
Status: Point in time view as at 01/01/2006.

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STATUTORY INSTRUMENTS

1997 No. 1182 (N.I. 11)

The Social Security Administration (Fraud) (Northern Ireland) Order 1997 ^{F1}

- - - - - 8th April 1997

Annotations:

F1 functions transf. by SR 1999/481

Title and commencement

1.—(1) This Order may be cited as the Social Security Administration (Fraud) (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Department may by order appoint^{F2}.

(3) An order under paragraph (2) may include such transitional provisions, consequential provisions or savings as the Department considers appropriate for the purposes of, or in connection with, the provisions to which it applies.

(4) Nothing in Article 12, 13 or 14 applies in relation to any act occurring before the Article comes into operation.

Annotations:

F2 partly exercised by SR 1997/316; 1997/449, 480; 1997/508

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

“the Department” means the Department of Health and Social Services.

Supply and use of information

The Housing Executive

3. After section 116B of the Administration Act insert—

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“The Housing Executive

Supply of information to the Housing Executive.

116C.—(1) This section applies to information relating to social security which is held—

- (a) by the Department or the Secretary of State; or
- (b) by a person providing services to the Department or the Secretary of State in connection with the provision of those services.

(2) Information to which this section applies may be supplied to—

- (a) the Housing Executive; or
- (b) a person authorised to exercise any function of the Housing Executive relating to housing benefit,

for use in the administration of housing benefit.

(3) But where information to which this section applies has been supplied to the Department, the Secretary of State or the person providing services under section 116 or 116B above it may only be supplied under subsection (2) above—

- (a) for use in the prevention, detection, investigation or prosecution of offences relating to housing benefit; or
- (b) for use in checking the accuracy of information relating to housing benefit and (where appropriate) amending or supplementing such information.

(4) The Department or the Secretary of State—

- (a) may impose conditions on the use of information supplied under subsection (2) above; and
- (b) may charge a reasonable fee in respect of the cost of supplying information under that subsection.

(5) Where information is supplied to the Housing Executive or other person under subsection (2) above, the Executive or other person shall have regard to it in the exercise of any function relating to housing benefit.

(6) Information supplied under subsection (2) above shall not be supplied by the recipient to any other person or body unless—

- (a) it is supplied—
 - (i) by the Housing Executive to a person authorised to exercise any function of the Executive relating to housing benefit; or
 - (ii) by a person authorised to exercise any function of the Housing Executive relating to housing benefit to the Executive;
- (b) it is supplied for the purposes of any civil or criminal proceedings relating to the Contributions and Benefits Act, the Jobseekers (Northern Ireland) Order 1995 or this Act or to any enactment applying in Great Britain corresponding to any of them; or
- (c) it is supplied under section 116D below.

(7) This section does not limit the circumstances in which information may be supplied apart from this section (in particular by reason of section 116(4) or 116B(4) above).

Supply of information by the Housing Executive.

116D.—(1) The Department or the Secretary of State may require—

- (a) the Housing Executive; or

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- (b) a person authorised to exercise any function of the Housing Executive relating to housing benefit,

to supply benefit administration information held by the Executive or other person to, or to a person providing services to, the Department or the Secretary of State for use for any purpose relating to social security.

- (2) The Department or the Secretary of State may require—

- (a) the Housing Executive; or
- (b) a person authorised to exercise any function of the Housing Executive relating to housing benefit,

to supply benefit policy information held by the Executive or other person to, or to a person providing services to, the Department or the Secretary of State.

(3) Information shall be supplied under subsection (1) or (2) above in such manner and form, and in accordance with such requirements, as may be prescribed.

(4) In subsection (1) above “benefit administration information”, in relation to the Housing Executive or other person, means any information which is relevant to the exercise of any function relating to housing benefit by the Executive or other person.

(5) In subsection (2) above “benefit policy information” means any information which may be relevant to the Department or the Secretary of State—

- (a) in preparing estimates of likely future expenditure on housing benefit; or
- (b) in developing policy relating to housing benefit.”.

