

*These notes refer to the Social Security Fraud Act (Northern Ireland)
2001 (c.17) which received Royal Assent on 15 November 2001*

Social Security Fraud Act (Northern Ireland) 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Additional powers to obtain information

The measures in the Act will provide for officers authorised under sections 103A and 104A of the Administration Act to require information about individuals from specified private and public sector organisations. Information may be obtained where it is reasonable for the purposes set out at sections 103A(2) and 104A(2). The list of specified private and public sector organisations that can be required to provide information can be extended by order subject to the confirmatory procedure in the Assembly.

The measures also provide for specifically authorised officers to require general information from utility companies about the quantity of services supplied to residential properties. The Department intends to match this information electronically with benefit records in order to detect fraud. For example, if a person was claiming IS at a particular address and was consuming no electricity at that address this could indicate that he does not, in fact, live there and that his claim may be fraudulent. The measures do not provide for the bulk acquisition of individuals' names, only details of utilities supplied to residential addresses.

If those from whom information has been requested fail to comply with authorised officers' requests they can be prosecuted under the current section 105 of the Administration Act. They may be fined up to £1,000 plus £40 for each day after this that they continue to fail to provide the information requested.

Section 1 amends and adds to the investigator's powers in sections 103A, 103B, 103C and 104A of the Administration Act.

Section 103A provides for the Department to authorise officers to use the powers in sections 103B and 103C for the purposes set out in section 103A(2):

- ascertaining whether a social security benefit is or was payable in an individual case;

- investigating the circumstances of accidents, injuries or diseases giving rise to claims for Industrial Injuries Benefit and other benefits;
- ascertaining whether the provisions of the relevant social security legislation have been, are being, or are likely to be contravened (in cases involving particular individuals as well as more generally);
- preventing, detecting and securing evidence of the commission of criminal offences in relation to the relevant social security legislation (either by particular individuals or more generally).

Section 104A allows the Housing Executive with the consent of the Department to authorise officers to use the powers in sections 103B and 103C for the purposes set out in section 104A(2):

- ascertaining whether HB is or was payable in an individual case;
- ascertaining whether the provisions of the relevant social security legislation regarding HB have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
- preventing, detecting and securing evidence of the commission of criminal offences in relation to HB (either by particular individuals or more generally).

Section 103B provides a power for authorised officers to require those listed in section 103B(2) to provide information requested by written notice where this is reasonable in relation to one or more of the purposes set out in section 103A(2).

Section 103C provides a power for authorised officers to inspect premises where persons are employed, from which a trade, business or pension fund is being carried on or where information about these is stored, where this is reasonable in relation to one or more of the purposes set out at section 103A(2). This section is not amended by the Act.

Section 1(1) provides for the amendment of the Administration Act.

Section 1(2) inserts new subsections (2A) to (2F) into section 103B of the Administration Act.

Subsection (2A) lists organisations from which officers authorised under section 103A and 104A can require information. These organisations include: banks, credit reference agencies; utility providers and education bodies.

Subsection (2B) provides that, subject to the following provisions of the section, the powers to require information shall only be exercisable for making enquiries of persons listed within subsection (2A) for the purpose only of obtaining information relating to particular persons identified by name or description.

Subsection (2C) provides that an authorised officer shall not exercise those powers to obtain information from persons listed in subsection (2A) unless it appears to him that there are reasonable grounds for believing that the identified person to whom it relates is:

- a person who has committed, is committing, or intends to commit a benefit offence; or
- a person who is a member of the family of a person falling within the above category. (A family member is defined in section 133 of the Contributions and Benefits Act and includes married and unmarried partners and children and dependants whom claimants or their partners are responsible for).

Subsection (2D) provides that, where an authorised officer is an official of a government department and where his authorisation explicitly states that it applies for the purposes of subsection (2D), nothing in subsection (2B) or (2C) shall prevent him from obtaining information relating exclusively to whether, and in what quantities, gas and electricity are supplied to residential premises.

Subsection (2E) provides that the powers in section 103B may only be exercised to obtain information from a telecommunications provider if it is “communications data” but not “traffic data” (as those terms are defined in section 21 of the Regulation of Investigatory Powers Act 2000). Restricting the information to communications data would enable the authorised officer to obtain information about the use made by a person of a telecommunications service or any other information held about subscribers to the service. However it would exclude information about the contents of any communication. The exclusion of traffic data would prevent the authorised officer from obtaining information identifying the person, apparatus or location to or from which a communication is sent.

Subsection (2F) provides a further exception to the requirements in subsections (2B) and (2C) (that is to exercise the powers only in relation to an identified person and where there is reasonable suspicion that the person has committed, is committing or intends to commit a benefit offence). Nothing in those subsections shall prevent an authorised officer from requiring information from a telecommunications provider, about a person’s identity and postal address where the authorised officer has identified the person solely by reference to a telephone number or electronic address.

Section 1(3) substitutes section 103B(5) of the Administration Act.

Subsection (5) sets out two cases where a person is exempt from the requirement to provide information. They are:

- if the information is information which may incriminate that person or that person’s spouse; and
- if the information is information which, in any proceedings, would be subject to legal professional privilege.

In both cases it does not matter whether the information is in documentary form or not. These exemptions would apply to information required from persons listed in subsections (2) and (2A). Only the exemption subject to legal privilege is new.

Section 1(4) adds subsections (6) and (7) to section 103B of the Administration Act.

Subsection (6) provides that provision may be made by an order:

- to add to the list of persons at subsection (2A);
- to remove persons from that list;
- to modify subsection (2A) to take account of any changes to the names of persons listed.

Subsection (7) gives definitions of the terms “bank”, “credit”, “residential premises” and “telecommunications service”.

Section 1(5) adds a new paragraph (c) to section 104A(7) of the Administration Act. Section 104A(7) provides that the powers in sections 103B and 103C may be exercised by officers authorised by the Housing Executive. Paragraph (c) excludes section 103B(2D) from this provision.

Section 1(6) amends section 105(1)(a) of the Administration Act (offence of obstruction) by substituting “authorised officer” for “inspector” for the purposes of consistent terminology.

Section 1(7) amends section 115CA(5) of the Administration Act to re-define benefit offences. The new definition now incorporates attempt, conspiracy and collusion to commit benefit offences.

Section 1(8) adds a new subsection (7) to section 115CA of the Administration Act to define “relevant social security benefit” which is a term used in the re-definition of benefit offences above.

Section 1(9) adds the order-making power provided for by the new section 103B(6)(a) to the list of the order-making powers subject to the confirmatory procedure set out in section 166(2) of the Administration Act.