



Welfare Reform Act 2012

2012 CHAPTER 5

PART 5

SOCIAL SECURITY: GENERAL

Loss of benefit

117 Benefit offences: disqualifying and sanctionable benefits

- (1) In the Social Security Fraud Act 2001, section 6A (meaning of “disqualifying benefit” and “sanctionable benefit”) is amended as follows.
- (2) In subsection (1), in the definition of “disqualifying benefit”, after paragraph (e) there is inserted—
 - “(f) child tax credit;
 - (g) working tax credit;”.
- (3) In that subsection, in the definition of “sanctionable benefit”, after paragraph (f) there is inserted—
 - “(fa) child tax credit;
 - (fb) working tax credit;”.

118 Benefit offences: period of sanction

- (1) The Social Security Fraud Act 2001 is amended as follows.
- (2) Section 6B (loss of benefit in case of conviction, penalty or caution for benefit offence) is amended as follows.
- (3) In subsection (11), for “the period of four weeks” there is substituted “the relevant period”.
- (4) After subsection (11) there is inserted—
 - “(11A) For the purposes of subsection (11) the relevant period is—

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- (a) in a case falling within subsection (1)(a) where the benefit offence, or one of them, is a relevant offence, the period of three years,
- (b) in a case falling within subsection (1)(a) (but not within paragraph (a) above)), the period of 13 weeks, or
- (c) in a case falling within subsection (1)(b) or (c), the period of four weeks.”

(5) After subsection (13) there is inserted—

“(14) In this section and section 7 “relevant offence” means—

- (a) in England and Wales, the common law offence of conspiracy to defraud, or
- (b) a prescribed offence which, in the offender’s case, is committed in such circumstances as may be prescribed, and which, on conviction—
 - (i) is found by the court to relate to an overpayment (as defined in section 115A(8) of the Administration Act) of at least £50,000,
 - (ii) is punished by a custodial sentence of at least one year (including a suspended sentence as defined in section 189(7) (b) of the Criminal Justice Act 2003), or
 - (iii) is found by the court to have been committed over a period of at least two years.”

(6) After subsection (14) (inserted by subsection (5) above) there is inserted—

“(15) The Secretary of State may by order amend subsection (11A)(a), (b) or (c), or (14)(b)(i), (ii) or (iii) to substitute a different period or amount for that for the time being specified there.”

(7) In section 7 (loss of benefit for second or subsequent conviction of benefit offence), after subsection (1) there is inserted—

“(1A) The following restrictions do not apply if the benefit offence referred to in subsection (1)(a), or any of them, is a relevant offence.”

(8) In section 11 (loss of benefit regulations)—

- (a) in the heading, after “benefit” there is inserted “orders and”;
- (b) in subsection (3) at the end there is inserted—
 - “(e) regulations under section 6B(14) or an order under section 6B(15), or”;
- (c) in subsection (4) after “make”, in both places, there is inserted “an order or”.

119 Benefit offences: sanctions for repeated benefit fraud

(1) The Social Security Fraud Act 2001 is amended as follows.

(2) In section 6B (loss of benefit in case of conviction, penalty or caution for benefit offence), in subsection (3) for “later“ there is substituted “current”.

(3) Section 7 (loss of benefit for second or subsequent conviction of benefit offence) is amended as follows.

(4) In the heading, for “second or subsequent conviction of benefit offence” there is substituted “repeated benefit fraud“.

(5) For subsection (1)(a) to (e) there is substituted—

- “(a) a person (“the offender”) is convicted of one or more benefit offences in a set of proceedings (“the current set of proceedings”),
- (b) within the period of five years ending on the date on which the benefit offence was, or any of them were, committed, one or more disqualifying events occurred in relation to the offender (the event, or the most recent of them, being referred to in this section as “the earlier disqualifying event”),
- (c) the current set of proceedings has not been taken into account for the purposes of any previous application of this section or section 8 or 9 in relation to the offender or any person who was then a member of his family,
- (d) the earlier disqualifying event has not been taken into account as an earlier disqualifying event for the purposes of any previous application of this section or either of those sections in relation to the offender or any person who was then a member of his family, and
- (e) the offender is a person with respect to whom the conditions for an entitlement to a sanctionable benefit are or become satisfied at any time within the disqualification period.”

