

*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 15: Offence of failing to notify a change of circumstances

Before the Fraud Order 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. The Fraud Order created a new either way offence of dishonestly making a false statement or producing a false document with a view to obtaining benefit.

In addition, the Fraud Order 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 Department or, as the case may be, authorities administering HB, the person could be charged under the false statement provisions of section 105A or 106 of the Administration Act. 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.

The Fraud Order 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 under section 105A of the Administration Act to fail to notify a change of circumstances which regulations required the person to notify. The same form of wording was also used in defining the summary offence in section 106(1A). However, 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. The Act provides the opportunity to revisit the powers in order to secure the original policy intent.

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.

Section 15(1) omits paragraphs (c) and (d) from section 105A(1) and inserts new subsections (1A) to (1G).

Subsection (1A) defines the new offence of “dishonestly” failing to give prompt notification of a change of circumstances in relation to the claimant himself.

Subsection (1B) defines the offence in relation to a third party who dishonestly causes or allows another person to fail to give prompt notification of a change in circumstances. This would apply, for example, in the case of a woman whose part-time earnings increase in circumstances where her husband is claiming income support. If she knows that this particular change affects his entitlement to benefit and does not inform him, thereby causing him to fail to notify the change, she is guilty of an offence.

Subsections (1C) and (1D) provide that the offence of dishonestly failing to give a prompt notification of a change in the circumstances of the claimant extends to third parties who have a right to receive payments on behalf of the claimant. This would, for instance, apply in cases where the claimant is unable for the time being to act for himself and, in the absence of any person having been legally appointed to act for him, the Department appoints a person to exercise on behalf of the claimant, any right to which that person may be entitled and to receive and deal on his behalf with any sums payable to him. If the person so appointed dishonestly fails to notify a change in the claimant’s circumstances, knowing that the change in question affects benefit, he is guilty of an offence.

Subsection (1E) provides that it is an offence if a third party, knowing that a particular change in circumstances affects the claimant’s entitlement to benefit, dishonestly causes or allows a person with the right to receive payments on behalf of the claimant to fail to make a prompt notification of that change. This extends the third party offence of dishonestly causing or allowing a failure on the part of the claimant whose responsibility it is to notify a relevant change in circumstances. It means that the offence applies equally if another person has been granted the right to receive payments on behalf of the claimant and is caused or allowed, by a third party, to fail to make a prompt notification of a change in the claimant’s circumstances.

Subsection (1F) qualifies the extent to which subsections (1C) to (1E) can be applied to the landlord of a tenant entitled to housing benefit. It ensures that a landlord cannot be guilty of an offence under these provisions unless the change in circumstances that the landlord had failed to notify promptly are those which relate to the claimant’s occupation of the dwelling or his liability to pay rent. The subsection further provides that the landlord must either know that the change

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in question is one that affects the claimant's benefit, or be one which he could reasonably be expected to know would do so.

Subsection (1G) provides that a notification is "prompt" if it is given as soon as reasonably practicable after the change occurs.

Section 15(2) makes changes to the summary offence in section 106, which mirror those made to section 105A.