

SOCIAL SECURITY FRAUD ACT 2001

EXPLANATORY NOTES

COMMENTARY ON CLAUSE 15

Colluding Employers

163. This clause inserts a new section 115B into the Social Security Administration Act 1992.
164. Subsection (1) provides for section 115B to apply where the Secretary of State for Social Security or an authority responsible for administering Housing Benefit or Council Tax Benefit considers that there are grounds for instituting proceedings (or grounds for referral to the Lord Advocate or procurator fiscal to consider proceedings in respect of the clause's application in Scotland) against a person for an offence in respect of conduct of a type defined in subsection (2). The person is referred to in section 115B as "the responsible person".
165. Subsection (2) defines the conduct for which there must be evidence of to prosecute. This is either:
- (a) conduct which constitutes an offence under the Social Security Administration Act 1992 in connection with an investigation into the employment of one or more employees, or
 - (b) conduct, which is such as to assist an employee to commit a benefit offence, whether an actual offence occurred or not.
166. Subsection (3) defines how the Secretary of State offers the invitation to pay a financial penalty and the information he must supply when he does so: the Secretary of State issues a written notice, which informs the 'responsible person' that he may be invited to agree to pay a penalty and that, if he does so in the specified manner, he will not be prosecuted for an offence for conduct described in subsection (2) (and the case will not be referred to the Lord Advocate or procurator fiscal to consider prosecution in respect of the clause's application in Scotland). This subsection also includes a regulation-making power to prescribe other information, which the Secretary of State must supply.
167. Subsection (4) provides that if the penalty is accepted it may under subsection (4)(a) be recovered as a civil debt and by deduction from benefit in circumstances where the recipient of the penalty notice is in receipt of a relevant social security benefit. Subsection (4)(b) provides that if the penalty is accepted no criminal proceedings for the specific conduct to which the penalty relates will be instituted (and the case will not be referred to the Lord Advocate or procurator fiscal to consider prosecution in respect of the clause's application in Scotland). Section 71(10) of the Social Security Administration Act 1992 (which relates to benefit overpayments) will apply in relation to penalties recoverable under section 115B. This will enable the penalty to be recovered as if it were an amount payable under a court order.
168. Subsection (5) fixes the amount of the penalty. Subsection (5)(a) provides for a penalty of £1,000 for conduct which falls into subsection (2)(a) but not subsection (2)(b). For conduct falling within subsection (2)(b) subsection (5)(b) and (c) provide for a penalty

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(c.11) which received Royal Assent on 11 May 2001*

of £1,000 multiplied by the number of employees involved in the fraud up to a maximum of £5,000.

169. Subsection (6) gives the 'responsible person' the right to withdraw agreement to pay a penalty, in a manner specified by the Secretary of State, within 28 days of having accepted it.
170. Subsection (7) (a) provides for the repayment of any amount of the penalty that has already been paid where the agreement to pay is withdrawn. In such circumstances subsection (7) (b) provides that the bar on prosecution will no longer apply.
171. Subsection (8) defines the different circumstances in which an individual is a '*relevant employee*' in relation to conduct of the '*responsible person*'. Subsection (8) provides that an individual is a relevant employee where:
 - (a) the conduct described in subsection (2) occurred when the individual was an employee of the 'responsible person'; or
 - (b) where the conduct described in subsection (2) occurred when the individual was an employee of a body corporate of which the 'responsible person' was a director; or
 - (c) the 'responsible person' engages in conduct described in subsection (2) whilst claiming to act on behalf of or in the interests of (because of his connection with) any person by whom the individual is employed.
172. Subsection (9) defines terms used in this section.
173. Subsection (9)(2) makes provision for penalties under section 115B to be paid into the Consolidated Fund.

Clause 16

Offence of failing to notify a change of circumstances

Background

174. This Clause amends sections 111A and 112 (1A) of the Social Security Administration Act 1992 (both of which were inserted by the Social Security Administration (Fraud) Act 1997). Before the 1997 Act the only specific offence for social security fraud was a summary offence of obtaining benefit by making a false statement or producing a false document (section 112). The 1997 Act created a new either way offence (section 111A) of dishonestly (or, in Scotland, knowingly) making a false statement or producing a false document with a view to obtaining benefit.
175. In addition, the 1997 Act introduced new offences aimed primarily at beneficiaries who receive payment of benefit by automated credit transfer (ACT). Those paid by girocheque or order book sign a statement, whenever they obtain payment, to the effect that the circumstances remain unchanged. If it subsequently transpires that the circumstances have indeed changed without being notified to the DSS or an authority administering Housing Benefit or Council Tax Benefit, the person could be charged under the false statement provisions of section 111A or section 112. Those paid by ACT cannot be charged under these provisions because there is no false statement as such – payment is made directly into an individual's bank account without any signature or other action being required on their part. A similar difficulty arose in cases where the period of fraudulent activity extended over many years. In such cases the evidence afforded by signatures on order book and girocheque counterfoils was commonly no longer available. Previously the DSS had had to rely on specimen false statements spanning the period in question, which could give the court a misleading picture of the gravity of the offence.
176. The 1997 Act sought to remedy this situation by adding offences of omission to the existing offences of commission. The new approach was to make it an offence in

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section 111A to fail to notify a change of circumstances which regulations under the Social Security Administration Act 1992 required the person to notify. The same form of wording was also used in defining the summary offence in section 112(1A). Unfortunately, problems were identified with this approach. It proved an impossible task to draft regulations which set out the various changes in circumstances which would inevitably affect any individual's entitlement to any given benefit. This Act provides the first opportunity to revisit the primary powers in order to secure the original policy intention.

177. The proposed changes restructure the provision so that the offences are defined in terms of changes that a person knows will affect entitlement to benefit, rather than to changes that regulations require him to report. As increasing numbers of beneficiaries opt to receive payment of social security benefits through ACT, the need for this change has become greater.