(6) In subsection (6), for the words from “in relation to” to the end, there is substituted “in an offender’s case, means the relevant period beginning with a prescribed date falling after the date of the conviction in the current set of proceedings”.

(7) After that subsection there is inserted—

“(6A) For the purposes of subsection (6) the relevant period is—

- (a) in a case where, within the period of five years ending on the date on which the earlier disqualifying event occurred, a previous disqualifying event occurred in relation to the offender, the period of three years;
- (b) in any other case, 26 weeks.”

(8) After subsection (7) there is inserted—

“(7A) Subsection (7B) applies where, after the agreement of any person (“P”) to pay a penalty under the appropriate penalty provision is taken into account for the purposes of the application of this section in relation to that person—

- (a) P’s agreement to pay the penalty is withdrawn under subsection (5) of the appropriate penalty provision,
- (b) it is decided on an appeal or in accordance with regulations under the Social Security Act 1998 or the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) that any overpayment to which the agreement relates is not recoverable or due, or
- (c) the amount of any overpayment to which the penalty relates is revised on an appeal or in accordance with regulations under the Social Security Act 1998 or the Social Security (Northern Ireland) Order 1998 and there is no new agreement by P to pay a penalty under the appropriate penalty provision in relation to the revised overpayment.

(7B) In those circumstances, all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under

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this section that could not have been imposed if P had not agreed to pay the penalty.”

- (9) In subsection (8), the following definitions are inserted at the appropriate places—
- ““appropriate penalty provision” has the meaning given in section 6B(2)(a);”
- ““disqualifying event” has the meaning given in section 6B(13).”

- (10) After that subsection there is inserted—

“(8A) Where a person is convicted of more than one benefit offence in the same set of proceedings, there is to be only one disqualifying event in respect of that set of proceedings for the purposes of this section and—

- (a) subsection (1)(b) is satisfied if any of the convictions take place in the five year periods mentioned there;
- (b) the event is taken into account for the purposes of subsection (1)(d) if any of the convictions have been taken into account as mentioned there;
- (c) in the case of the earlier disqualifying event mentioned in subsection (6A)(a), the reference there to the date on which the earlier disqualifying event occurred is a reference to the date on which any of the convictions take place;
- (d) in the case of the previous disqualifying event mentioned in subsection (6A)(a), that provision is satisfied if any of the convictions take place in the five year period mentioned there.”

- (11) After subsection (10) there is inserted—

“(10A) The Secretary of State may by order amend subsection (6A) to substitute different periods for those for the time being specified there.

(10B) An order under subsection (10A) may provide for different periods to apply according to the type of earlier disqualifying event or events occurring in any case”.

- (12) In section 11 (loss of benefit regulations), in subsection (3), after paragraph (e) (as inserted by section 118 above) there is inserted—
- “(f) an order under section 7(10A).”.

120 Loss of tax credits

- (1) The Tax Credits Act 2002 is amended as follows.
- (2) After section 36 there is inserted—

“Loss of tax credit provisions

36A Loss of working tax credit in case of conviction etc for benefit offence

- (1) Subsection (4) applies where a person (“the offender”)—
 - (a) is convicted of one or more benefit offences in any proceedings, or

