

*These notes refer to the Social Security Fraud Act 2001  
(c.11) which received Royal Assent on 11 May 2001*

# **SOCIAL SECURITY FRAUD ACT 2001**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

These explanatory notes relate to the Social Security Fraud Act which received Royal Assent on 11 May 2001. They have been prepared by the Department of Social Security (DSS) in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.

The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a clause or part of a clause does not seem to require explanation or comment, none is given.

#### *Structure of the notes*

The notes start with a brief overview of the Act as a whole and outline the four main elements contained within the Act. The notes are then divided into four parts which reflect the elements of the Act, and which provide the background to the changes. Each part then finishes with a detailed commentary on the clauses relevant to that part.

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## **OVERVIEW**

### ***Background to the Act***

1. The Government estimates that fraud in social security benefits costs the taxpayer at least £2 billion every year. In March 1999, the Government set out its strategy for reducing fraud and error in the social security system in the Green Paper entitled "A new contract for welfare – Safeguarding Social Security"(Cm 4276).
2. The central principle in the Green Paper was "getting it right, keeping it right and putting it right". The intention is to secure the social security system by limiting the possibility of invalid claims entering it as new claims, ensuring that claims are adjusted when relevant changes of circumstances do occur and detecting those claims already within the system where benefit is being overpaid due to fraud or error.
3. The Government has made a public commitment through the DSS Public Service Agreement to reduce fraud and error in Income Support and Jobseeker's Allowance by 25% by March 2004 and 50% by March 2006. The expectation is that by March 2002 at least a 10% reduction will have been achieved.
4. The most recently published research on Income Support and Jobseeker's Allowance, where levels of fraud and error are measured continuously, estimated losses through fraud and error for the period April 1999 - March 2000 to be in the region of £1.32 billion (8.4% of programme expenditure).
5. In November 1999, Lord Grabiner QC was asked by the Chancellor of the Exchequer to conduct an investigation into the informal economy and produce a report in time for the March 2000 Budget. He was assisted by a taskforce of officials drawn from HM Treasury, the Inland Revenue, Customs and Excise, DSS and the Department for Education and Employment.
6. The final report entitled, "The Informal Economy" (copies available from the Public Enquiry Unit, HM Treasury, Parliament Street, London SW1P 3AG), suggested that every year billions of pounds were being lost to the informal economy. It proposed new measures to tackle the hidden economy and concluded that the Government should introduce new ways to tackle those operating in it. Lord Grabiner estimated that at any

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one time 120,000 people are fraudulently working and claiming benefits. This fraud costs the taxpayer half a billion pounds every year.

7. In July 2000, the Government published a consultation document "*Safeguarding Social Security: Getting the information we need*" (*copies available from Welfare Reform (Fraud) Freepost (HA 4441) Hayes UB3 1BR*), in response to one of Lord Grabiner's recommendations that the Government should examine how to make use of information held by the private sector.
8. This Act seeks to implement the Government's proposals in response to Lord Grabiner's recommendations on tackling benefit fraud.

### ***The measures in the Act***

9. There are four main elements in the Act:

#### ***Obtaining and Sharing Information***

- Introduction of additional powers to obtain information from specified private and public sector organisations to tackle benefit fraud and error;
- A measure which provides the authority for DSS to supply information to countries outside of the UK in line with agreed arrangements, where those countries have adequate safeguards against improper use of that information;
- Changing the requirement on authorities administering Housing Benefit or Council Tax Benefit to supply information to DSS, the Northern Ireland Department or other authorities from one based in regulations to one based on directions.

#### ***Loss of Benefit Provisions***

- Introduction of powers to reduce or withdraw specified benefits where an offender is convicted twice of benefit offences within a period of three years.

#### ***Penalties as an Alternative to Prosecution***

- Introduction of a new discretionary power which will allow DSS and authorities administering Housing Benefit or Council Tax Benefit to offer a financial administrative penalty to an employer as an alternative to prosecution;
- Introduction of powers to facilitate closer working between DSS and authorities administering Housing Benefit or Council Tax Benefit in the operation of the administrative penalty system.

#### ***Offences***

- Clarification of the offence of failing to notify a change of circumstances;
- Alignment of the limit for taking proceedings in Scotland with that applying in England and Wales.

## **INFORMATION SHARING**

### **Obtaining information**

#### ***Background***

##### **The current position**

10. Benefit fraud occurs because people lie about their circumstances, or deliberately fail to tell DSS or authorities administering Housing Benefit or Council Tax Benefit

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about a relevant change. Cross-checking the information that claimants provide against independent sources of information helps to detect benefit fraud.

11. DSS already has powers to check information against that held by other Government Departments - for example, the Inland Revenue - to detect fraud committed by people working whilst claiming means-tested benefits. DSS also has powers to obtain information from employers. However, if a person is working and claiming benefit, he may wish to conceal his earnings from the Inland Revenue as well as DSS, or his employer may be colluding in his benefit fraud. Hence, we need the ability to cross-check information with additional independent sources - for example, with banks.
12. Information can be obtained from independent sources with a claimant's consent but people who lie to obtain benefit are unlikely to give this. Where benefit fraud is suspected, investigating officers can also ask organisations to provide them with any information for the purpose of the prevention and detection of crime under an exemption to data protection legislation set out in section 29 of the Data Protection Act 1998. However, they cannot compel organisations to provide information under the exemption. Many organisations are bound by a duty of confidentiality to their customers and are therefore uncertain whether they should provide information on this basis. Consequently, investigating officers obtain very little information in this way.

***Recent developments***

13. DSS distributed over 800 copies of the consultation document "Safeguarding Social Security: Getting the information we need" in July 2000 to major utility companies, authorities administering Housing Benefit or Council Tax Benefit, major trade associations, the insurance and banking sectors, claimants' and civil liberties groups, the Information Commissioner and other potentially interested parties including members of the public. The document was also available on the DSS website. DSS received 65 responses to the consultation document. A summary of responses was placed in the libraries of both Houses of Parliament.

***The measures in the Act***

14. The measures in the Act amend and build upon current legislation in sections 109B and 110A of the Social Security Administration Act 1992 as inserted by the Child Support, Pensions and Social Security Act 2000. Section 109B provides for officers authorised under sections 109A and 110A to obtain information in relation to employment and pensions.

***Clause 1: Additional powers to obtain information***

15. The measures in the Act will provide for officers authorised under sections 109A and 110A of the Social Security Administration Act 1992 to require information about individuals from specified private and public sector organisations. Information may be obtained, about persons identified by name or description, where it is reasonable for the purposes set out at section 109A(2) and 110A(2). The list of specified private and public sector organisations that can be required to provide information can be extended by an order with the affirmative resolution of both Houses of Parliament and amended by an order with a negative resolution.
16. The measures also provide for specifically authorised officers to require general information from utility companies about the quantity of services supplied to residential properties. DSS intends to match this information electronically with benefit records in order to detect fraud. For example, if a person was claiming Income Support at a particular address and was consuming no electricity at that address this could indicate that he does not, in fact, live there and that his claim may be fraudulent. The measures do not provide for the bulk acquisition of individuals' names, only details of utilities supplied to residential addresses.

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17. If those from whom information has been requested fail to comply with authorised officers' requests they can be prosecuted under the current section 111 of the Social Security Administration Act 1992. They may be fined up to £1,000 plus £40 for each day after this that they continue to fail to provide the information requested.

***Clause 2: Electronic access to information***

18. This clause provides that the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit can require organisations to enter into arrangements so that the information can be provided electronically on-line where facilities exist to provide such access. For example, credit reference agencies provide direct on-line access to their databases instead of processing enquiries in writing. The clause provides that only those officers especially authorised can use such on-line facilities. This clause enables the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit to require the provision of audit trail information in the arrangements in order to ensure that officers' use of the system can be thoroughly monitored. Authorities administering Housing Benefit or Council Tax Benefit are prevented from requiring an organisation to provide on-line facilities without the consent of the Secretary of State. They are also prevented from entering into a voluntary arrangement for on-line access to private information without the Secretary of State's consent.