Unauthorised disclosure by officials

4.—(1) In Schedule 4 to the Administration Act (persons who may commit an offence under section 117 of that Act), after the entry headed “Other public departments and offices” insert—

“The Housing Executive etc.

A member, officer or employee of the Housing Executive.

A person authorised to exercise any function of the Housing Executive relating to housing benefit or any employee of such a person.

A person authorised under section 128A(1) of this Act to consider and report to the Department on the administration of housing benefit.”.

(2) In section 117 of that Act (offence of unauthorised disclosure by certain persons of information relating to particular persons), in subsection (8) (persons employed in audit of expenditure)—

- (a) after paragraph (g) insert—

- “(ga) a Northern Ireland local government auditor;
- (gb) a member of the Audit Commission for Local Authorities and the National Health Service in England and Wales and any auditor appointed by that Commission;
- (gc) a member of the Accounts Commission for Scotland and any auditor within the meaning of Part VII of the Local Government (Scotland) Act 1973;”

- (b) after paragraph (h) insert—

- “(ha) a member of the Local Commission for England;
- (hb) a member of the Local Commission for Wales;
- (hc) the Commissioner for Local Administration in Scotland; and” , and

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- (c) in paragraph (i), for “referred to in paragraph (b), (c), (e) or (h) above” substitute “or Commissions referred to in paragraphs (b), (c), (e) and (gb) to (hc) above and any person assisting an auditor referred to in paragraph (ga), (gb) or (gc) above”.

Administration of housing benefit

Overseeing of administration by Department

5. After section 128 of the Administration Act insert—

“Reports

Persons to report on administration.

128A.—(1) The Department may authorise persons to consider and report to it on the administration by the Housing Executive of housing benefit and, in particular, the Executive's performance in the prevention and detection of fraud relating to that benefit.

(2) A person may be authorised under subsection (1) above on such terms and for such period as the Department thinks fit.

Powers of investigation.

128B.—(1) A person authorised under section 128A(1) above—

- (a) has a right of access at all reasonable times to any document relating to the administration of housing benefit;
- (b) is entitled to require from any person holding or accountable for any such document such information and explanation as he thinks necessary; and
- (c) is entitled, if he thinks it necessary, to require any such person to produce any such document or to attend before him in person to give such information or explanation.

(2) A person authorised under section 128A(1) above is entitled to require any officer or member of the Housing Executive or any person involved in the administration of housing benefit for the Executive—

- (a) to give him such information and explanation relating to the administration of housing benefit as he thinks necessary; and
- (b) if he thinks it necessary, to require any such person to attend before him in person to give the information or explanation.

(3) A person who without reasonable excuse fails to comply with a requirement under subsection (1) or (2) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A person authorised under section 128A(1) above may—

- (a) require any document or information which is to be given to him under subsection (1) or (2) above to be given in any form reasonably specified by him; and
- (b) take copies of any document produced to him.

(5) In this section “document” means anything in which information of any description is recorded.

Reports.

128C.—(1) A report about the Housing Executive by a person authorised under section 128A(1) above may include recommendations about improvements which could be made by the Executive in its administration of housing benefit and, in particular, in the prevention and detection of fraud relating to that benefit.

(2) When the Department receives a report about the Housing Executive from a person authorised under section 128A(1) above, it shall send a copy to the Executive.”.

Role of local government auditors in relation to housing benefit

6.—(1) The Department may request^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] to conduct or assist the Department in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance in the discharge by the Housing Executive of functions relating to the administration of housing benefit.

(2) In the following provisions of this Article “study” means a study which^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] is requested to conduct, or assist the Department in conducting, under paragraph (1).

(3) If^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] requires the Housing Executive or any officer or member of the Executive to supply him or an authorised person with such information as is needed for the purposes of the study, the Executive or officer or member shall supply the information.

(4) If^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] requires the Housing Executive to make available for inspection by him or by an authorised person documents which relate to the Executive and are needed for the purposes of the study, the Executive shall make the documents available.