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- (b) after being given a notice under subsection (2) of the appropriate penalty provision by an appropriate authority, agrees in the manner specified by the appropriate authority to pay a penalty under the appropriate penalty provision to the appropriate authority, in a case where the offence to which the notice relates is a benefit offence, or
 - (c) is cautioned in respect of one or more benefit offences.
- (2) In subsection (1)(b)—
 - (a) “the appropriate penalty provision” means section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution) or section 109A of the Social Security Administration (Northern Ireland) Act 1992 (the corresponding provision for Northern Ireland);
 - (b) “appropriate authority” means—
 - (i) in relation to section 115A of the Social Security Administration Act 1992, the Secretary of State or an authority which administers housing benefit or council tax benefit, and
 - (ii) in relation to section 109A of the Social Security Administration (Northern Ireland) Act 1992, the Department (within the meaning of that Act) or the Northern Ireland Housing Executive.
- (3) Subsection (4) does not apply by virtue of subsection (1)(a) if, because the proceedings in which the offender was convicted constitute the current set of proceedings for the purposes of section 36C, the restriction in subsection (3) of that section applies in the offender’s case.
- (4) If this subsection applies and the offender is a person who would, apart from this section, be entitled (whether pursuant to a single or joint claim) to working tax credit at any time within the disqualification period, then, despite that entitlement, working tax credit shall not be payable for any period comprised in the disqualification period—
 - (a) in the case of a single claim, to the offender, or
 - (b) in the case of a joint claim, to the offender or the other member of the couple.
- (5) Regulations may provide in relation to cases to which subsection (4)(b) would otherwise apply that working tax credit shall be payable, for any period comprised in the disqualification period, as if the amount payable were reduced in such manner as may be prescribed.
- (6) For the purposes of this section, the disqualification period, in relation to any disqualifying event, means the relevant period beginning with such date, falling after the date of the disqualifying event, as may be determined by or in accordance with regulations.
- (7) For the purposes of subsection (6) the relevant period is—
 - (a) in a case falling within subsection (1)(a) where the benefit offence, or one of them, is a relevant offence, the period of three years,
 - (b) in a case falling within subsection (1)(a) (but not within paragraph (a) above), the period of 13 weeks, or
 - (c) in a case falling within subsection (1)(b) or (c), the period of 4 weeks.

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- (8) The Treasury may by order amend subsection (7)(a), (b) or (c) to substitute a different period for that for the time being specified there.
- (9) This section has effect subject to section 36B.
- (10) In this section and section 36B—
- “benefit offence“ means any of the following offences committed on or after the day specified by order made by the Treasury—
- (a) an offence in connection with a claim for a disqualifying benefit;
 - (b) an offence in connection with the receipt or payment of any amount by way of such a benefit;
 - (c) an offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
 - (d) an offence consisting in an attempt or conspiracy to commit a benefit offence;
- “disqualifying benefit” has the meaning given in section 6A(1) of the Social Security Fraud Act 2001;
- “disqualifying event“ means—
- (a) the conviction falling within subsection (1)(a);
 - (b) the agreement falling within subsection (1)(b);
 - (c) the caution falling within subsection (1)(c);
- “relevant offence” has the meaning given in section 6B of the Social Security Fraud Act 2001.

36B Section 36A: supplementary

- (1) Where—
- (a) the conviction of any person of any offence is taken in account for the purposes of the application of section 36A in relation to that person, and
 - (b) that conviction is subsequently quashed,
- all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under section 36A that could not have been imposed if the conviction had not taken place.
- (2) Where, after the agreement of any person (“P”) to pay a penalty under the appropriate penalty provision is taken into account for the purposes of the application of section 36A in relation to that person—
- (a) P’s agreement to pay the penalty is withdrawn under subsection (5) of the appropriate penalty provision, or
 - (b) it is decided on an appeal or in accordance with regulations under the Social Security Act 1992 or the Social Security (Northern Ireland) Order 1998 ([S.I. 1998/1506 \(N.I. 10\)](#)) that the overpayment to which the agreement relates is not recoverable or due,
- all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under section 36A that could not have been imposed if P had not agreed to pay the penalty.

- (3) Where, after the agreement (“the old agreement”) of any person (“P”) to pay a penalty under the appropriate penalty provision is taken into account for the purposes of the application of section 36A in relation to P, the amount of any overpayment made to which the penalty relates is revised on an appeal or in accordance with regulations under the Social Security Act 1998 or the Social Security (Northern Ireland) Order 1998—
- (a) section 36A shall cease to apply by virtue of the old agreement, and
 - (b) subsection (4) shall apply.
- (4) Where this subsection applies—
- (a) if there is a new disqualifying event consisting of—
 - (i) P’s agreement to pay a penalty under the appropriate penalty regime in relation to the revised overpayment, or
 - (ii) P being cautioned in relation to the offence to which the old agreement relates,the disqualification period relating to the new disqualifying event shall be reduced by the number of days in so much of the disqualification period relating to the old agreement as had expired when subsection 36A ceased to apply by virtue of the old agreement, and
 - (b) in any other case, all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under section 36A that could not have been imposed if P had not agreed to pay the penalty.
- (5) For the purposes of section 36A—
- (a) the date of a person’s conviction in any proceedings of a benefit offence shall be taken to be the date on which the person was found guilty of that offence in those proceedings (whenever the person was sentenced) or in the case mentioned in paragraph (b)(ii) the date of the order for absolute discharge, and
 - (b) references to a conviction include references to—
 - (i) a conviction in relation to which the court makes an order for absolute or conditional discharge,
 - (ii) an order for absolute discharge made by a court of summary jurisdiction in Scotland under section 246(3) of the Criminal Procedure (Scotland) Act 1995 without proceeding to a conviction, and
 - (iii) a conviction in Northern Ireland.
- (6) In this section “the appropriate penalty provision” has the meaning given by section 36A(2)(a).