***Clause 3: Code of practice about use of information powers***

19. This clause provides for the issue and revision of a statutory code of practice relating to the exercise of powers which would be provided for by clause 1 and 2 of the Act. That is powers to obtain information from independent sources of information such as banks and building societies. It requires the Secretary of State to publish a draft of the code before issuing or revising it and to consider any representation made to him about the draft. It also enables him to incorporate any proposed modifications to the draft. The Secretary of State must lay the code and any revisions of it before both Houses of Parliament. The code of practice will come into force when it is issued by the Secretary of State, as will any revised codes of practice. The clause requires authorised officers to have regard to the code of practice when exercising powers that would be provided for by clauses 1 and 2 and would make the code admissible as evidence in any civil or criminal proceedings. Failure to comply with any of the provisions of the code would not of itself render the authorised officer liable to prosecution or to any penalty or damages in civil proceedings.

***Clause 4: Arrangements for payments in respect of information***

20. The measures allow the Secretary of State to make payments for the information obtained from credit reference agencies and telecommunications providers. Payments may also be made to utility companies but only for the information they provide about the quantities of services supplied to residential properties. The Secretary of State may make payments where he considers this reasonable, and need not make any payments if he does not think that this is appropriate. Any organisation that is added to the list of those who can be required to provide information may also be paid under the same terms.

**COMMENTARY ON CLAUSES 1 TO 4**

***Clause 1: Additional powers to obtain information***

21. This clause amends and adds to the investigator's powers in sections 109A, 109B, 109C and 110A of the Social Security Administration Act 1992.
22. [Section 109A](#) provides for the Secretary of State to authorise officers to use powers in sections 109B and 109C for the purposes set out at section 109A(2):

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- (a) ascertaining whether a social security benefit is or was payable in an individual case;
  - (b) investigating the circumstances of accidents, injuries or diseases giving rise to claims for Industrial Injuries Benefit and other benefits;
  - (c) ascertaining whether the provisions of the relevant social security legislation have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
  - (d) preventing, detecting and securing evidence of the commission of criminal offences in relation to the relevant social security legislation (either by particular individuals or more generally).
23. **Section 110A** allows the Chief Executives or Principal Finance Officers of authorities administering Housing Benefit or Council Tax Benefit to authorise officers to use the powers at sections 109B and 109C for purposes set out in section 110A(2):
- (a) ascertaining whether Housing Benefit or Council Tax Benefit is or was payable in an individual case;
  - (b) ascertaining whether the provisions of the relevant social security legislation regarding Housing Benefit and Council Tax Benefit have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
  - (c) preventing, detecting and securing evidence of the commission of criminal offences in relation to Housing Benefit and Council Tax Benefit (either by particular individuals or more generally).
24. **Section 109B** provides a power for authorised officers to require those listed at 109B(2) to provide information requested by written notice where this is reasonable in relation to one or more of the purposes set out at section 109A(2).
25. **Section 109C** provides a power for authorised officers to inspect premises where persons are employed, from which a trade, business or pension fund is being carried on or where information about these is stored, where this is reasonable in relation to one or more of the purposes set out at section 109A(2). This section is not amended by the Act.
26. Clause 1(1) provides for amendment of section 109B of the Social Security Administration Act 1992.
27. Clause 1(2) inserts a new subsection (2A) after section 109B(2). It lists organisations from which officers authorised under section 109A and 110A of the Social Security Administration Act 1992 can require information. Those organisations include: banks; credit reference agencies; utility providers and education bodies.
28. Clause 1(2) also inserts new subsections (2B) to (2F) into section 109B of the Social Security Administration Act 1992.
29. The new section 109B(2B) provides that, subject to the following provisions of the section, the powers to require information at section 109B shall only be exercisable for making enquiries of persons listed at new section 109B(2A) for the purpose of obtaining information relating to particular persons identified by name or description.
30. New section 109B(2C) provides that an authorised officer shall not exercise those powers to obtain information from persons listed in new section 109B(2A) unless it appears to him that there are reasonable grounds for believing that the identified person who it relates to is:
- (a) a person who has committed, is committing or intends to commit a benefit offence;
- or

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- (b) a person who is a member of the family of a person falling within paragraph (a) above. (A family member is defined in section 137 of the Social Security and Contributions Benefit Act 1992 and includes married and unmarried partners and children and dependants which claimants or their partners are responsible for).
31. New section 109B(2D) provides that, where an authorised officer is a member of a Government Department and where his authorisation explicitly states that it applies for the purposes of new section 109B(2D), nothing in 109B(2B) or 109B(2C) shall prevent him from obtaining information relating exclusively to whether, and in what quantities, water, gas and electricity are supplied to residential premises.
32. New section 109B(2E) provides that the powers at 109B may only be exercised to obtain information from a telecommunications provider if it is “communications data” but not “traffic data” (as those terms are defined in section 21 of the Regulation of Investigatory Powers Act 2000). Restricting the information to communications data would enable the authorised officer to obtain information about the use made by a person of a telecommunications service or any other information held about subscribers to the service. However it would exclude information about the contents of any communication. The exclusion of traffic data would prevent the authorised officer from obtaining information identifying the person, apparatus or location to or from which a communication is sent.
33. New section 109B(2F) provides a further exception to the requirements in section 109B(2B) and 109B(2C) (that is to exercise the powers only in relation to an identified person and where there is reasonable suspicion that the person has committed, is committing or intends to commit a benefit offence). Nothing in those subsections shall prevent an authorised officer from requiring information from a telecommunications provider, about a person’s identity and postal address where the authorised officer has identified the person solely by reference to a telephone number or electronic address.
34. Clause 1(3) amends the existing 109B(5).  
Revised 109B(5) sets out two cases where a person is exempt from the requirement to provide information. They are:
- a) if the information is information which may incriminate themselves or their spouse; and
  - b) if the information is information which, in any proceedings, would be subject to legal professional privilege or, in Scotland, confidentially between a client and a professional legal advisor.
- For both a) and b) it does not matter whether the information is in documentary form or not. These exemptions would apply to information required from persons listed in sections 109B(2) and 109B(2A). Only the exemption subject to legal privilege is new.
35. Clause 1(4) inserts new section 109B(6) and 7.
36. New section 109B(6) provides that provision may be made by Order:
- (a) to add to the list of persons at 109B(2A);
  - (b) to remove persons from that list;
  - (c) to modify 109B(2A) to take account of any changes to the names of persons listed there.
37. New section 109B(7) gives definitions of the terms “bank” “credit” “residential premises” and “telecommunications service”.

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38. Clause 1(5) inserts a new paragraph (c) into section 110A(8). Section 110A(8) provides that the powers in sections 109B and 109C may be exercised by officers authorised by authorities administering Housing Benefit and Council Tax Benefit. New paragraph (c) excludes section 109B(2D) from this provision.
39. Clause 1(6) amends section 111(1)(a) of the Act (offence of obstruction) by substituting "authorised officer" for "inspector" for the purposes of consistent terminology.
40. Clause 1(7) amends section 121 DA (5) to re-define benefit offences. The new definition now incorporates attempt, conspiracy and collusion to commit benefit offences.
41. Clause 1(8) amends section 121 DA (7) to define "relevant social security benefit" which is a term used in the re-definition of benefit offences above.
42. Clause 1(9) adds the order making power provided for by new section 109B(6)(a) to the list of the order making powers subject to affirmative Parliamentary procedure set out at section 190(1)(a) of the Social Security Administration Act 1992.