(5) Any information obtained under a requirement under paragraph (3) or (4) may be disclosed by^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] to the Department for the purposes of any of its functions which are connected with housing benefit.

(6) In paragraphs (3) and (4) “authorised person” means a person authorised by^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] for the purposes of this Article.

(7) ^[F3]The Comptroller and Auditor General for Northern Ireland^[F3] shall send to the Department a copy of any report of a study; and the Department or a local government auditor may send a copy of a report of a study to the Housing Executive.

(8) Any report of a study may be published by the Department.

(9) ^[F3]The Comptroller and Auditor General for Northern Ireland^[F3] shall not conduct, or assist the Department in conducting, a study unless, before he does so, the Department has made arrangements for the payment of such reasonable amount as may be agreed between it and^[F3] The Comptroller and Auditor General for Northern Ireland^[F3] in respect of the study.

(10) The Department may supply to^[F3] the Comptroller and Auditor General for Northern Ireland^[F3] any information held by it which relates to housing benefit and which appears to it to be relevant to the exercise of any function of^[F3] the Comptroller and Auditor General for Northern Ireland^[F3].

Annotations:

F3 2003 NI 5

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References and reports to Department

7.—(1) [^{F4}The Comptroller and Auditor General for Northern Ireland]^{F4} may refer to the Department any matter arising from any audit or study if it appears that it may be relevant for the purposes of any of the functions of the Department relating to social security.

Para. (2) rep. by 2003 NI 5

Annotations:

F4 2003 NI 5

Directions by Department

8. After section 128C of the Administration Act (inserted by Article 5) insert—

“Directions by Department

Directions.

128D.—(1) This section applies where—

- (a) a copy of a report has been sent to the Housing Executive under section 128C(2) above;
- (b) a copy of a report has been sent to the Housing Executive under Article 21 of the Housing (Northern Ireland) Order 1981 and to the Department under Article 7(2) of the Social Security Administration (Fraud) (Northern Ireland) Order 1997; or
- (c) a copy of a report has been sent to the Housing Executive under Article 6(7) of the Social Security Administration (Fraud) (Northern Ireland) Order 1997.

(2) The Department may invite the Housing Executive to consider the report and to submit proposals for—

- (a) improving the Executive's performance in relation to the prevention and detection of fraud relating to housing benefit or otherwise in relation to the administration of that benefit; and
- (b) remedying any failings identified by the report.

(3) After considering the report and any proposals made by the Housing Executive in response to it, the Department may give directions to the Executive as to —

- (a) standards which the Executive is to attain in the prevention and detection of fraud relating to housing benefit or otherwise in the administration of that benefit; and
- (b) the time within which the standards are to be attained.

(4) When giving directions to the Housing Executive under subsection (3) above, the Department may make recommendations to the Executive setting out any course of action which the Department thinks the Executive might take to attain the standards which it is directed to attain.”.

Enforcement of directions

9. After section 128D of the Administration Act (inserted by Article 8) insert—

“Information about attainment of standards.

128E.—(1) Where directions have been given to the Housing Executive under section 128D(3) above, the Department may require the Executive to supply to it any information which the Department considers may assist it in deciding—

- (a) whether the Executive has attained the standards which it has been directed to attain; or
- (b) whether the Executive is likely to attain those standards within the time specified in the directions.

(2) Information shall be supplied under subsection (1) above in such manner and form as the Department may require.

Enforcement notices.

128F.—(1) Where directions have been given to the Housing Executive under section 128D(3) above and the Department—

- (a) is not satisfied that the Executive has attained the standards which it has been directed to attain; or
- (b) is not satisfied that the Executive is likely to attain those standards within the time specified in the directions,

the Department may serve on the Executive a written notice under this section.

(2) The notice shall—

- (a) identify the directions and state why the Department is not satisfied as mentioned in paragraph (a) or (b) of subsection (1) above; and
- (b) require the Housing Executive to submit a written response to the Department within a time specified in the notice.

