



# Social Security Administration (Northern Ireland) Act 1992

## 1992 CHAPTER 8

### PART VI

#### ENFORCEMENT

#### Modifications etc. (not altering text)

C1 Pt. VI: power to amend conferred (7.2.1994) by 1993 c. 49, s.173; S.R. 1994/17, art. 2

#### *Inspection*

VALID FROM 02/04/2001

#### **[<sup>F1</sup>103A Authorisations for investigators**

- (1) An individual who for the time being has the Department's authorisation for the purposes of this Part shall be entitled, for any one or more of the purposes mentioned in subsection (2) below, to exercise any of the powers which are conferred on an authorised officer by sections 103B and 103C below.
- (2) Those purposes are—
  - (a) ascertaining in relation to any case whether a benefit is or was payable in that case in accordance with any provision of the relevant social security legislation;
  - (b) investigating the circumstances in which any accident, injury or disease which has given rise, or may give rise, to a claim for—
    - (i) industrial injuries benefit, or
    - (ii) any benefit under any provision of the relevant social security legislation,

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- occurred or may have occurred, or was or may have been received or contracted;
- (c) ascertaining whether provisions of the relevant social security legislation are being, have been or are likely to be contravened (whether by particular persons or more generally);
- (d) preventing, detecting and securing evidence of the commission (whether by particular persons or more generally) of benefit offences.
- (3) An individual has the Department’s authorisation for the purposes of this Part if, and only if, the Department has granted him an authorisation for those purposes and he is—
- (a) an official of a government department;
- (b) an individual employed by the Housing Executive; or
- (c) an individual authorised to carry out functions of the Housing Executive relating to housing benefit.
- (4) An authorisation granted for the purposes of this Part to an individual of any of the descriptions mentioned in subsection (3) above—
- (a) shall be contained in a certificate provided to that individual as evidence of his entitlement to exercise powers conferred by this Part;
- (b) may contain provision as to the period for which the authorisation is to have effect; and
- (c) may restrict the powers exercisable by virtue of the authorisation so as to prohibit their exercise except for particular purposes, in particular circumstances or in relation to particular benefits or particular provisions of the relevant social security legislation.
- (5) An authorisation granted under this section may be withdrawn at any time by the Department.
- (6) Where the Department grants an authorisation for the purposes of this Part to an individual employed by the Housing Executive, or to an individual authorised to carry out functions of the Housing Executive relating to housing benefit—
- (a) the Department and the Housing Executive shall enter into such arrangements (if any) as they consider appropriate with respect to the carrying out of functions conferred on that individual by or in connection with the authorisation granted to him; and
- (b) the Department may make to the Housing Executive such payments (if any) as the Department thinks fit in respect of the carrying out by that individual of any such functions.
- (7) The matters on which a person may be authorised to consider and report to the Department under section 128A below shall be taken to include the carrying out by any such individual as is mentioned in subsection (3)(b) or (c) above of any functions conferred on that individual by virtue of any grant by the Department of an authorisation for the purposes of this Part.
- (8) The powers conferred by sections 103B and 103C below shall be exercisable in relation to persons holding office under the Crown and persons in the service of the Crown, and in relation to premises owned or occupied by the Crown, as they are exercisable in relation to other persons and premises.]

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### Textual Amendments

**F1** Ss. 103A-103C substituted for s. 104 (2.4.2001) by 2000 c. 4 (N.I.), s. 68(1), **Sch. 6 para. 2** (with s. 66(6)); S.I. 2001/141, art. 2(1)(a), **Sch. Pt. I**

VALID FROM 02/04/2001

### **F2**103B Power to require information

- (1) An authorised officer who has reasonable grounds for suspecting that a person—
- (a) is a person falling within subsection (2) below, and
  - (b) has or may have possession of or access to any information about any matter that is relevant for any one or more of the purposes mentioned in section 103A(2) above,
- may, by written notice, require that person to provide all such information described in the notice as is information of which he has possession, or to which he has access, and which it is reasonable for the authorised officer to require for a purpose so mentioned.
- (2) The persons who fall within this subsection are—
- (a) any person who is or has been an employer or employee within the meaning of any provision made by or under the Contributions and Benefits Act;
  - (b) any person who is or has been a self-employed earner within the meaning of any such provision;
  - (c) any person who by virtue of any provision made by or under that Act falls, or has fallen, to be treated for the purposes of any such provision as a person within paragraph (a) or (b) above;
  - (d) any person who is carrying on, or has carried on, any business involving the supply of goods for sale to the ultimate consumers by individuals not carrying on retail businesses from retail premises;
  - (e) any person who is carrying on, or has carried on, any business involving the supply of goods or services by the use of work done or services performed by persons other than employees of his;
  - (f) any person who is carrying on, or has carried on, an agency or other business for the introduction or supply, to persons requiring them, of persons available to do work or to perform services;
  - (g) any district council acting in its capacity as an authority responsible for the granting of any licence;
  - (h) any person who is or has been a trustee or manager of a personal or occupational pension scheme;
    - (i) any person who is or has been liable to make a compensation payment or a payment to the Department under Article 8 of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (payments in respect of recoverable benefits); and
    - (j) the servants and agents of any such person as is specified in any of paragraphs (a) to (i) above.
- (3) The obligation of a person to provide information in accordance with a notice under this section shall be discharged only by the provision of that information, at such