***Clause 2: Electronic access to information***

43. Clause 2(1) provides that new section 109BA shall be inserted into the Social Security Administration Act 1992 after section 109B.
44. New section 109BA(1) provides that, subject to subsection (2), where it appears to the Secretary of State that: any person listed in section 109B(2A) keeps any electronic records; that those records may contain information relevant to any one or more of the purposes at 109A(2); and that electronic access to those records is, or is capable of being, provided; the Secretary of State may require that person to enter into arrangements under which authorised officers are allowed access to those records.
45. New section 109BA(2)(a) provides that an authorised officer may only obtain information under the arrangements at 109BA(1) if his authorisation explicitly states that it applies for the purposes of that subsection.
46. New subsection 109BA(2)(b) provides that officers authorised for the purposes of this subsection may only obtain information under the arrangements provided for by subsection (1) where the information relates to a particular person and where it is information that they have the power to obtain under provisions at section 109B.
47. New section 109BA(3) sets out the matters which may be included in arrangements made under subsection (1).
48. New section 109BA(4) provides that an authorised officer who is allowed access to electronic records in accordance with any arrangements entered into under subsection (1) may make copies of, and take extracts from, those records.
49. Clause 2(2) provides for the insertion of new section 110AA after section 110A of the Social Security Administration Act 1992. The provisions are similar to clause 1 and enable authorities administering Housing Benefit or Council Tax Benefit, that have the Secretary of State's consent, to make arrangements for electronic access to information in relation to Housing Benefit or Council Tax Benefit claims.
50. New section 110AA(1) provides that, subject to subsection (2), where it appears to an authority administering Housing Benefit or Council Tax Benefit that: any person listed in section 109B(2A) keeps any electronic records; that those records may contain information relevant to any one or more of the purposes at 110A(2); and that electronic access to those records is, or is capable of being, provided; the authority may require that person to enter into arrangements under which authorised officers are allowed access to those records.

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51. New section 110AA(2)(a) provides that an authorised officer may only obtain information under the arrangements at subsection (1) if his authorisation explicitly states that it applies for the purposes of that subsection.
52. New subsection 110AA(2)(b) provides that the authorised officer may not obtain information under the arrangements at subsection (1) unless the information relates to a particular person and it is information that he has the power to obtain under provisions at section 109B as applied to him by provisions at section 110A(8).
53. New section 110AA(3) provides for the matters which may be included in arrangements made under subsection (1).
54. New section 110AA(4) provides that an authorised officer who is able to access records in accordance with arrangements under subsection (1) may make copies of, and take extracts from, those records.
55. New section 110AA(5) provides that an authority administering Housing Benefit or Council Tax Benefit may only require a person to enter into arrangements for giving authorised officers electronic access to records if it has the consent of the Secretary of State. It also provides that the authority may not enter into arrangements with a person specified in section 109B(2A) to give persons acting on behalf the authority electronic access to private information (otherwise than in accordance with the requirement imposed under this section) unless it has the consent of the Secretary of State. In either case, the arrangements entered into may be subject to any conditions imposed by the Secretary of State when he gives consent. "Private information" is defined in section 110AA(7) as any information held by a person who is not entitled to disclose it except in compliance with a requirement imposed by the authority in exercise of its statutory powers.
56. New section 110AA(6) provides that, for the purposes of subsection (5), consent may be given in relation to a particular case, or to any case that falls within a particular description of cases.
57. Clause 2(3) amends section 111 of the Social Security Administration Act 1992. Section 111(1) provides for any person found guilty of obstruction or delay to be liable on summary conviction to a fine not exceeding level 3 on the standard scale. That is currently up to a £1,000 fine. Section 111(2) provides that, where a person who is convicted under section 111(1) continues to refuse to provide required information or to answer questions, he will be guilty of a further offence. On summary conviction he will be fined £40 for every day thereafter that the requirement to provide information is not met.
  - (a) Clause 2(3)(a) amends section 111(1) to provide that the offence at section 111 also applies where a person refuses or neglects to comply with any requirements under sections 109BA and 110AA.
  - (b) Clause 2(3)(b) provides that the provisions at 111(2) apply to requirements under sections 109BA and 110AA.

***Clause 3: Code of Practice about use of information powers***

58. Clause 3 provides for the issue and revision of a Code of Practice relating to the exercise of the provisions set out in clauses 1 and 2 of the Act.
59. Clause 3(1) provides that the Secretary of State shall issue a Code of Practice relating to the use of provisions at Section 109B of the Social Security Administration Act 1992 where they are being used to make enquiries of persons listed at Section 109B(2A) - banks, building societies, credit reference agencies etc. The Code would also relate to the use of the powers to obtain electronic access to information - new Sections 109BA and 110AA.

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60. Clause 3(2) provides that the Secretary of State may revise the Code of Practice. The Department intends to review the operation of the Code of Practice to ensure that it is working as intended for both investigators and for business. The code could be revised if any review demonstrated this was necessary.
61. Clause 3(3) relates to consultation on the Code. It provides that the Secretary of State shall prepare and publish a draft of the Code of Practice, consider any representations made to him upon the draft, and may make any changes he considers appropriate before publishing the final version. It provides for the Secretary of State to do the same in relation to any revisions of the code.
62. Clause 3(4) provides that the final, and any revised, version of the Code of Practice should be laid before both Houses of Parliament.
63. Clause 3(5) provides that the Code of Practice, and any revised version, shall come into force when it is issued by the Secretary of State.
64. Clause 3(6) provides that authorised officers must have regard to the Code of Practice currently in force when exercising their powers under the provisions covered by the code.
65. Clause 3(7) provides that failure on the part of an authorised officer to comply with the Code of Practice would not, in itself, render him liable to civil or criminal proceedings. If authorised officers misuse their powers, they are already liable to proceedings under the Data Protection Act 1998 and the Computer Misuse Act 1990.
66. Clause 3(8) provides that the Code of Practice shall be admissible in any civil or criminal proceedings - for example, if an investigator was charged with misuse of these powers under the offences in the Data Protection Act 1998 or the Computer Misuse Act 1990.
67. Clause 3(9) defines authorised officer. It has the same meaning as in the Social Security Administration Act 1992.

***Clause 4: Arrangements for payments in respect of information***

68. Clause 4(1) provides that it shall be the duty of the Secretary of State to ensure that such arrangements as he considers appropriate (if any) are in place to ensure that he can authorise such payments as he thinks appropriate and in cases that he thinks fit, in respect of organisations subject to “relevant obligations”. The organisations that may be paid under these arrangements are credit reference agencies, telecommunications, gas, water and electricity providers and the servants and agents of the above. Payments may also be made to persons added to the list at section 109B(2A) by Order as provided for in Clause 1(3) and their servants and agents.
69. Clause 4(2) defines “relevant obligation” for the purposes of subsection (1).
  - (a) Clause 4(2)(a) provides that, in the case of credit reference agencies, telecommunication providers and persons added to the list at 109B(2A) by Order, “relevant obligation” means any requirement to provide information under section 109B by virtue of their falling within the list at 109B(2A). It also means any requirement to provide access to records in accordance with section 109BA or 110AA.
  - (b) Clause 4(2)(b) provides that, in the case of providers of water, gas and electricity, “relevant obligation” means any requirements imposed by the exercise of powers at 109B as mentioned in section 109B(2D).
70. Clause 4(3) provides that the Secretary of State may make arrangements for payments to be made from money provided by Parliament in order to comply with his duties under this section.

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71. Clause 4(4) provides that authorities administering Housing Benefit or Council Tax Benefit shall be under a duty to comply with any specific or general directions that the Secretary of State makes regarding payments in accordance with arrangements made under clause 4(1).

### ***Exchanging Information***

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

#### **Background**

The current position

72. People are not entitled to means-tested benefits if they are claiming similar benefits in another country or working abroad. In some cases benefits cannot be paid to people living in other countries. Other countries have similar rules. Some people fraudulently claim benefit in more than one country at a time or use false, borrowed or stolen overseas identities to claim benefit fraudulently in the UK.
73. Sharing information with another country about people claiming benefit and living abroad could help both countries prevent and detect benefit fraud. Some limited information is already exchanged with other countries under the regulations that co-ordinate social security provision within the EU and under reciprocal agreements for payment of social security benefits with countries outside the EU. However, these do not provide for the exchange of all the information needed to prevent and detect social security fraud and error.