(3) If any person (other than the Housing Executive) carrying out work relating to the administration of housing benefit may be affected by any determination which may be made under section 128G below, the Executive shall—

- (a) consult that person before submitting its response; and
- (b) include in its response any relevant observations made by that person.

(4) The Housing Executive's response shall either—

- (a) state that the Executive has attained the standards, or is likely to attain them within the time specified in the directions, and justify that statement; or
- (b) state that the Executive has not attained the standards, or is not likely to attain them within that time, and (if the Executive wishes) give reasons why a determination under section 128G below should not be made or should not include any particular provision.

(5) The notice may relate to any one or more matters covered by the directions.

(6) The serving of a notice under this section relating to any directions or matter does not prevent the serving of further notices under this section relating to the same directions or matter.

Enforcement determinations.

128G.—(1) Where, after the time specified in the notice under section 128F above has expired, the Department—

- (a) is not satisfied that the Housing Executive has attained the standards in question; or

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- (b) is not satisfied that the Executive is likely to attain those standards within the time specified in the directions,
the Department may make a determination under this section.
- (2) The determination may be made whether or not the Housing Executive has responded to the notice under section 128F above.
- (3) The determination shall be designed to secure the attainment of the standards in question and—
- (a) shall include provision such as is specified in subsection (4) below; and
 - (b) may also include provision such as is specified in subsection (5) below.
- (4) The provision referred to in paragraph (a) of subsection (3) above is provision that the Housing Executive must comply with specified requirements as to inviting, preparing, considering and accepting bids to carry out any work which—
- (a) falls to be carried out in pursuance of the Executive's functions relating to the administration of housing benefit; and
 - (b) is of a description specified in the determination.
- (5) The provision referred to in paragraph (b) of that subsection is provision of any one or more of the following kinds relating to the work, or any specified category of the work, to which the determination relates—
- (a) provision that it may not be carried out by the Housing Executive;
 - (b) provision that it may not be carried out by any person (other than the Executive) who has been carrying it out; and
 - (c) provision that any contract made by the Executive with any person for carrying it out shall include terms requiring a level of performance which will secure, or contribute to securing, the attainment of the standards in question.

Enforcement determinations: supplementary.

128H.—(1) The provisions included in a determination under section 128G above shall take effect from a date specified in the determination; and different dates may be specified in relation to different provisions.

(2) The making of a determination under section 128G above in relation to any directions does not prevent the making of further determinations under that section in relation to the same directions.

(3) The provision included in a determination by virtue of section 1286(3) above may include—

- (a) requirements that the Department be satisfied as to any specified matter; and
- (b) requirements that the Department authorise or consent to any specified matter.

(4) The provision so included may also include provision as to the time at which any contract for the carrying out of work to which the determination relates (and which is not previously discharged) is to be taken to be frustrated by the determination.

(5) A determination under section 128G above shall have effect in spite of any statutory provision under or by virtue of which the Housing Executive is required or authorised to carry out any work to which the determination relates.”.

Investigations relating to housing benefit

Information from landlords and agents

10. After section 119 of the Administration Act insert—

“Landlords and agents

Power to require information from landlords and agents.

119A.—(1) Regulations shall provide that where a claim for housing benefit in respect of a dwelling is made to the Housing Executive and the circumstances are such as are prescribed—

- (a) the Executive; or
- (b) a person authorised to exercise any function of the Executive relating to housing benefit,

may require any appropriate person to supply information of a prescribed description to the Executive or other person.

(2) Subject to subsection (4) below, for the purposes of subsection (1) above a person is an appropriate person in relation to a dwelling if he is—

- (a) a person to whom anyone is, or claims to be, liable to make relevant payments;
- (b) a person to whom, or at whose direction, a person within paragraph (a) above has agreed to make payments in consequence of being entitled to receive relevant payments; or
- (c) a person acting on behalf of a person within paragraph (a) or (b) above in connection with any aspect of the management of the dwelling.

(3) In subsection (2) above “relevant payments”, in relation to a dwelling, means payments in respect of the dwelling which are of a description in relation to which housing benefit may be paid.

