

SOCIAL SECURITY FRAUD ACT 2001

EXPLANATORY NOTES

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 Subsection (1) provides for benefit to be reduced or withdrawn where an offender is convicted on more than one occasion of specified benefit offences.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 Where this happens the offender will have all sanctionable benefits in payment withdrawn or reduced for the period of the sanction.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 Subsection (2) introduces a “disqualification period”, which is the time for which the benefit will be reduced or withdrawn.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.
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 Subsection (3) provides for Income Support to be paid at a reduced rate for the prescribed period rather than withdrawn completely.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.

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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 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

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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.
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.

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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 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.