#### **Recent developments**

74. A Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning co-operation and mutual assistance in the administration of social security programmes (the Memorandum of Understanding) was signed on 9 October 2000. It will enable both countries to improve the administrative efficiency, cost effectiveness and integrity of their social security systems

#### **The measures in the Act**

75. The measures in the Act will provide for social security information to be supplied to authorities in other countries that carry out functions relating to social security to facilitate the carrying out of those functions. Information may only be supplied where the Secretary of State is content that arrangements have been made with those countries to exchange information and that the country in question has adequate safeguards in place against the improper use of any information disclosed. As these measures involve international relations, with the agreement of the Northern Ireland Executive, the equivalent powers for the Northern Ireland Department of Social Development to supply social security information to authorities in other countries are provided in this Act.

### **COMMENTARY ON CLAUSE 5**

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

76. Clause 5(1) inserts a new section 179A after section 179 of the Social Security Administration Act 1992. Section 179 provides for reciprocal agreements relating to social security with countries outside the UK to be given effect by Order in Council.
77. The new section 179A provides for the Secretary of State to disclose any relevant information to authorities in countries outside of the UK under agreed arrangements for

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the exchange of relevant information, where those countries have adequate safeguards against improper use of that information.

78. New section 179A(1) provides that the provisions of new section 179A to supply information to authorities in countries outside the UK will only apply where:
- (a) it appears to the Secretary of State that there is an arrangement in force between him and the other country for the exchange of relevant information; and
  - (b) in the Secretary of State's view, the law and arrangements in the other country provide adequate safeguards against any improper use of information disclosed under this section.
79. New section 179A(2) provides that the Secretary of State may disclose relevant information where this is necessary to give effect to the arrangements mentioned in section 179A(1)(a). The information must be supplied for the purposes of helping the other country carry out functions relating to anything corresponding to, or in the nature of, social security benefits.
80. New section 179A(3) provides that the Secretary of State shall be under a duty to take reasonable steps to ensure that any information received under an arrangement mentioned in section 179A(1)(a) is not used for any purpose that is not covered expressly or impliedly in that arrangement. For example, the Memorandum of Understanding with the Government of Ireland contains an agreement that the Secretary of State will not pass information to the security services.
81. New section 179A(4) provides that this section does not apply where section 179 gives effect to any arrangements.
82. New section 179A(5) extends the purposes for which the Secretary of State may require information in respect of Housing Benefit and Council Tax Benefit from the authorities administering Housing Benefit or Council Tax Benefit under section 122D of the Social Security Administration Act 1992 or section 116D of the Northern Ireland Administration Act to include disclosure to other countries in accordance with this section.
83. New section 179A(6) provides a definition of relevant information for the purpose of this section as information held by the Secretary of State or any authorities in a country outside the UK for the purposes of any function relating to a social security benefit or anything corresponding to, or in the nature of, a social security benefit.
84. Clause 5(2) inserts a new section 155A after section 155 in Part XIII of the Social Security Administration (Northern Ireland) Act 1992. It provides the same measures for the Northern Ireland Department which administers social security benefits as the new section 179A provides for the Secretary of State.

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

**The measures in the Act**

85. The proposed amendment is a technical change to the provisions under which an authority administering Housing Benefit or Council Tax Benefit can be required to provide information to DSS or to another authority.
86. Section 122D of the Social Security Administration Act 1992 enables the Secretary of State to require an authority administering Housing Benefit or Council Tax Benefit to supply information to him. But, if the Secretary of State wishes to impose requirements relating to the manner and form in which the information is provided he must make regulations under subsection (3). This measure will allow the Secretary of State to specify in directions, rather than regulations, the manner and form (and other requirements) in which information is to be provided.

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87. Section 122E of the Social Security Administration Act 1992 provides for the exchange of information between authorities administering Housing Benefit or Council Tax Benefit. Subsections (3) and (4) enable the Secretary of State to require information to be supplied by one authority to another. Those subsections have not yet been commenced. However, as subsection (4) mirrors section 122D(3), it is also being amended for the sake of consistency.

## **COMMENTARY ON CLAUSE 6**

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

88. This clause amends sections 122D and 122E of the Social Security Administration Act 1992 by replacing the word “prescribed” with “specified in directions given by the Secretary of State or, as the case may be, the Northern Ireland Department”. This means the Secretary of State or the Northern Ireland Department can specify the manner and form in which information is to be supplied under those sections (or any other requirements relating to the supply of information) by way of directions rather than by regulations.

## **LOSS OF BENEFIT PROVISIONS**

### ***Clauses 7 to 13***

#### **Background**

89. The report by Lord Grabiner concluded that the Government should consider introducing new ways to tackle those who are involved in the hidden economy, including a ‘two strikes and you’re out’ approach for people convicted twice of social security benefit fraud.
90. The report spelt out how Lord Grabiner saw a ‘two strikes’ sanction working. He indicated that a tough approach for persistent offenders would be to simply deny them benefit altogether as in parts of the United States and Canada. However, any measure of this kind must have safeguards to protect the innocent and the vulnerable. There are already arrangements in place to allow people to claim reduced-rate payments of benefit while they are subject to benefit sanctions provided they can show that they or their dependants would otherwise suffer hardship.
91. The report concluded that those who persistently defrauded the benefit system should lose their right to benefit in the same way as people who have failed to meet other responsibilities under the social security system. The existing sanctions regime provided a precedent, and many of the details of how such a scheme might work in practice are already established. Furthermore, if the sanction were restricted to a hard core of convicted cheats it could act as a deterrent even if it were infrequently used.

#### **The measures in the Act**

92. The measures in the Act provide that certain specified benefits shall be reduced or withdrawn where a person is convicted twice of committing offences in relation to specified benefits within the space of three years. The sanction will be for a fixed period of 13 weeks and will begin after conviction for the second offence where benefit is in payment or, if benefit is not in payment, when entitlement first arises in the three-year period following the second conviction. The decision that the sanction applies will carry with it the right of appeal to an appeal tribunal on a question of fact and law.
93. The measures will apply to offences involving fraud against all social security benefits and War Pensions with the exception of Statutory Sick Pay, Statutory Maternity Pay, and Maternity Allowance. Tax Credits are also excluded. Offences relating to Retirement Pension, Graduated Retirement Benefit, Disability Living Allowance, Attendance Allowance, Child Benefit, and Guardian’s Allowance will activate benefit

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loss but these benefits will not be subject to sanction by removal of payment. Also exempt as sanctionable "benefits" are Social Fund payments and Christmas bonuses. All other benefits will be withdrawn or reduced as a result of a second conviction.

