

# **SOCIAL SECURITY FRAUD ACT 2001**

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## **EXPLANATORY NOTES**

### **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 The measures in the Act provide that certain specified benefits shall be reduced or withdrawn where a person is convicted twice of committing offences in relation to specified benefits within the space of three years.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 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

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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

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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.