36C Loss of working tax credit for repeated benefit fraud

- (1) If—
- (a) a person (“the offender”) is convicted of one or more benefit offences in a set of proceedings (“the current set of proceedings”),
 - (b) within the period of five years ending on the date on which the benefit offence was, or any of them were, committed, one or more disqualifying events occurred in relation to the offender (the event,

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or the most recent of them, being referred to in this section as “the earlier disqualifying event”),

- (c) the current set of proceedings has not been taken into account for the purposes of any previous application of this section in relation to the offender,
- (d) the earlier disqualifying event has not been taken into account as an earlier disqualifying event for the purposes of any previous application of this section in relation to the offender, and
- (e) the offender is a person who would, apart from this section, be entitled (whether pursuant to a single or joint claim) to working tax credit at any time within the disqualification period,

then, despite that entitlement, the restriction in subsection (3) shall apply in relation to the payment of that benefit in the offender’s case.

- (2) The restriction in subsection (3) does not apply if the benefit offence referred to in subsection (1)(a), or any of them, is a relevant offence.
- (3) Working tax credit shall not be payable for any period comprised in the disqualification period—
 - (a) in the case of a single claim, to the offender, or
 - (b) in the case of a joint claim, to the offender or the other member of the couple.
- (4) Regulations may provide in relation to cases to which subsection (3)(b) would otherwise apply that working tax credit shall be payable, for any period comprised in the disqualification period, as if the amount payable were reduced in such manner as may be prescribed.
- (5) For the purposes of this section the disqualification period, in an offender’s case, means the relevant period beginning with a prescribed date falling after the date of the conviction in the current set of proceedings.
- (6) For the purposes of subsection (5) the relevant period is—
 - (a) in a case where, within the period of five years ending on the date on which the earlier disqualifying event occurred, a previous disqualifying event occurred in relation to the offender, the period of three years;
 - (b) in any other case, 26 weeks.
- (7) In this section and section 36D—
 - “appropriate penalty provision” has the meaning given in section 36A(2)(a);
 - “benefit offence” means any of the following offences committed on or after the day specified by order made by the Treasury—
 - (a) an offence in connection with a claim for a disqualifying benefit;
 - (b) an offence in connection with the receipt or payment of any amount by way of such a benefit;
 - (c) an offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
 - (d) an offence consisting in an attempt or conspiracy to commit a benefit offence;

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“disqualifying benefit” has the meaning given in section 6A(1) of the Social Security Fraud Act 2001;

“disqualifying event” has the meaning given in section 36A(10);

“relevant offence” has the meaning given in section 6B of the Social Security Fraud Act 2001.

- (8) Where a person is convicted of more than one benefit offence in the same set of proceedings, there is to be only one disqualifying event in respect of that set of proceedings for the purposes of this section and—
- (a) subsection (1)(b) is satisfied if any of the convictions take place in the five year period there;
 - (b) the event is taken into account for the purposes of subsection (1)(d) if any of the convictions have been taken into account as mentioned there;
 - (c) in the case of the earlier disqualifying event mentioned in subsection (6)(a), the reference there to the date on which the earlier disqualifying event occurred is a reference to the date on which any of the convictions take place;
 - (d) in the case of the previous disqualifying event mentioned in subsection (6)(a), that provision is satisfied if any of the convictions take place in the five year period mentioned there.
- (9) The Treasury may by order amend subsection (6) to substitute different periods for those for the time being specified there.
- (10) An order under subsection (9) may provide for different periods to apply according to the type of earlier disqualifying event or events occurring in any case.
- (11) This section has effect subject to section 36D.