94. The intention is that while relevant benefits will be sanctioned, an underlying entitlement will remain to ensure that the link between benefits and other entitlements such as free prescriptions and school meals remain. For recipients of both contributory and income-based Jobseeker's Allowance, the benefit will be withdrawn for the period of the sanction. Jobseeker's Allowance claimants will also have their Housing Benefit and Council Tax Benefit withdrawn during this period. It is intended that regulations under the powers for which this Act provides will mirror current provisions for hardship payments arising from employment condition sanctions. If a Jobseeker's Allowance claimant falls into a vulnerable group they could apply for hardship payments from the first day of the sanction. The term "vulnerable group" refers to the group of people specified in regulation 140(1) of the Jobseeker's Allowance Regulations 1996. Those who do not fall into a vulnerable group will be eligible to apply for hardship payments from the 15th day of the sanction.
95. Claimants will retain an underlying entitlement to Jobseeker's Allowance throughout the period of the sanction whether or not they are entitled to hardship payments, ensuring that the "passporting" back on to Housing Benefit and Council Tax Benefit is maintained. If hardship is established under the regulations, and the claimant satisfies the other conditions of entitlement, they will be awarded a reduced payment of income-based Jobseeker's Allowance. The rate of reduction will be prescribed in regulations, but the intention is that the reduction will normally be 40 per cent of the single person's allowance, although where someone in the family is seriously ill or pregnant, the reduction will be 20 per cent.
96. Joint-claim Jobseeker's Allowance is dealt with in a different manner. Joint-claim Jobseeker's Allowance was introduced by section 59 of, and Schedule 7 to, the Welfare Reform and Pensions Act 1999. These provisions are to be commenced on 19 March 2001. The requirement to make a joint claim for Jobseeker's Allowance will impact on couples without children where one or both of the partners is in the 18-24 years age range on the date when the measure is introduced. Coverage will apply to those born on or after a certain date, so older couples without children will be included as time passes. Under joint claims, both members of the couple will have to claim Jobseeker's Allowance and both will have to meet Jobseeker's Allowance labour market conditions.
97. It is intended to prescribe in regulations that in cases where couples without dependants are in receipt of joint-claim Jobseeker's Allowance, and one member of the couple is subject to the sanction, the non-convicted member will continue to receive the equivalent of the rate of Jobseeker's Allowance which is applicable to a single person during the period of the sanction.
98. For Income Support claimants the effect of the sanction will be to reduce the amount of benefit in payment, rather than withdraw the benefit in its entirety. It is intended that the effect of this measure will be to reduce benefits in line with the calculation of Jobseeker's Allowance payments i.e. by 40 per cent of the single person's allowance, or 20 per cent where a member of the family is pregnant or seriously ill. The reduction will always leave a minimum of 10p Income Support in payment to enable Housing Benefit and Council Tax Benefit as well as other "passporting" benefit entitlements to remain.
99. Where the sanctioned benefit is neither Income Support nor income-based Jobseeker's Allowance, a claimant may claim such benefits under normal rules. Such benefits will be subject to sanctions but the claimant may still be entitled to payments of these benefits under the hardship regime. Entitlement to a hardship payment will also provide entitlement to Housing Benefit and Council Tax Benefit (even where these have been sanctioned).

100. In any case where a claimant is neither eligible for Income Support nor income-based Jobseeker's Allowance under normal rules (e.g. if their income, capital or hours worked excludes them from these benefits), it is intended to prescribe in regulations that Housing Benefit and Council Tax Benefit entitlement will be reduced by a specified amount similar to that used in Income Support cases. This would be by 20 per cent of the Income Support personal allowance where a member of the family is pregnant or seriously ill and 40 per cent in all other cases. The decision whether to award hardship payments and the amount of the award will in all cases each carry the right of appeal to an appeal tribunal on a question of fact and law.
101. To prevent cases where a couple attempt to avoid the sanction by swapping which of them makes the claim, regulations will enable the Secretary of State to reduce the amount of benefit paid to the partner or any dependent of the "offender" by a specified amount for the duration of the sanction.
102. The provisions for members of an offender's family only apply when one of the specified income-related benefits is to be sanctioned – Income Support, income-based Jobseeker's Allowance, Housing Benefit and Council Tax Benefit as these are the only benefits where it is possible for a couple to choose which of them makes the claim.
103. With Jobseeker's Allowance, the effect of the sanction, as prescribed in regulations, would be to reduce the level of Jobseeker's Allowance by removing the element of personal allowance paid in respect of the offender. The partner may receive any allowances and premiums in respect of themselves and their dependants. Hardship provisions similar to those which currently apply with joint-claim Jobseeker's Allowance will also be put in place to protect families in vulnerable circumstances.
104. There will be a number of occasions when a claimant will have deductions taken from their benefit to pay for items such as fuel arrears, court fines and Social Fund loans. Under current arrangements, a claimant has to agree with the Secretary of State which payments to third parties should remain 'deductible' during a period of sanction. There will be times when it is either in the claimant's best interests to continue third party payments (i.e. where money is being deducted to pay for essential fuel costs), or where it is in an innocent third party's interest to have the payments maintained (i.e. child maintenance deductions introduced by the Child Support, Pensions and Social Security Act 2000). The provisions will allow a certain amount of flexibility to the current system and the powers in clause 10(2) allow the Secretary of State to prescribe in regulations which circumstances this may apply to.

## **COMMENTARY ON CLAUSES 7 TO 13**

### ***Clause 7: Loss of benefit for commission of benefit offences***

105. This clause contains provisions to remove or reduce benefit from offenders who have been convicted twice of benefit fraud within a period of three years.
106. Subsection (1) provides for benefit to be reduced or withdrawn where an offender is convicted on more than one occasion of specified benefit offences. Benefit withdrawal or reduction is triggered when an offender is convicted of one or more benefit offences in each of two separate sets of proceedings. The offence for which the second set of proceedings has been brought must occur within a period of three years of the date on which the offender was convicted for the first offence. Where this happens the offender will have all sanctionable benefits in payment withdrawn or reduced for the period of the sanction.
107. Subsection (2) introduces a "disqualification period", which is the time for which the benefit will be reduced or withdrawn. Subsection (6) further prescribes the period as beginning at a prescribed time after conviction for the second offence.

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108. Subsection (3) provides for Income Support to be paid at a reduced rate for the prescribed period rather than withdrawn completely. Details of the reduction will be prescribed in regulations. The broad intention is that the reduction will be similar to that which will apply in Jobseeker's Allowance cases where hardship is established.
109. Subsection (4) enables regulations to be made to provide that Jobseeker's Allowance claimants may be eligible for a reduced rate of benefit during the prescribed period providing they satisfy certain conditions. The intention is that these conditions will be similar to the hardship provisions that currently apply with Jobseeker's Allowance.
110. Subsection (5) enables regulations to be made to provide that Housing Benefit and Council Tax Benefit claimants will be eligible for a reduced rate of benefit during all or part of any disqualifying period. The intention is that a person entitled to Housing Benefit or Council Tax Benefit who becomes subject to sanction under the new clauses should, if any Income Support or Jobseeker's Allowance remains payable under subsections (3) and (4), remain entitled to full Housing Benefit and Council Tax Benefit. Where these benefits are not payable, the Housing Benefit and Council Tax Benefit entitlement will be reduced by a sum specified in regulations.
111. Subsection (6) provides that where an offender has been convicted twice of benefit fraud within the period specified within subsection (1), the sanction will be a period of 13 weeks commencing at the prescribed time after conviction for the second offence.
112. Subsection (7) provides that in the event if a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.
113. Subsection (8) sets out definitions of the terms used within this provision.
114. Subsection (9) provides further definition of the meaning of conviction as used within this provision.
115. Subsection (10) provides that the sanction shall not take effect under this clause where it has already taken effect for the same convictions under the equivalent Northern Ireland legislation. It also allows a sanction to be imposed where a previous sanction took effect for a period within the same disqualifying period (e.g. where it has taken effect for part of that period in relation to a relative under clause 8 and then takes effect in relation to the offender himself for the rest of the period).
116. Subsection (11) provides that for the extent that the clause applies in Northern Ireland, the only sanctionable benefit that this clause will apply to is a War Pension.

***Clause 8: Effect of offence on joint-claim Jobseeker's Allowance***

117. This clause sets out how the fraud sanction provisions will apply to joint-claim Jobseeker's Allowance as introduced by section 59 of, and Schedule 7 to, the Welfare Reform and Pensions Act 1999. These provisions are to be commenced on 19 March 2001.
118. Subsection (1) provides for the provisions of subsections (2) and (3) to apply where a joint-claim couple are entitled, or become entitled to joint-claim Jobseeker's Allowance and the fraud sanction is applicable to at least one of the couple.
119. Subsection (2) provides that no joint claim Jobseeker's Allowance will be payable where both members of the couple are subject to a fraud sanction, or where one member is subject to a fraud sanction and the other is already subject to a sanction pursuant to section 20A of the Jobseeker's Act 1995, or to a community sentence sanction as detailed in subsection (2) of section 62 of the Child Support, Pensions and Social Security Act 2000.
120. Subsection (3) provides that where only one member of a couple is subject to a fraud sanction and the other member is not subject to any sanction, the amount of Jobseeker's

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Allowance payable will be reduced to an amount calculated in a prescribed way and will be paid to the other member of the couple who is not subject to the sanction.