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reasonable time and in such form as may be specified in the notice, to the authorised officer who—

- (a) is identified by or in accordance with the terms of the notice, or
  - (b) has been identified, since the giving of the notice, by a further written notice given by the authorised officer who imposed the original requirement or another authorised officer.
- (4) The power of an authorised officer under this section to require the provision of information shall include a power to require the production and delivery up and (if necessary) creation of, or of copies of or extracts from any such documents containing the information as may be specified or described in the notice imposing the requirement.
- (5) No one shall be required under this section to provide any information (whether in documentary form or otherwise) that tends to incriminate either himself or, in the case of a person who is married, his spouse.

#### Textual Amendments

- F2** Ss. 103A-103C substituted for s. 104 (2.4.2001) by 2000 c. 4 (N.I.), s. 68(1), **Sch. 6 para. 2** (with s. 66(6)); S.I. 2001/141, art. 2(1)(a), **Sch. Pt. I**

VALID FROM 24/02/2003

#### **[<sup>F3</sup>103BA] Power of Department to require electronic access to information**

- (1) Subject to subsection (2) below, where it appears to the Department—
- (a) that a person falling within section 103B(2A) above keeps any electronic records,
  - (b) that the records contain or are likely, from time to time, to contain information about any matter that is relevant for any one or more of the purposes mentioned in section 103A(2) above, and
  - (c) that facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,
- the Department may require that person to enter into arrangements under which authorised officers are allowed such access to those records.
- (2) An authorised officer—
- (a) shall be entitled to obtain information in accordance with arrangements entered into under subsection (1) above only if his authorisation states that his authorisation applies for the purposes of that subsection; and
  - (b) shall not seek to obtain any information in accordance with any such arrangements other than information which relates to a particular person and could be the subject of a requirement under section 103B above.
- (3) The matters that may be included in the arrangements that a person is required to enter into under subsection (1) above may include—
- (a) requirements as to the electronic access to records that is to be made available to authorised officers;

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- (b) requirements as to the keeping of records of the use that is made of the arrangements;
  - (c) requirements restricting the disclosure of information about the use that is made of the arrangements; and
  - (d) such other incidental requirements as the Department considers appropriate in connection with allowing access to records to authorised officers.
- (4) An authorised officer who is allowed access in accordance with any arrangements entered into under subsection (1) above shall be entitled to make copies of, and to take extracts from, any records containing information which he is entitled to require under section 103B above.]

#### Textual Amendments

**F3** S. 103BA inserted (24.2.2003) by 2001 c. 17 (N.I.) , ss. 2(1), 17(1); S.R. 2002/406, art. 2(2)

VALID FROM 02/04/2001

#### **F4** 103C Powers of entry

- (1) An authorised officer shall be entitled, at any reasonable time and either alone or accompanied by such other persons as he thinks fit, to enter any premises which—
- (a) are liable to inspection under this section; and
  - (b) are premises to which it is reasonable for him to require entry in order to exercise the powers conferred by this section.
- (2) An authorised officer who has entered any premises liable to inspection under this section may—
- (a) make such an examination of those premises, and
  - (b) conduct any such inquiry there,
- as appears to him appropriate for any one or more of the purposes mentioned in section 103A(2) above.
- (3) An authorised officer who has entered any premises liable to inspection under this section may—
- (a) question any person whom he finds there;
  - (b) require any person whom he finds there to do any one or more of the following—
    - (i) to provide him with such information,
    - (ii) to produce and deliver up and (if necessary) create such documents or such copies of, or extracts from, documents,
 as he may reasonably require for any one or more of the purposes mentioned in section 103A(2) above; and
  - (c) take possession of and either remove or make his own copies of any such documents as appear to him to contain information that is relevant for any of those purposes.

