
STATUTORY INSTRUMENTS

1997 No. 1182

**The Social Security Administration
(Fraud) (Northern Ireland) Order 1997**

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.”.

Extension of offence of false representation for obtaining benefit

13. In section 106 of the Administration Act (offence of making false representation etc. for obtaining benefit or for other purpose connected with social security legislation), after subsection (1) insert—

“(1A) If a person without reasonable excuse—

- (a) fails to notify a change of circumstances which regulations under this Act require him to notify; or
- (b) knowingly causes or knowingly allows another person to fail to notify a change of circumstances which such regulations require the other person to notify,

and he knows that he, or the other person, is required to notify the change of circumstances, he shall be guilty of an offence.”.

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.

(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.”.