121. Subsection (4) provides for hardship payments to be made in cases where both members of a joint-claim couple for Jobseeker's Allowance are subject to a fraud sanction, or where one member is subject to a fraud sanction and the other is sanctioned for employment-related reasons imposed under section 19 of the Jobseeker's Act 1995, or the restriction introduced in subsection (2) of section 62 of the Child Support, Pensions and Social Security Act 2000.
122. Subsection (5) prescribes that the reduced amount payable, referred to in subsection (3), will be calculated in the same way as prescribed in section 20A of the Jobseeker's Act 1995.
123. Subsection (6) provides that in the event if a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

***Clause 9: Effect of offence on benefits for members of offender's family***

124. This clause allows the Secretary of State to prescribe in regulations that certain benefits shall be lost or reduced where a member of an offender's family claims benefit in respect of the offender during the period of disqualification.
125. Subsection (1) prescribes the income-related benefits to which the clause relates.
126. Subsection (2) prescribes the cases in respect of which such regulations may be made under this clause. These are cases where a member of the offender's family becomes entitled to, and would be paid, one of the benefits listed in subsection (1) during the disqualification period and entitlement to, or the amount of that benefit, is determined by reference to the offender.
127. Subsection (3), as in clause 7(3), prescribes that where the offender's family member is entitled to Income Support, regulations may be made reducing his applicable amount in the prescribed manner. The intention is that the reduction will be similar to that which will apply in Jobseeker's Allowance cases where hardship is established.
128. Subsection (4) prescribes that where the offender's family member is entitled to Jobseeker's Allowance, regulations may be made reducing the rate of the allowance providing that it shall only be payable on compliance with certain obligations or the provision of certain information. The broad intent is that the partner may receive any allowances in respect of themselves and their dependants but any personal allowance payable for the offender will be withdrawn during the prescribed period.
129. Subsection (5), as in clause 7(5), prescribes that where the offender's family member is entitled to Housing Benefit or Council Tax Benefit, regulations may be made reducing the rate of the benefit and providing that benefit shall only be payable in prescribed circumstances. The intention is that where an underlying entitlement to Jobseeker's Allowance or Income Support remains, either for the offender, partner or any dependants, full Housing Benefit or Council Tax Benefit will remain payable. Where these benefits are not payable, the Housing Benefit or Council Tax Benefit entitlement will be reduced by a sum specified in regulations.
130. Subsection (6) provides that in the event of a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made.

***Clause 10: Power to supplement and mitigate loss of benefit provisions***

131. This clause contains definitions and further regulation-making powers enabling the scheme of benefit offence sanctions to be modified.

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132. Subsection (1) allows the Secretary of State to provide by regulations that certain benefits shall be disqualifying but not sanctionable, or to exclude benefits from the scheme altogether by specifying them as neither disqualifying nor sanctionable benefits. It is intended to provide the Secretary of State with the flexibility to change the scope of the scheme where it is appropriate to do so.
133. Subsection (2) allows the Secretary of State to prescribe regulations for certain parts of a claimant's benefit to be exempted from restriction, where that part is already being deducted from benefit and paid to a third party. For example, the Child Support reforms brought in under the Child Support, Pensions and Social Security Act 2000 introduced compulsory deductions from the benefits of absent parents. These are then passed on to the parent with care. In circumstances such as these the intention is that benefit payment is withdrawn or reduced apart from amounts subject to the amount of compulsory maintenance deductions which are to be paid over to the parents with care in the normal way.
134. Subsection (3) sets out definitions of the terms used within this provision.

***Clause 11: Loss of benefit regulations***

135. This section contains provisions about the making of regulations by the Secretary of State.
136. Subsection (1) defines the term 'prescribed' to mean prescribed by, or in accordance with, regulations made by the Secretary of State.
137. Subsection (2) provides for all regulations under these provisions, other than those regulations referred to in subsection (3), to be made by the negative resolution procedure.
138. Subsection (3) lists the regulations that require the affirmative resolution procedure. These are:
- a) regulations that prescribe any additional benefits that are to be treated as disqualifying benefits but not as sanctionable benefits for the purposes of clause 7;
  - b) regulations to prescribe a reduced amount of Income Support to be paid to a claimant, or a member of the offender's family, who is subject to a fraud sanction;
  - c) regulations prescribing the circumstances in which reduced hardship payments are to be made, and the amount, where the sanction applies to a single claimant on Jobseeker's Allowance, or where both members of a joint-claim couple are subject to a sanction. This subsection also applies to regulations prescribing a reduced amount of Housing Benefit or Council Tax Benefit to be paid to a claimant, or member of the offenders family, who is subject to a fraud sanction;
  - d) regulations prescribing a reduced amount of a joint-claim Jobseeker's Allowance where one member of a couple is subject to sanction.
139. Subsection (4) applies provisions of the Social Security Administration Act 1992 allowing the regulation-making powers in clauses 7 to 10 to be used in such a way as to make different provisions for different classes of cases, imposing conditions or creating exceptions. It also enables the regulations to include incidental, consequential and transitional provisions.
140. Subsection (5) provides that regulations under these measures can include different provision for different areas.

***Clause 12: Consequential amendments***

141. Subsection (1) makes a consequential amendment to the 'breach of Community Order' provisions in the Child Support, Pensions and Social Security Act 2000 in relation to

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joint claims to Jobseeker's Allowance. It allows sanctions under this Act to be taken into account when determining the sanction to which a joint-claim couple is subject under that Act.

142. Subsection (2) creates a right of appeal against the decision that a benefit has to be reduced or withdrawn.
143. Subsection (3) adds the Social Security Fraud Act 2001 to the definitions of "relevant enactments and relevant Northern Ireland enactments" in section 170 of the Social Security Administration Act 1992 (functions of the Social Security Advisory Committee in relation to the relevant enactments and the relevant Northern Ireland enactments).

### ***Clause 13: Interpretation of sections***

144. This clause contains a number of further definitions that are applied from other Acts.

## **PENALTIES AS AN ALTERNATIVE TO PROSECUTION**

### ***Clause 14***

#### **Delegation of functions**

##### Background

145. Section 15 of the Social Security Administration (Fraud) Act 1997 introduced a new administrative penalty, with the insertion of new section 115A into the Social Security Administration Act 1992. The provision applies "where an overpayment is recoverable from a person by, or due from a person to, the Secretary of State or an authority that administers Housing Benefit or Council Tax Benefit (as defined in the Social Security Administration Act 1992) and it appears to the Secretary of State or authority that administers Housing Benefit or Council Tax Benefit that:
  - (a) the making of the overpayment was attributable to an act or omission on the part of that person; and
  - (b) there are grounds for instituting against him proceedings for an offence (under this Act or any other enactment) relating to the overpayment."
146. Where the provisions in sub-section (1) apply, then the Secretary of State or authority may give to the person a written notice:
  - (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 Secretary of State or authority, no such proceedings will be instituted against him; and
  - (b) containing such information relating to the operation of this section as may be prescribed."
147. The structure of these provisions is based on the premise that the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit will act independently of each other in the administration of the penalty system. This reflects the fact that they have statutory responsibility for different benefits. In particular, sections 134 and 139 Social Security Administration Act 1992 confer a statutory duty upon authorities administering Housing Benefit or Council Tax Benefit to administer Housing Benefit and Council Tax Benefit respectively.

