

# **SOCIAL SECURITY FRAUD ACT 2001**

---

## **EXPLANATORY NOTES**

### **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):
  - (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.

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

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
  - (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

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

- 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”.
- 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).

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

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.
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.

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

- (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.
- 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

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

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.
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

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

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.