(4) Regulations may provide that any prescribed person, or any person of a prescribed description, is not an appropriate person for, the purposes of subsection (1) above.

(5) The descriptions of information which may be prescribed for the purposes of subsection (1) above include, in particular, any description of information relating to, or to any interest in or other connection with, dwellings and other property situated anywhere in the United Kingdom.

(6) Information shall be supplied under subsection (1) above in such manner and form, and at such time and in accordance with such other requirements, as may be prescribed.

(7) Information supplied to the Housing Executive or other person under subsection (1) above may be used by the Executive or other person only in the exercise of any function relating to housing benefit.

(8) The provisions of section 116D above apply in relation to any information supplied under subsection (1) above which is not benefit administration information (within the meaning of those provisions) as if it were.”.

Art. 11 rep. by 2000 c. 4 (NI)

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Offences, penalties and overpayments

Offence of dishonest representation for obtaining benefit

12. After section 105 of the Administration Act insert—

“Dishonest representations for obtaining benefit etc.

105A.—(1) If a person dishonestly—

- (a) makes a false statement or representation;
- (b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;
- (c) fails to notify a change of circumstances which regulations under this Act require him to notify; or
- (d) causes or allows another person to fail to notify a change of circumstances which such regulations require the other person to notify,

with a view to obtaining any benefit or other payment or advantage under the social security legislation (whether for himself or for some other person), he shall be guilty of an offence.

(2) In this section “the social security legislation” means the legislation to which section 104 above applies and the Jobseekers (Northern Ireland) Order 1995.

(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years, or to a fine, or to both.”.

Art. 13 rep. by 2001 c. 17 (NI)

Penalty as alternative to prosecution

14. After section 109 of the Administration Act insert—

“Penalty as alternative to prosecution.

109A.—(1) This section applies where an overpayment is recoverable from a person by, or due from a person to, the Department or the Housing Executive under or by virtue of section 69, 69A or 73 above and it appears to the Department or the Executive that—

- (a) the making of the overpayment was attributable to an act or omission on the part of that person; and
- (b) there are grounds for instituting against him proceedings for an offence (under this Act or any other statutory provision) relating to the overpayment.

(2) The Department or the Housing Executive may give to the person a written notice—

- (a) stating that he may be invited to agree to pay a penalty and that, if he does so in the manner specified by the Department or the Executive, no such proceedings will be instituted against him; and
- (b) containing such information relating to the operation of this section as may be prescribed.

(3) The amount of the penalty shall be 30 per cent. of the amount of the overpayment (rounded down to the nearest whole penny).

- (4) If the person agrees in the specified manner to pay the penalty—
- (a) the amount of the penalty shall be recoverable by the same methods as those by which the overpayment is recoverable; and
 - (b) no proceedings will be instituted against him for an offence (under this Act or any other statutory provision) relating to the overpayment.

(5) The person may withdraw his agreement to pay the penalty by notifying the Department or the Housing Executive, in the manner specified by the Department or the Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it; and if he does so—

- (a) so much of the penalty as has already been recovered shall be repaid; and
- (b) subsection (4)(b) above shall not apply.

(6) Where, after the person has agreed to pay the penalty, it is decided on a review or appeal or in accordance with regulations that the overpayment is not recoverable or due, so much of the penalty as has already been recovered shall be repaid.

(7) Where, after the person has agreed to pay the penalty, the amount of the overpayment is revised on a review or appeal or in accordance with regulations—

- (a) so much of the penalty as has already been recovered shall be repaid; and
- (b) subsection (4)(b) above shall no longer apply by reason of the agreement;

but if a new agreement is made under this section in relation to the revised overpayment, the amount already recovered by way of penalty, to the extent that it does not exceed the amount of the new penalty, may be treated as recovered under the new agreement instead of being repaid.

