

## WELFARE REFORM ACT 2012

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### EXPLANATORY NOTES

#### COMMENTARY ON SECTIONS

#### **Part 5: Social security: General**

#### *Section 124: Tax credit fraud: prosecution and penalties*

635. Section 35 of the TCA 2002 provides a criminal offence where a person is knowingly concerned in fraudulent activity in connection with obtaining payments of tax credit.
636. Section 35 is presently triable either way, meaning it could be tried in the Magistrates' Courts or in the Crown Court. This means that even low value tax credit offences must be tried in the Crown Court where a claimant elects to be tried there.
637. The purpose of *section 124* is to provide, in certain circumstances, for tax credit offences to be summary only offences, tried before the magistrates.
638. New *section 35(2)* provides that tax credit offences involving payments of up to £20,000 will be summary only offences and tried before the magistrates. Upon conviction for this type of case, new *sections 35(3)* and *(4)* provide that the penalties applicable are a maximum of 51 weeks imprisonment for conviction in England and Wales, 6 months for conviction in Scotland or Northern Ireland and/or a fine not greater than level 5 on the standard scale. *Subsection 35(8)* provides that for England and Wales, the period of 51 weeks is to be read as 6 months until section 281(5) of the Criminal Justice Act 2003 ("the 2003 Act") is commenced. When section 281(5) is commenced, it will increase the existing maximum terms of imprisonment for offences tried summarily only, to 51 weeks.
639. New *section 35(5)* provides that in all cases other than subsection (2), (meaning those where the payment involved exceeds £20,000), the tax credit offence provided under section 35(1) will be triable either way.
640. New *section 35(6)* sets out the penalties that will apply where a triable either way tax credit offence is convicted before either the magistrates' Court (*section 35(6)(a)*) or the Crown Court (*section 35(6)(b)*).
641. As with subsection (3), the maximum term of imprisonment expressed in subsection (6) (a) is expressed for England and Wales by reference to a relevant provision of the 2003 Act; section 154(1) of the 2003 Act provides that the maximum term of imprisonment for summary conviction of a triable either way offence in England and Wales is to be 12 months. Section 154(1) has not yet been commenced. New *section 35(9)* therefore provides that until section 154(1) has been commenced, the 12 month maximum term of imprisonment is to be read in England and Wales as being 6 months.
642. New *section 35(7)* provides that in Scotland the maximum term of imprisonment for summary conviction of the triable either way tax credit offence is 12 months and for Northern Ireland it is 6 months. The maximum fine applicable in all three jurisdictions is the statutory maximum.

*These notes refer to the Welfare Reform Act 2012  
(c.5) which received Royal Assent on 8 March 2012*

643. New *section 35(10)(a)* provides that the existing provision in section 116(1) of SSAA 1992 applies to proceedings where the tax credit offence is tried before the magistrates. This means that for tax credit offences tried before the magistrates in England and Wales, any person authorised by the Secretary of State may conduct any proceedings before a magistrates' Court although not a barrister or solicitor.
644. New *section 35(10)(b)* applies the time limits provisions for summary only offences in section 116 to the new summary only version of the tax credit offence in section 35(2) of the TCA 2002. Section 116 provides, in principle, for a time limit of 12 months from the date an offence was committed, allowing, however, for prosecutions after that date, if they are within 3 months of the date on which evidence, adequate in the opinion of the Secretary of State to justify a prosecution, came to his attention about a benefit offence. This ensures consistent time limits operate for summary only tax credit offences as for summary only social security benefit fraud offences.
645. New *section 35(11)* provides for the equivalent of the above time limits in relation to Scotland.
646. New *section 35(12)(a)* applies section 110 of the Social Security Administration (Northern Ireland) Act 1992 to tax credit offence proceedings, where appropriate. New *section 35(12)(b)* applies the time limits provisions for summary only offences in section 110(2)(a) and (3)(a) to the new summary only version of the tax credit offence in section 35(2) of the TCA 2002. It also provides that for tax credit offences tried before the magistrates the equivalent legislative provision in Northern Ireland to section 116(1), applies in relation to allowing a person to conduct the proceedings before a magistrates' Court although not a barrister or solicitor.