under subsection (1) above only if his authorisation states that his authorisation applies for the purposes of that subsection; and
- (b) shall not seek to obtain any information in accordance with any such arrangements other than information which relates to a particular person and could be the subject of a requirement under section 109B above.

- (3) The matters that may be included in the arrangements that a person is required to enter into under subsection (1) above may include—
- (a) requirements as to the electronic access to records that is to be made available to authorised officers;
  - (b) requirements as to the keeping of records of the use that is made of the arrangements;
  - (c) requirements restricting the disclosure of information about the use that is made of the arrangements; and
  - (d) such other incidental requirements as the Secretary of State considers appropriate in connection with allowing access to records to authorised officers.
- (4) An authorised officer who is allowed access in accordance with any arrangements entered into under subsection (1) above shall be entitled to make copies of, and to take extracts from, any records containing information which he is entitled to require under section 109B.”
- (2) After section 110A of that Act there shall be inserted—

**“110A A Power of local authority to require electronic access to information**

- (1) Subject to subsection (2) below, where it appears to an authority administering housing benefit or council tax benefit—
- (a) that a person falling within section 109B(2A) keeps any electronic records,
  - (b) that the records contain or are likely, from time to time, to contain information about any matter that is relevant for any one or more of the purposes mentioned in section 110A(2) above, and
  - (c) that facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,
- that authority may require that person to enter into arrangements under which authorised officers are allowed such access to those records.
- (2) An authorised officer—
- (a) shall be entitled to obtain information in accordance with arrangements entered into under subsection (1) above only if his authorisation states that his authorisation applies for the purposes of that subsection; and
  - (b) shall not seek to obtain any information in accordance with any such arrangements other than information which—
    - (i) relates to a particular person; and
    - (ii) could be the subject of any such requirement under section 109B above as may be imposed in exercise of the powers conferred by section 110A(8) above.
- (3) The matters that may be included in the arrangements that a person is required to enter into under subsection (1) above may include—
- (a) requirements as to the electronic access to records that is to be made available to authorised officers;

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- (b) requirements as to the keeping of records of the use that is made of the arrangements;
  - (c) requirements restricting the disclosure of information about the use that is made of the arrangements; and
  - (d) such other incidental requirements as the authority in question considers appropriate in connection with allowing access to records to authorised officers.
- (4) An authorised officer who is allowed access in accordance with any arrangements entered into under subsection (1) above shall be entitled to make copies of, and to take extracts from, any records containing information which he is entitled to make the subject of a requirement such as is mentioned in subsection (2)(b) above.
- (5) An authority administering housing benefit or council tax benefit shall not—
- (a) require any person to enter into arrangements for allowing authorised officers to have electronic access to any records; or
  - (b) otherwise than in pursuance of a requirement under this section, enter into any arrangements with a person specified in section 109B(2A) above for allowing anyone acting on behalf of the authority for purposes connected with any benefit to have electronic access to any private information contained in any records,
- except with the consent of the Secretary of State and subject to any conditions imposed by the Secretary of State by the provisions of the consent.
- (6) A consent for the purposes of subsection (5) may be given in relation to a particular case, or in relation to any case that falls within a particular description of cases.
- (7) In this section “private information”, in relation to an authority administering housing benefit or council tax benefit, means any information held by a person who is not entitled to disclose it to that authority except in compliance with a requirement imposed by the authority in exercise of their statutory powers.”
- (3) In section 111 of that Act (offences)—
- (a) in subsection (1)(a), for “or” at the end there shall be substituted—
    - “(ab) refuses or neglects to comply with any requirement under section 109BA or 110AA or with the requirements of any arrangements entered into in accordance with subsection (1) of that section, or”;
- and
- (b) in subsection (2), for “subsection (1)(b)” there shall be substituted “subsection (1)(ab) or (b)”.

### **3 Code of practice about use of information powers**

- (1) The Secretary of State shall issue a code of practice relating to the exercise of—
- (a) the powers that are exercisable by an authorised officer under section 109B of the Administration Act in relation to the persons mentioned in subsection (2A) of that section; and
  - (b) the powers conferred on an authorised officer by sections 109BA and 110AA of that Act.

- (2) The Secretary of State may from time to time—
  - (a) revise the whole or any part of the code for the time being in force under this section; and
  - (b) issue a revised code.
- (3) Before issuing or revising the code of practice under this section, the Secretary of State shall—
  - (a) prepare and publish a draft of the code, or of the revised code; and
  - (b) consider any representations made to him about the draft;and the Secretary of State may incorporate in the code he issues any modifications made by him to his proposals after their publication.
- (4) The Secretary of State shall lay before each House of Parliament the code of practice, and every revised code, issued by him under this section.
- (5) The code of practice issued under this section and any revisions of the code shall come into force at the time at which the code or, as the case may be, the revised code is issued by the Secretary of State.
- (6) An authorised officer exercising any power in relation to which provision must be made by the code of practice under this section shall have regard, in doing so, to the provisions (so far as they are applicable) of the code for the time being in force under this section.
- (7) A failure on the part of any person to comply with any provision of the code of practice for the time being in force under this section shall not of itself render him liable to any civil or criminal proceedings.
- (8) The code of practice for the time being in force under this section shall be admissible in evidence in any civil or criminal proceedings.
- (9) In this section “authorised officer” has the same meaning as in Part 6 of the Administration Act.

