

*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 6: Loss of benefit for commission of benefit offences

Measures in the Act provide that certain specified benefits shall be reduced or withdrawn where a person is convicted twice of committing offences in relation to specified benefits within the space of three years. The sanction will be for a fixed period of 13 weeks and will begin after conviction for the second offence where benefit is in payment or, if benefit is not in payment, when entitlement first arises in the three-year period following the second conviction. The decision that the sanction applies will carry with it the right of appeal to an appeal tribunal on a question of fact and law.

The measures will apply to offences involving fraud against all social security benefits and War Pension with the exception of Statutory Sick Pay, Statutory Maternity Pay, and Maternity Allowance. Tax Credits are also excluded. Offences relating to joint-claim JSA, Retirement Pension, Graduated Retirement Benefit, Disability Living Allowance, Attendance Allowance, Child Benefit, and Guardian's Allowance will activate benefit loss but these benefits will not be subject to sanction by removal of payment. Also Social Fund payments and Christmas bonuses will not be subject to sanction. All other benefits will be withdrawn or reduced as a result of a second conviction. Any sanction against a War Pension would be by virtue of the corresponding provision of the Social Security Fraud Act 2001.

The intention is that while relevant benefits will be sanctioned, an underlying entitlement will remain to ensure that the link between benefits and other entitlements such as free prescriptions and school meals remain. For recipients of both contributory and income-based JSA, the benefit will be withdrawn for the period of the sanction. JSA claimants will also have their HB withdrawn during this period. It is intended that regulations under the powers for which this Act provides will mirror current provisions for hardship payments arising from employment condition sanctions. If a JSA claimant falls into a vulnerable group he could apply for hardship payments from the first day of the sanction. The term "vulnerable group" refers to the group of people specified in regulation 140(1) of the Jobseeker's Allowance Regulations (Northern Ireland) 1996. Those who

do not fall into a vulnerable group will be eligible to apply for hardship payments from the 15th day of the sanction.

Claimants will retain an underlying entitlement to JSA throughout the period of the sanction whether or not they are entitled to hardship payments, ensuring that the “passporting” back on to HB is maintained. If hardship is established under the regulations, and the claimant satisfies the other conditions of entitlement, they will be awarded a reduced payment of income-based JSA. The rate of reduction will be prescribed in regulations, but the intention is that the reduction will normally be 40 per cent. of the single person’s allowance, although where someone in the family is seriously ill or pregnant, the reduction will be 20 per cent.

Section 6 contains provisions to remove or reduce benefit from offenders who have been convicted twice of benefit fraud within a period of three years.

Section 6(1) provides for benefit to be reduced or withdrawn where an offender is convicted on more than one occasion of specified benefit offences. Benefit withdrawal or reduction is triggered when an offender is convicted of one or more benefit offences in each of two separate sets of proceedings. The offence for which the second set of proceedings has been brought must occur within a period of three years of the date on which the offender was convicted for the first offence. Where this happens the offender will have all sanctionable benefits in payment withdrawn or reduced for the period of the sanction.

Section 6(2) introduces a “disqualification period”, which is the time for which the benefit will be reduced or withdrawn. Subsection (6) further prescribes the period as beginning at a prescribed time after conviction for the second offence.

Section 6(3) provides for IS to be paid at a reduced rate for the prescribed period rather than withdrawn completely. Details of the reduction will be prescribed in regulations. The broad intention is that the reduction will be similar to that which will apply in JSA cases where hardship is established.

Section 6(4) enables regulations to be made to provide that JSA claimants may be eligible for a reduced rate of benefit during the prescribed period providing they satisfy certain conditions. The intention is that these conditions will be similar to the hardship provisions that currently apply with JSA.

Section 6(5) enables regulations to be made to provide that HB claimants will be eligible for a reduced rate of benefit during all or part of any disqualifying period. The intention is that a person entitled to HB who becomes subject to sanction under the new sections should, if any IS or JSA remains payable under subsections (3) and (4), remain entitled to full HB. Where these benefits are not payable, the HB entitlement will be reduced by a sum specified in regulations.

Section 6(6) provides that where an offender has been convicted twice of benefit fraud within the period specified within subsection (1), the sanction will be a period of 13 weeks commencing at the prescribed time after conviction for the second offence.

Section 6(7) provides that in the event of a successful appeal against either of the convictions that resulted in the imposition of a sanction, then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Section 6(8) sets out definitions of the terms used within this provision.

Section 6(9) provides further definition of the meaning of conviction as used within this provision.

Section 6(10) provides that the sanction shall not take effect under this section where it has already taken effect for the same convictions under the equivalent Great Britain legislation. It also allows a sanction to be imposed where a previous sanction took effect for a period within the same disqualifying period (e.g. where it has taken effect for part of that period in relation to a relative under section 7 and then takes effect in relation to the offender himself for the rest of the period).