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- (4) The premises liable to inspection under this section are any premises (including premises consisting in the whole or a part of a dwelling house) which an authorised officer has reasonable grounds for suspecting are—
- (a) premises which are a person’s place of employment;
  - (b) premises from which a trade or business is being carried on or where documents relating to a trade or business are kept by the person carrying it on or by another person on his behalf;
  - (c) premises from which a personal or occupational pension scheme is being administered or where documents relating to the administration of such a scheme are kept by the person administering the scheme or by another person on his behalf;
  - (d) premises where a person who is the compensator in relation to any such accident, injury or disease as is referred to in section 103A(2)(b) above is to be found;
  - (e) premises where a person on whose behalf any such compensator has made, may have made or may make a compensation payment is to be found.
- (5) An authorised officer applying for admission to any premises in accordance with this section shall, if required to do so, produce the certificate containing his authorisation for the purposes of this Part.
- (6) Subsection (5) of section 103B applies for the purposes of this section as it applies for the purposes of that section.

#### Textual Amendments

- F4** Ss. 103A-103C substituted for s. 104 (2.4.2001) by 2000 c. 4 (N.I.), s. 68(1), **Sch. 6 para. 2** (with s. 66(6)); S.I. 2001/141, art. 2(1)(a), **Sch. Pt. I**

## 104 Appointment and powers of inspectors.

- (1) For the purposes of the legislation to which this section applies the Department may appoint such inspectors, and pay to them such salaries or remuneration, as it may determine with the consent of the Department of Finance and Personnel.
- (2) An inspector appointed under this section shall, for the purposes of the execution of that legislation, have the following powers—
- (a) to enter at all reasonable times any premises liable to inspection under this section;
  - (b) to make such examination and inquiry as may be necessary—
    - (i) for ascertaining whether the provisions of the legislation are being, or have been, complied with in any such premises; or
    - (ii) for investigating the circumstances in which any accident, injury or disease which has given or may give rise to a claim for industrial injuries benefit, or for any benefit which is a relevant benefit, occurred or may have occurred, or was or may have been received or contracted;
  - (c) to examine, either alone or in the presence of any other person, as he thinks fit, in relation to any matters under the legislation on which he may reasonably require information, every person whom he finds in any such premises or

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whom he has reasonable cause to believe to be or to have been a person liable to pay—

- (i) contributions under Part I of the Contributions and Benefits Act;
- (ii) a state scheme premium; or
- (iii) a compensation payment or a relevant payment,

and to require every such person to be so examined;

- (d) to exercise such other powers as may be necessary for carrying the legislation into effect.

- (3) The premises liable to inspection under this section are any where an inspector has reasonable grounds for supposing that—

- (a) any persons are employed;
- (b) there is being carried on any agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services;
- (c) a personal or occupational pension scheme is being administered; or
- (d) any person—
  - (i) who is the compensator in relation to any such accident, injury or disease as is referred to in subsection (2)(b)(ii) above; or
  - (ii) on whose behalf any such compensator has or may have made, or may make, a compensation payment,

carries on business or is to be found,

but do not include any private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

- (4) Every inspector shall be furnished with a certificate of his appointment, and on applying for admission to any premises for the purpose of the legislation shall, if so required, produce the certificate.

- (5) Where any premises are liable to be inspected by an inspector or officer appointed or employed by, or are under the control of, some other government department, the Department may make arrangements with that department for any of the powers or duties of inspectors under this section to be carried out by an inspector or officer employed by that department.

- (6) In accordance with this section, persons shall furnish to an inspector all such information, and produce for his inspection all such documents, as he may reasonably require for the purpose of ascertaining—

- (a) whether—
  - (i) any contribution under Part I of the Contributions and Benefits Act;
  - (ii) any state scheme premium; or
  - (iii) any compensation payment or relevant payment,

is or has been payable, or has been duly paid, by or in respect of any person; or

- (b) whether benefit is or was payable to or in respect of any person.

- (7) The following persons are under the duty imposed by subsection (6) above—

- (a) the occupier of any premises liable to inspection under this section;
- (b) any person who is or has been an employer or an employee within the meaning of any provision of the Contributions and Benefits Act;

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- (c) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services;
- (d) any person who is or has at any time been a trustee or manager of a personal or occupational pension scheme;
- (e) any person who is or has been liable—
  - (i) to pay contributions or state scheme premiums; or
  - (ii) to make any compensation payment or relevant payment;
- (f) the servants or agents of any such person as is specified in any of the preceding paragraphs,

but no one shall be required under this section to answer any questions or to give evidence tending to incriminate himself or, in the case of a person who is married, his or her spouse.