36D Section 36C: supplementary

- (1) Where—
- (a) the conviction of any person of any offence is taken into account for the purposes of the application of section 36C in relation to that person, and
 - (b) that conviction is subsequently quashed,
- all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under section 36C that could not have been imposed if the conviction had not taken place.
- (2) Subsection (3) applies where, after the agreement of any person (“P”) to pay a penalty under the appropriate penalty provision is taken into account for the purposes of the application of section 36C in relation to that person—
- (a) P’s agreement to pay the penalty is withdrawn under subsection (5) of the appropriate penalty provision,
 - (b) it is decided on an appeal or in accordance with regulations under the Social Security Act 1998 or the Social Security (Northern Ireland) Order 1998 ([S.I. 1998/1506 \(N.I. 10\)](#)) that any overpayment made to which the agreement relates is not recoverable or due, or

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- (c) the amount of any over payment to which the penalty relates is revised on an appeal or in accordance with regulations under the Social Security Act 1998 or the Social Security (Northern Ireland) Order 1998 and there is no new agreement by P to pay a penalty under the appropriate penalty provision in relation to the revised overpayment.
- (3) In those circumstances, all such payments and other adjustments shall be made as would be necessary if no restriction had been imposed by or under section 36C that could not have been imposed if P had not agreed to pay the penalty.
- (4) For the purposes of section 36C—
- (a) the date of a person’s conviction in any proceedings of a benefit offence shall be taken to be the date on which the person was found guilty of that offence in those proceedings (whenever the person was sentenced) or in the case mentioned in paragraph (b)(ii) the date of the order for absolute discharge, and
 - (b) references to a conviction include references to—
 - (i) a conviction in relation to which the court makes an order for absolute or conditional discharge,
 - (ii) an order for absolute discharge made by a court of summary jurisdiction in Scotland under section 246(3) of the Criminal Procedure (Scotland) Act 1995 without proceeding to a conviction, and
 - (iii) a conviction in Northern Ireland.
- (5) In section 36C references to any previous application of that section—
- (a) include references to any previous application of a provision having an effect in Northern Ireland corresponding to provision made by that section, but
 - (b) do not include references to any previous application of that section the effect of which was to impose a restriction for a period comprised in the same disqualification period.”
- (3) In section 38 (appeals), in subsection (1)—
- (a) the “and” immediately following paragraph (c) is repealed;
 - (b) after that paragraph there is inserted—
 - “(ca) a decision under section 36A or 36C that working tax credit is not payable (or is not payable for a particular period), and”.
- (4) In section 66 (parliamentary etc control of instruments)—
- (a) in subsection (1)—
 - (i) after “no” there is inserted “order or”;
 - (ii) for “them” there is substituted “the order or regulations”;
 - (b) in subsection (2) before paragraph (a) there is inserted—
 - “(za) an order made by the Treasury under section 36A(8) or 36C(9),
 - (zb) regulations made under section 36A(5) or 36C(4),”;
 - (c) in subsection (3)(a) at the beginning there is inserted “an order or”.
- (5) In section 67 (interpretation), at the appropriate place there is inserted—

““cautioned”, in relation to any person and any offence, means cautioned after the person concerned has admitted the offence; and “caution” is to be interpreted accordingly;”.

121 Cautions

- (1) In section 6B of the Social Security Fraud Act 2001 (loss of benefit in case of conviction, penalty or caution for benefit offence)—
 - (a) in the heading, for “penalty or caution” there is substituted “or penalty”;
 - (b) in subsection (1), after paragraph (a) there is inserted “or”;
 - (c) subsection (1)(c) (cautions) is repealed;
 - (d) in subsection (13), in the definition of “disqualifying event”, after “(1)(a)” there is inserted “or”.
- (2) In section 36A of the Tax Credits Act 2002 (loss of tax working tax credit in case of conviction, penalty or caution for benefit offence) subsection (1)(c) (cautions) is repealed.