



## 2001 CHAPTER 17

### *Penalties as an alternative to prosecution*

#### **Delegation of functions**

**13.** In section 109A of the Administration Act (penalty as alternative to prosecution), after subsection (7) there shall be inserted—

“(7A) Subject to subsection (7B) below, the Department and the Housing Executive may agree that, to the extent determined by the agreement, one may carry out on the other’s behalf, or may join in the carrying out of, any of the other’s functions under this section.

(7B) Subsection (7A) above shall not authorise any delegation of—

- (a) the function of the person by whom any overpayment is recoverable, or to whom it is due, of determining whether or not a notice should be given under subsection (2) above in respect of that overpayment; or
- (b) the power to make regulations for the purposes of paragraph (b) of subsection (2) above.”.

#### **Colluding employers**

**14.—(1)** After section 109A of the Administration Act there shall be inserted—

##### **“109B Penalty as alternative to prosecution: colluding employers, etc.**

(1) This section applies where it appears to the Department or the Housing Executive—

- (a) that there are grounds for instituting proceedings against any person (“the responsible person”) for an offence (whether or not under this Act) in respect of any conduct; and
  - (b) that the conduct in respect of which there are grounds for instituting the proceedings is conduct falling within subsection (2) below.
- (2) Conduct in respect of which there appear to be grounds for instituting proceedings falls within this subsection if—
- (a) those proceedings would be for an offence under this Act in connection with an inquiry relating to the employment of relevant employees or of any one or more particular relevant employees; or
  - (b) it is conduct which was such as to facilitate the commission of a benefit offence by a relevant employee (whether or not such an offence was in fact committed).
- (3) The Department or the Housing Executive may give to the responsible person a written notice—
- (a) specifying or describing the conduct in question;
  - (b) stating that he may be invited to agree to pay a penalty in respect of that conduct;
  - (c) stating that, if he does so in the manner specified by the Department or the Housing Executive, no criminal proceedings will be instituted against him in respect of that conduct; and
  - (d) containing such information relating to the operation of this section as may be prescribed.
- (4) If the recipient of a notice under subsection (3) above agrees, in the specified manner, to pay the penalty—
- (a) the amount of the penalty shall be recoverable as a civil debt, and shall be capable of being set off against an amount of relevant benefit payable to the recipient of the notice; and
  - (b) no criminal proceedings shall be instituted against him in respect of the conduct to which the notice relates;
- and section 69(10) above shall apply in relation to an amount recoverable by virtue of paragraph (a) above as it applies in relation to an amount recoverable under the provisions mentioned in section 69(8) above.
- (5) The amount of the penalty shall be—
- (a) in a case in which the conduct in question falls within paragraph (a) of subsection (2) above but not within paragraph (b) of that subsection, £1,000;

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*Status: This is the original version (as it was originally enacted).*

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- (b) in a case in which that conduct falls within paragraph (b) of that subsection and the number of relevant employees by reference to whom it falls within that subsection is five or more, £5,000; and
- (c) in any other case, the amount obtained by multiplying £1,000 by the number of relevant employees by reference to whom that conduct falls within that subsection.

(6) The responsible person may withdraw his agreement to pay a penalty under this section by notifying the Department or the Housing Executive, in the manner specified by the Department or the Housing Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it.

(7) Where the responsible person withdraws his agreement in accordance with subsection (6) above—

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

(8) For the purposes of this section an individual is a relevant employee in relation to any conduct of the responsible person if—

- (a) that conduct was at or in relation to a time when that individual was an employee of the responsible person;
- (b) that conduct was at or in relation to a time when that individual was an employee of a body corporate of which the responsible person is or has been a director; or
- (c) the responsible person, in engaging in that conduct, was acting or purporting to act on behalf of, in the interests of or otherwise by reason of his connection with, any person by whom that individual is or has been employed.

(9) In this section—

“conduct” includes acts, omissions and statements;

“the Department” also includes the Department of Finance and Personnel;

“director”—

- (a) in relation to a company (within the meaning of the Companies (Northern Ireland) Order 1986), includes a shadow director;
- (b) in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company; and
- (c) in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate;

“employee” means any person who—

- (a) is employed under a contract of service or apprenticeship, or in an office (including an elective office), or
- (b) carries out any work under any contract under which he has undertaken to provide his work,

and “employment” shall be construed accordingly;

“relevant benefit” means benefit prescribed for the purposes of section 69(8) above;

“shadow director” means a shadow director as defined in Article 9(2) of the Companies (Northern Ireland) Order 1986;

“subsidiary” means a subsidiary as defined in Article 4 of the Companies (Northern Ireland) Order 1986.”.

(2) In section 144(8) of the Administration Act (penalties to be paid into the Consolidated Fund) after “109A” there shall be inserted “or 109B”.