(8) This section applies to the following legislation—

- (a) the Social Security Act 1973;
- (b) the Contributions and Benefits Act;
- (c) this Act;
- (d) the Pensions Order; and
- [<sup>F5</sup>(e) the Pensions Act]

(9) In this section “relevant benefit” and “relevant payment” mean a relevant benefit and relevant payment within the meaning of Part IV of this Act.

#### Textual Amendments

**F5** S. 104(8)(e) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para.39**; S.R. 1994/17, **art. 2**

#### Modifications etc. (not altering text)

**C2** S. 104(6)(7) modified (6.4.1996) by S.I. 1995/2705 (N.I. 15), **art. 34**; S.R. 1996/26, **art. 2**

VALID FROM 01/04/1999

#### [<sup>F6</sup>104ZA] Powers exercisable by officers of Inland Revenue.

- (1) For the purposes of the enactments to which this section applies, the Inland Revenue may authorise any of their officers to exercise the powers conferred by this section.
- (2) An officer authorised under this section shall, for the purposes of the execution of those enactments, have the following powers—
  - (a) to enter at all reasonable times any premises liable to inspection under this section;
  - (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of the enactments are being, or have been, complied with in any such premises;
  - (c) to examine, either alone or in the presence of any other person, as he thinks fit, in relation to any matters under the enactments on which he may reasonably require information, every person whom he finds in any such



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premises or whom he has reasonable cause to believe to be or to have been a person liable to pay—

- (i) contributions; or
- (ii) a contributions equivalent premium,

and to require every such person to be so examined.

(3) Premises are liable to inspection under this section if an officer has reasonable grounds for believing that—

- (a) any persons are employed there;
- (b) a trade or business is being carried on from there;
- (c) any records relating to a trade or business are kept there; or
- (d) a personal or occupational pension scheme is being administered there;

but a private dwelling-house is not liable to inspection under this section unless an officer has reasonable grounds for believing that a trade or business is being carried on from the dwelling-house and that the trade or business is not also being carried on from premises other than a dwelling-house.

(4) Every officer authorised under this section shall be furnished with a certificate of his authorisation, and on applying for admission to any premises for the purpose of the enactments shall, if so required, produce the authorisation.

(5) In accordance with this section, persons shall furnish to an officer all such information, and produce for his inspection all such documents, as he may reasonably require for the purpose of ascertaining—

- (a) whether—
  - (i) any contribution; or
  - (ii) any contributions equivalent premium,is or has been payable, or has been duly paid, by or in respect of any person; or
- (b) whether statutory sick pay or statutory maternity pay is or was payable to or in respect of any person.

(6) The following persons are under the duty imposed by subsection (5) above—

- (a) any person who is or has been an employer or an employee within the meaning of any provision of the Contributions and Benefits Act;
- (b) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services;
- (c) any person who is or has at any time been a trustee or manager of a personal or occupational pension scheme;
- (d) the servants or agents of any such person as is specified in any of the preceding paragraphs.

(7) This section applies to the following enactments—

- (a) the Contributions and Benefits Act so far as relating to contributions, statutory sick pay or statutory maternity pay;
- (b) this Act; and
- (c) Part III of the Pensions Act.

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- (8) Any reference in this section to a contributions equivalent premium includes a reference to state scheme premiums payable before 6th April 1997 (the day on which Article 138 of the Pensions (Northern Ireland) Order 1995 came into operation).]

#### Textual Amendments

**F6** S. 104ZA inserted (1.4.1999) by S.I. 1999/671, art. 5, **Sch. 4 para. 3**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of that S.R.)

VALID FROM 01/07/1997

#### [<sup>F7</sup>104A Appointment of inspectors by the Housing Executive.

- (1) The Housing Executive may appoint persons to be inspectors.
- (2) The Department may notify the Housing Executive as to—
  - (a) the number of persons who may be appointed as inspectors by the Executive; and
  - (b) the manner in which appointments shall be made.
- (3) The Housing Executive may only appoint as inspectors persons employed by—
  - (a) the Executive; or
  - (b) a person authorised to exercise any function of the Executive relating to housing benefit.
- (4) A person within subsection (3)(b) above may only be appointed as an inspector with the consent of the Department.
- (5) Appointment as an inspector shall be for a period not exceeding one year; but such an appointment—
  - (a) may be renewed any number of times; and
  - (b) may be terminated at any time by the Housing Executive or, in the case of a person within subsection (3)(b) above, by either the Executive or the Department.
- (6) Every person appointed as an inspector shall be given a certificate of his appointment.]