##### The measures in the Act

148. The policy is to introduce powers that will facilitate closer working between the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit in the operation of the administrative penalty system. At present, where a benefit offence results in overpayments of Housing Benefit or Council Tax Benefit and another

benefit and both the Benefits Agency and the authorities administering Housing Benefit or Council Tax Benefit decide to offer an administrative penalty, each will handle the process separately. This means two interviews and two sets of papers for the claimant.

149. The aim is both to make the system easier for those persons who may be subject to more than one penalty, and to streamline administrative procedures by enabling the Department and the relevant authority to act together in offering the penalty. This means one interview, not two, and one gross sum recovered. However, the process of recovery will still be the business of DSS and the authority respectively.

## **COMMENTARY ON CLAUSE 14**

### ***Delegation of Functions***

150. This clause inserts two new subsections into section 115A of the Social Security Administration Act 1992.
151. Subsection (7A) allows the Secretary of State and an authority administering Housing Benefit or Council Tax Benefit to agree to exercise functions under section 115A on each other's behalf or to act together in exercising those functions.
152. Subsection (7B) precludes the Secretary of State or an authority administering Housing Benefit or Council Tax Benefit from deciding on the other's behalf to offer an administrative penalty.

### ***Clause 15***

#### **Colluding Employers**

##### **Background**

153. The report by Lord Grabiner concluded that very few offenders are punished. Prosecution in particular takes up large amounts of staff time, so the undoubted deterrent effect it has must be balanced against the high cost. Generally, it is used only in the more serious cases.
154. An administrative penalty, offered to a colluding employer as an alternative to prosecution, will provide a useful additional tool to target these cases. It will go some way to streamline the sometimes cumbersome prosecution process. In addition to rationalising management of the case, administering the penalty more swiftly following discovery of the offence should have a deterrent effect on the employer and others contemplating a similar offence.
155. The existing sanctions regime, which includes penalties as an alternative to prosecution for benefit claimants provides a precedent and many details of how such a scheme might work in practice are already established. These include offering penalties only in cases where prosecution is a viable alternative should the offender refuse to accept the penalty offer. The offer is made on the basis that, once it has been accepted, the Department will not then prosecute for that offence, subject to a 28-day cooling-off period during which the person is free to withdraw his acceptance.
156. The administrative penalty builds upon the report's recommendations, which aim to deter and punish people who are working in the hidden economy. This is compatible with other Government policies, which aim to encourage people to move into a legitimate lifestyle.

##### **The measures in the Act**

157. This measure introduces a new discretionary power, which provides for the payment of a financial penalty, as an alternative to prosecution. This applies in circumstances where the Secretary of State or authority responsible for administering Housing Benefit or Council Tax Benefit has sufficient evidence to institute proceedings (or request that

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the Lord Advocate or procurator fiscal consider proceedings in respect of the clause's application in Scotland) against an employer for either of the following kinds of offence:

158. The first kind of offence is one committed in connection with an inquiry into the employment of one or more employees. It will involve the hindering of an investigation. In these circumstances the employer may be offered a penalty of £1,000 as an alternative to prosecution. The second kind of offence may involve particular claimants, and will relate to acts or omissions that help those claimants to commit offences. In these circumstances the employer may be offered a higher penalty, as an alternative to prosecution, of £1,000 multiplied by the number of employees involved in the fraud, up to a maximum sum of £5,000.
159. The penalty may be offered to those organisations or people who employ persons to work in any capacity: it will cover all cases in which a claimant works directly for another person, including cases where the claimant is self-employed. The penalty applies not only to the person (or company) who is the actual employer but also to individuals who are within the same organisation and who have a delegated responsibility to appoint staff.
160. The measures include a regulation-making power to prescribe the information to be included in the written notice which informs the employer that a penalty may be offered.
161. The employer will not be prosecuted for conduct for which the penalty has been offered where he has made an agreement to pay the penalty. The measures include provision for the employer to withdraw agreement to pay the penalty within 28 days from the date of the agreement. Non-agreement or withdrawal of agreement may result in prosecution for the conduct for which the penalty was offered.
162. The measure provides that an unpaid penalty may be recovered as a civil debt, or by deduction from social security benefit where the employer is a claimant and in receipt of benefit.

## **COMMENTARY ON CLAUSE 15**

### ***Colluding Employers***

163. This clause inserts a new section 115B into the Social Security Administration Act 1992.
164. Subsection (1) provides for section 115B to apply where the Secretary of State for Social Security or an authority responsible for administering Housing Benefit or Council Tax Benefit considers that there are grounds for instituting proceedings (or grounds for referral to the Lord Advocate or procurator fiscal to consider proceedings in respect of the clause's application in Scotland) against a person for an offence in respect of conduct of a type defined in subsection (2). The person is referred to in section 115B as "the responsible person".
165. Subsection (2) defines the conduct for which there must be evidence of to prosecute. This is either:
  - (a) conduct which constitutes an offence under the Social Security Administration Act 1992 in connection with an investigation into the employment of one or more employees, or
  - (b) conduct, which is such as to assist an employee to commit a benefit offence, whether an actual offence occurred or not.
166. Subsection (3) defines how the Secretary of State offers the invitation to pay a financial penalty and the information he must supply when he does so: the Secretary of State issues a written notice, which informs the 'responsible person' that he may be invited to agree to pay a penalty and that, if he does so in the specified manner, he will not be

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prosecuted for an offence for conduct described in subsection (2) (and the case will not be referred to the Lord Advocate or procurator fiscal to consider prosecution in respect of the clause's application in Scotland). This subsection also includes a regulation-making power to prescribe other information, which the Secretary of State must supply.

167. Subsection (4) provides that if the penalty is accepted it may under subsection (4)(a) be recovered as a civil debt and by deduction from benefit in circumstances where the recipient of the penalty notice is in receipt of a relevant social security benefit. Subsection (4)(b) provides that if the penalty is accepted no criminal proceedings for the specific conduct to which the penalty relates will be instituted (and the case will not be referred to the Lord Advocate or procurator fiscal to consider prosecution in respect of the clause's application in Scotland). Section 71(10) of the Social Security Administration Act 1992 (which relates to benefit overpayments) will apply in relation to penalties recoverable under section 115B. This will enable the penalty to be recovered as if it were an amount payable under a court order.
168. Subsection (5) fixes the amount of the penalty. Subsection (5)(a) provides for a penalty of £1,000 for conduct which falls into subsection (2)(a) but not subsection (2)(b). For conduct falling within subsection (2)(b) subsection (5)(b) and (c) provide for a penalty of £1,000 multiplied by the number of employees involved in the fraud up to a maximum of £5,000.
169. Subsection (6) gives the 'responsible person' the right to withdraw agreement to pay a penalty, in a manner specified by the Secretary of State, within 28 days of having accepted it.
170. Subsection (7) (a) provides for the repayment of any amount of the penalty that has already been paid where the agreement to pay is withdrawn. In such circumstances subsection (7) (b) provides that the bar on prosecution will no longer apply.
171. Subsection (8) defines the different circumstances in which an individual is a '*relevant employee*' in relation to conduct of the '*responsible person*'. Subsection (8) provides that an individual is a relevant employee where:
  - (a) the conduct described in subsection (2) occurred when the individual was an employee of the 'responsible person'; or
  - (b) where the conduct described in subsection (2) occurred when the individual was an employee of a body corporate of which the 'responsible person' was a director; or
  - (c) the 'responsible person' engages in conduct described in subsection (2) whilst claiming to act on behalf of or in the interests of (because of his connection with) any person by whom the individual is employed.
172. Subsection (9) defines terms used in this section.
173. Subsection (9)(2) makes provision for penalties under section 115B to be paid into the Consolidated Fund.