(8) In this section “overpayment” means—

- (a) a payment which should not have been made;
- (b) a sum which the Department should have received;
- (c) an amount of benefit paid in excess of entitlement; or
- (d) an amount equal to an excess of benefit allowed;

and the reference in subsection (1)(a) above to the making of the overpayment is to the making of the payment, the failure to receive the sum, the payment of benefit in excess of entitlement or the allowing of an excess of benefit.”.

Recovery of overpaid housing benefit

15. In section 73 of the Administration Act (recovery of overpayments of housing benefit), after subsection (4) add—

“(5) Where an amount paid to a person on behalf of another person is recoverable under this section, subsections (3) and (4) above authorise its recovery from the person to whom it was paid by deduction—

- (a) from prescribed benefits to which he is entitled;
- (b) from prescribed benefits paid to him to discharge (in whole or in part) an obligation owed to him by the person on whose behalf the recoverable amount was paid; or
- (c) from prescribed benefits paid to him to discharge (in whole or in part) an obligation owed to him by any other person.

(6) Where an amount is recovered as mentioned in paragraph (b) of subsection (5) above, the obligation specified in that paragraph shall in prescribed circumstances be taken to be discharged by the amount of the deduction; and where an amount is recovered as mentioned in paragraph (c) of that subsection, the obligation specified in that paragraph shall in all cases be taken to be so discharged.

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(7) Where any amount recoverable under this section is to be recovered otherwise than by deduction from prescribed benefits it shall, if the county court so orders, be enforceable as if it were payable under an order of that court.”.

Reviews and medical examinations

F⁵Reviews initiated by Department

16.—(1) In section 28 of the Administration Act (reviews of decisions about attendance allowance, disability living allowance or disability working allowance), after subsection (7) insert—

“(7A) The Department may undertake investigations to obtain information and evidence for the purposes of making applications under subsection (7) above.”.

(2) In section 30(4)(b) of that Act (consideration on review of questions about component for life where information is available to give grounds for believing it ought not to continue), for “information is available to the adjudication officer” substitute “there has been supplied to the adjudication officer by the Department, or is otherwise available to him, information”.

Annotations:

F5 prosp. in pt. rep. by 1998 NI 10

F⁶Medical examinations of persons awarded certain benefits

17. After section 55 of the Administration Act insert—

“Medical examinations

Medical examinations of persons awarded attendance allowance or disability living allowance.

55A. Regulations may make provision—

- (a) enabling the Department to require a person to whom attendance allowance or disability living allowance has been awarded to submit to medical examination in prescribed circumstances;
- (b) for withholding payments of benefit in prescribed circumstances where a person has failed to submit himself to a medical examination to which he has been required to submit in accordance with regulations under paragraph (a) above; and
- (c) for the subsequent making in prescribed circumstances of payments withheld in accordance with regulations under paragraph (b) above.”.

Annotations:

F6 prosp. in pt. rep. by 1998 NI 10

National insurance numbers

Requirement to state national insurance number

18. In section 1 of the Administration Act (entitlement to benefit dependent on claim), after subsection (1) insert—

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“(1A) No person whose entitlement to any benefit depends on his making a claim shall be entitled to the benefit unless subsection (1B) below is satisfied in relation both to the person making the claim and to any other person in respect of whom he is claiming benefit.

(1B) This subsection is satisfied in relation to a person if—

(a) the claim is accompanied by—

(i) a statement of the person's national insurance number and information or evidence establishing that that number has been allocated to the person; or

(ii) information or evidence enabling the national insurance number that has been allocated to the person to be ascertained; or

(b) the person makes an application for a national insurance number to be allocated to him which is accompanied by information or evidence enabling such a number to be so allocated.

(1C) Regulations may make provision disapplying subsection (1A) above in the case of—

(a) prescribed benefits;

(b) prescribed descriptions of persons making claims; or

(c) prescribed descriptions of persons in respect of whom benefit is claimed,

or in other prescribed circumstances.”.

Article 19—Amendments and repeals

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Schedule 1—Amendments

Schedule 2—Repeals

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

The Social Security Administration (Fraud) (Northern Ireland) Order 1997 is up to date with all changes known to be in force on or before 19 March 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.