#### **4 Arrangements for payments in respect of information**

- (1) It shall be the duty of the Secretary of State to ensure that such arrangements (if any) are in force as he thinks appropriate for requiring or authorising, in such cases as he thinks fit, the making of such payments as he considers appropriate in respect of compliance with relevant obligations by any of the following—
  - (a) a credit reference agency (within the meaning given by section 145(8) of the Consumer Credit Act 1974 (c. 39)) or any servant or agent of such an agency;
  - (b) a person providing a telecommunications service (within the meaning of the Regulation of Investigatory Powers Act 2000 (c. 23)) or any servant or agent of such a person;
  - (c) a water undertaker or a water and sewerage authority constituted under section 62 of the Local Government etc. (Scotland) Act 1994 (c. 39) or any servant or agent of such an undertaker or authority,
  - (d) any person who (within the meaning the Gas Act 1986 (c. 44)) supplies gas conveyed through pipes, or any servant or agent of such a person;
  - (e) any person who (within the meaning of the Electricity Act 1989 (c. 29)) supplies electricity conveyed by distribution systems, or any servant or agent of such a person;

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- (f) any person added to the list of persons falling within subsection (2A) of section 109B of the Administration Act by an order under subsection (6) of that section, or any person's servant or agent who falls within that subsection by virtue of such an order.
- (2) In subsection (1) "relevant obligation"—
- (a) in relation to a person falling within paragraph (a), (b) or (f) of that subsection, means—
- (i) an obligation to provide information in pursuance of a requirement imposed on that person under section 109B of the Administration Act by virtue only of his falling within subsection (2A) of that section; or
  - (ii) any obligation to comply, for the purpose of enabling an authorised officer to obtain information which might otherwise be obtained by the imposition of such a requirement, with any requirements imposed on that person under section 109BA or 110AA of that Act;
- and
- (b) in relation to a person falling within any of paragraphs (c) to (e) of that subsection, means any obligation to provide information in pursuance of a requirement imposed by such an exercise of the powers conferred by section 109B of that Act as is mentioned in subsection (2D) of that section.
- (3) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.
- (4) It shall be the duty of an authority administering housing benefit or council tax benefit to comply with such general or specific directions as to the making of payments as may be given by the Secretary of State in accordance with any arrangements for the time being in force for the purposes of subsection (1).

## **5 Exchange of information with overseas authorities**

- (1) In Part 14 of the Administration Act (social security systems outside Great Britain), after section 179 there shall be inserted the following section—

### **“179A Exchange of information with overseas authorities**

- (1) This section applies where it appears to the Secretary of State—
- (a) that there are arrangements in force for the exchange of relevant information between him and any authorities in a country outside the United Kingdom ('the overseas country'); and
  - (b) that the arrangements and the law in force in the overseas country are such as to ensure that there are adequate safeguards in place against any improper use of information disclosed by the Secretary of State under this section.
- (2) For the purpose of facilitating the carrying out by authorities in the overseas country of any function relating to anything corresponding to, or in the nature of, a social security benefit, the Secretary of State may make any such disclosure of relevant information to authorities in the overseas country as he considers necessary to give effect to the arrangements.



- (3) It shall be the duty of the Secretary of State to take all such steps as may be reasonable for securing that relevant information disclosed to him in accordance with the arrangements is not used for any purpose for which its use is not expressly or impliedly authorised by or under the arrangements.
  - (4) This section does not apply where provision is in force under section 179 above for giving effect to the arrangements in question.
  - (5) The purposes for which information may be required to be disclosed to the Secretary of State under section 122D above or section 116D of the Northern Ireland Administration Act (information required from authorities administering housing benefit or council tax benefit) shall be deemed to include the further disclosure of that information in accordance with this section.
  - (6) In this section “relevant information” means any information held by the Secretary of State or any authorities in a country outside the United Kingdom for the purposes of any functions relating to, or to anything corresponding to or in the nature of, a social security benefit.”
- (2) In Part 13 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (social security systems outside Northern Ireland), after section 155 there shall be inserted the following section—

**“155A Exchange of information with overseas authorities**

- (1) This section applies where it appears to the Department—
  - (a) that there are arrangements in force for the exchange of relevant information between the Department and any authorities in a country outside the United Kingdom (“the overseas country”); and
  - (b) that the arrangements and the law in force in the overseas country are such as to ensure that there are adequate safeguards in place against any improper use of information disclosed by the Department under this section.
- (2) For the purpose of facilitating the carrying out by authorities in the overseas country of any function relating to anything corresponding to, or in the nature of, a social security benefit, the Department may make any such disclosure of relevant information to authorities in the overseas country as the Department considers necessary to give effect to the arrangements.
- (3) It shall be the duty of the Department to take all such steps as may be reasonable for securing that relevant information disclosed to it in accordance with the arrangements is not used for any purpose for which its use is not expressly or impliedly authorised by or under the arrangements.
- (4) This section does not apply where provision is in force under section 155 above for giving effect to the arrangements in question.
- (5) The purposes for which information may be required to be disclosed to the Department under section 116D above or section 122D of the Great Britain Administration Act (information required from authorities administering housing benefit or council tax benefit) shall be deemed to include the further disclosure of that information in accordance with this section.

- (6) In this section “relevant information” means any information held by the Department or any authorities in a country outside the United Kingdom for the purposes of any functions relating to, or to anything corresponding to or in the nature of, a social security benefit.”

**6 Exchange of information by authorities administering benefit**

In each of sections 122D(3) and 122E(4) of the Administration Act (power of the Secretary of State and Northern Ireland Department to require the supply of information by authorities administering housing or council tax benefit, and persons acting on their behalf), for “prescribed” there shall be substituted “specified in directions given by the Secretary of State or, as the case may be, the Northern Ireland Department”.