Clause 16

***Offence of failing to notify a change of circumstances***

**Background**

174. This Clause amends sections 111A and 112 (1A) of the Social Security Administration Act 1992 (both of which were inserted by the Social Security Administration (Fraud) Act 1997). Before the 1997 Act the only specific offence for social security fraud was a summary offence of obtaining benefit by making a false statement or producing a false document (section 112). The 1997 Act created a new either way offence (section 111A) of dishonestly (or, in Scotland, knowingly) making a false statement or producing a false document with a view to obtaining benefit.

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175. In addition, the 1997 Act introduced new offences aimed primarily at beneficiaries who receive payment of benefit by automated credit transfer (ACT). Those paid by girocheque or order book sign a statement, whenever they obtain payment, to the effect that the circumstances remain unchanged. If it subsequently transpires that the circumstances have indeed changed without being notified to the DSS or an authority administering Housing Benefit or Council Tax Benefit, the person could be charged under the false statement provisions of section 111A or section 112. Those paid by ACT cannot be charged under these provisions because there is no false statement as such – payment is made directly into an individual’s bank account without any signature or other action being required on their part. A similar difficulty arose in cases where the period of fraudulent activity extended over many years. In such cases the evidence afforded by signatures on order book and girocheque counterfoils was commonly no longer available. Previously the DSS had had to rely on specimen false statements spanning the period in question, which could give the court a misleading picture of the gravity of the offence.
176. The 1997 Act sought to remedy this situation by adding offences of omission to the existing offences of commission. The new approach was to make it an offence in section 111A to fail to notify a change of circumstances which regulations under the Social Security Administration Act 1992 required the person to notify. The same form of wording was also used in defining the summary offence in section 112(1A). Unfortunately, problems were identified with this approach. It proved an impossible task to draft regulations which set out the various changes in circumstances which would inevitably affect any individual’s entitlement to any given benefit. This Act provides the first opportunity to revisit the primary powers in order to secure the original policy intention.
177. The proposed changes restructure the provision so that the offences are defined in terms of changes that a person knows will affect entitlement to benefit, rather than to changes that regulations require him to report. As increasing numbers of beneficiaries opt to receive payment of social security benefits through ACT, the need for this change has become greater.

**COMMENTARY ON CLAUSE 16**

178. Clause 16(1) and (2) omit paragraphs (c) and (d) from section 111A(1) and insert new subsections (1A) to (1G).
179. Subsection (1A) defines the new offence of “dishonestly” failing to give prompt notification of a change of circumstances in relation to the claimant himself. Subsection (1B) defines the offence in relation to a third party who dishonestly causes or allows another person to fail to give prompt notification of a change in circumstances. This would apply, for example, in the case of a woman whose part-time earnings increase in circumstances where her husband is claiming income support. If she knows that this particular change affects his entitlement to benefit and does not inform him, thereby causing him to fail to notify the change, she is guilty of an offence.
180. Subsections (1C) and (1D) provide that the offence of dishonestly failing to give a prompt notification of a change in the circumstances of the claimant extends to third parties who have a right to receive payments on behalf of the claimant. This would, for instance, apply in cases where the claimant is unable for the time being to act for himself and, in the absence of any person having been legally appointed to act for him, the Secretary of State appoints a person to exercise on behalf of the claimant, any right to which that person may be entitled and to receive and deal on his behalf with any sums payable to him. If the person so appointed dishonestly fails to notify a change in the claimant’s circumstances, knowing that the change in question affects benefit, he is guilty of an offence.
181. Subsection (1E) provides that it is an offence if a third party, knowing that a particular change in circumstances affects the claimant’s entitlement to benefit, dishonestly causes

or allows a person with the right to receive payments on behalf of the claimant to fail to make a prompt notification of that change. This extends the third party offence of dishonestly causing or allowing a failure on the part of the claimant whose responsibility it is to notify a relevant change in circumstances. It means that the offence applies equally if another person has been granted the right to receive payments on behalf of the claimant and is caused or allowed, by a third party, to fail to make a prompt notification of a change in the claimant's circumstances.

182. Subsection (1F) qualifies the extent to which subsections (1C), (1D) and (1E) can be applied to the landlord of a tenant entitled to housing benefit. It ensures that a landlord cannot be guilty of an offence under these provisions unless the change in circumstances that the landlord has failed to notify promptly are those which relate to the claimant's occupation of the dwelling or to his liability to pay rent. The subsection further provides that the landlord must either know that the change in question is one that affects the claimant's benefit, or be one which he could reasonably be expected to know would do so.
183. Subsection (1G) provides that a notification is "prompt" if it given as soon as reasonably practicable after the change occurs.
184. Clause 16(1) also amends section 111A(4) so that, the offences set out in subsections (1) to (1E), should, for the purposes of applying them to Scotland, be read as though the word "knowingly" replaced the word "dishonestly" wherever it occurs.
185. Clause 16(3) makes changes to the summary offence in section 112, which mirror those made to section 111A.

## **OFFENCES**

### ***Clause 17***

#### **Time Limit for Proceedings in Scotland**

##### **Background**

186. Part VI (Inspection and Offences) of the Social Security Administration Act 1992 makes provisions for enforcement, and contains a number of specific offences relating to benefit fraud. Section 111A of the Social Security Administration Act 1992 (dishonest representations for obtaining benefit) was inserted by section 13 of the Social Security Administration (Fraud) Act 1997. At the same time, paragraph 5 of Schedule 1 to the 1997 Act amended section 116 of the Social Security Administration Act 1992 (legal proceedings) to disapply provisions concerning limitation for the purposes of prosecutions under section 111A of the Social Security Administration Act 1992.
187. Subsection (2) of section 116 provides that proceedings for an offence under the Social Security Administration Act 1992 may be begun at any time within a period of three months from the date on which evidence sufficient to justify a prosecution for the offence comes to the Secretary of State's knowledge (or that of the relevant authority in the case of Housing Benefit or Council Tax Benefit cases), or within a period of 12 months from the commission of the offence, whichever is the later date. The Social Security Administration (Fraud) Act 1997 modified this general rule by inserting subsection (2A) which provides that subsection (2) shall not be taken to impose any restriction on the time when proceedings may be begun for an offence under section 111A above.
188. Subsection (7) of section 116 of the Social Security Administration Act 1992 modifies the application of that section as it applies to Scotland, and remained unamended by the Social Security Administration (Fraud) Act 1997. It provides limitations as to the time in which a prosecution must be brought in relation to proceedings under the Social Security Administration Act 1992.

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which received Royal Assent on 11 May 2001*

189. No provision equivalent to subsection (2A) of section 116 was made in the 1997 Act for the purposes of prosecutions in Scotland.

The measures in the Act

190. This measure corrects the omission by disapplying the time limitations specified in subsection (7) of section 116 of the Social Security Administration Act 1992 in relation to prosecutions under section 111A of that Act in Scotland.

**COMMENTARY ON CLAUSE 17**

191. The clause amends section 116 (7) of the Social Security Administration Act 1992 which provides time limits for the commencement of proceedings in Scotland. The effect of the amendment is to prevent those time limits from applying in relation to offences under section 111A of that Act.

**COMMENCEMENT**

192. All provisions are to come into force by commencement orders.

**HANSARD REFERENCES**

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>HOUSE OF LORDS</b>		
Introduction	18 December 2000	Vol 620, col 574
Second Reading	16 January 2001	vol. 620, col 1037-1091
Committee	1 February and 6 February 2001(2 sittings)	Vol.621, col 810-865 and vol 621, col 1049 - 1120
Report	27 February 2001	vol 622, col 1082- 1157
Third Reading	8 March 2001	vol 623, col 316 - 340
<b>HOUSE OF COMMONS</b>		
Introduction	12 March 2001	
Second Reading	27 March 2001	vol 365, col 857930
Committee	3 April 2001, 5 April 2001 and 9 April 2001	Standing Committee A
Third Reading and Report	1 May 2001	vol 367, col 760 - 814
<b>Royal Assent</b>	11 May 2001	<b>House of Commons</b> vol 368, col 406 <b>House of Lords</b> vol 620, col 573 -574