

*These notes refer to the Welfare Reform Act (Northern Ireland)
2010 (c.13) which received Royal Assent on 13 August 2010*

Welfare Reform Act (Northern Ireland) 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Social security

Section 19: Loss of benefit provisions

Section 6 of the [Social Security Fraud Act \(Northern Ireland\) 2001 \(c.17\)](#) enables certain specified benefits to be withdrawn, or reduced payments to be made, for a period of 13 weeks (known as the disqualification period) where a person is convicted of benefit fraud on two occasions, and the second offence was committed within five years of the date of conviction for the first. These loss of benefit provisions are commonly referred to as the ‘two strikes’ rule.

Where such an offence of benefit fraud comes to light, the offender may be prosecuted, agree to an administrative penalty as an alternative to prosecution under section 109A of the Social Security Administration (Northern Ireland) Act 1992, or agree to be given a caution.

Subsection (1) inserts new sections 5A, 5B and 5C into the Social Security Fraud Act (Northern Ireland) 2001. New section 5A defines, for the purposes of section 5B and section 6, ‘disqualifying benefit’ and ‘sanctionable benefit’.

New section 5B introduces the new benefit sanction to apply after the first conviction, or after any administrative penalty or caution known as the “one strike” rule. The combined effect of subsections (1), (4) and (5) is for benefit to be reduced or withdrawn for the disqualification period where the offender has –

- been convicted of one or more benefit offences in any proceedings;
- accepted an administrative penalty as an alternative to prosecution; or
- agreed to be given a caution

The disqualification period is defined in subsection (11) of new section 5B as a period of four weeks beginning at a prescribed time after conviction or the agreement of an administrative penalty or caution.

Subsection (2) of new section 5B sets out definitions of the terms used in new section 5B(1)(b).

Subsection (3) of new section 5B provides that a sanction under the new rules will not apply where a conviction would be the second conviction for the purposes of section 6 ('two strikes').

Subsections (6) to (10) of new section 5B provide that the amounts by which income support, jobseeker's allowance, state pension credit, employment and support allowance or housing benefit are to be reduced will be prescribed in regulations. These amounts will be the same as those currently prescribed for the purposes of section 6.

Subsection (13) of new section 5B sets out definitions of the terms used within new sections 5B and 5C; in particular, 'benefit offence' is defined in such a way that the provisions will only apply to offences committed after new section 5B comes into operation.

Subsection (1) of new section 5C provides that in the event that a conviction is quashed all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Subsection (2)(a) of new section 5C provides that where the person had agreed to pay an administrative penalty but has withdrawn that agreement, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Subsection (2)(b) of new section 5C provides that where, following an appeal or in accordance with regulations, it is decided that there was no overpayment or that it is not recoverable, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Subsection (3) of new section 5C provides for subsection (4) to apply where the person had agreed to pay an administrative penalty, but following an appeal or in accordance with regulations the amount of the overpayment is revised.

Subsection (4) provides that where there is a new penalty or caution relating to the same offence, the new disqualification period is to be reduced by the length of the old disqualification period and that in any other case the necessary adjustments are to be made to reverse the effects of the sanction.

Subsection (4)(b) of new section 5C provides that if a new agreement to pay an administrative penalty is not made then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed and the Department can proceed to prosecute the offence.

Subsection (5)(b) of new section 5C provides for convictions that result in absolute or conditional discharges and to a conviction in Great Britain, including convictions that result in absolute discharges, conditional discharges, or probation orders made by a court in Scotland and absolute discharges made by a court of summary jurisdiction in Scotland, to count as convictions for the purposes of the new sanction.

*These notes refer to the Welfare Reform Act (Northern Ireland)
2010 (c.13) which received Royal Assent on 13 August 2010*

Subsection (2) of section 19 introduces Schedule 3 which contains further amendments to the Social Security Fraud Act (Northern Ireland) 2001 and related amendments to other legislation.