#### Textual Amendments

**F7** Ss. 104A, 104B inserted (1.7.1997) by S.I. 1997/1182 (N.I. 11), **art. 11**; S.R. 1997/316, art. 2, **Sch.**

#### Modifications etc. (not altering text)

**C3** S. 104A: functions modified (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 67, **Sch. 8 para. 32**

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VALID FROM 24/02/2003

#### **[F8]104A Power of Housing Executive to require electronic access to information**

- (1) Subject to subsection (2) below, where it appears to the Housing Executive—
  - (a) that a person falling within section 103B(2A) above keeps any electronic records,
  - (b) that the records contain or are likely, from time to time, to contain information about any matter that is relevant for any one or more of the purposes mentioned in section 104A(2) above, and
  - (c) that facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons, the Housing Executive may require that person to enter into arrangements under which authorised officers are allowed such access to those records.
- (2) An authorised officer—
  - (a) shall be entitled to obtain information in accordance with arrangements entered into under subsection (1) above only if his authorisation states that his authorisation applies for the purposes of that subsection; and
  - (b) shall not seek to obtain any information in accordance with any such arrangements other than information which—
    - (i) relates to a particular person; and
    - (ii) could be the subject of any such requirement under section 103B above as may be imposed in exercise of the powers conferred by section 104A(7) above.
- (3) The matters that may be included in the arrangements that a person is required to enter into under subsection (1) above may include—
  - (a) requirements as to the electronic access to records that is to be made available to authorised officers;
  - (b) requirements as to the keeping of records of the use that is made of the arrangements;
  - (c) requirements restricting the disclosure of information about the use that is made of the arrangements; and
  - (d) such other incidental requirements as the Housing Executive considers appropriate in connection with allowing access to records to authorised officers.
- (4) An authorised officer who is allowed access in accordance with any arrangements entered into under subsection (1) above shall be entitled to make copies of, and to take extracts from, any records containing information which he is entitled to make the subject of a requirement such as is mentioned in subsection (2)(b) above.
- (5) The Housing Executive shall not—
  - (a) require any person to enter into arrangements for allowing authorised officers to have electronic access to any records; or
  - (b) otherwise than in pursuance of a requirement under this section, enter into any arrangements with a person specified in section 103B(2A) above for allowing anyone acting on behalf of the Housing Executive for purposes connected with any benefit to have electronic access to any private information contained in any records,

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except with the consent of the Department and subject to any conditions imposed by the Department by the provisions of the consent.

- (6) A consent for the purposes of subsection (5) above may be given in relation to a particular case, or in relation to any case that falls within a particular description of cases.
- (7) In this section “private information”, in relation to the Housing Executive, means any information held by a person who is not entitled to disclose it to the Housing Executive except in compliance with a requirement imposed by the Housing Executive in exercise of its statutory powers.]

#### Textual Amendments

**F8** S. 104AA inserted (24.2.2003) by 2001 c. 17 (N.I.), ss. 2(2), 17(1); S.R. 2002/406, art. 2(2)(b)

VALID FROM 01/07/1997

#### [<sup>F9</sup>104B Powers of inspectors appointed under section 104A.

- (1) An inspector may—
- (a) on showing his certificate of appointment as an inspector (if required to do so), enter any premises liable to inspection under this section at any reasonable time together with such other persons as he considers it necessary to take with him;
  - (b) make inquiries about, and examine documents relating to, any person believed by him to be a benefit claimant or a benefit recipient; and
  - (c) interview any person found by him in any premises liable to inspection under this section or believed by him to hold or have access to information or documents relating to any person believed by him to be a benefit claimant or a benefit recipient.
- (2) Any person liable to supply information or produce documents under this section shall—
- (a) supply to an inspector all such information; and
  - (b) produce for his inspection, or supply him with a copy of, all such documents, as he may reasonably require for the purpose of ascertaining whether housing benefit is or was payable to or in respect of any person.
- (3) Information, documents and copies supplied or produced under subsection (2) above shall be in such form as the inspector may reasonably require.
- (4) No one shall be required under subsection (2) above to answer any questions or to give evidence tending to incriminate himself or, in the case of a person who is married, his or her spouse.
- (5) Premises are liable to inspection under this section if an inspector has reasonable grounds for believing that—
- (a) any persons are employed there;
  - (b) a trade or business is being carried on from there; or

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(c) any records relating to a trade or business are kept there;

but a private dwelling-house is not liable to inspection under this section unless an inspector has reasonable grounds for believing that a trade or business is being carried on from the dwelling-house and that the trade or business is not also being carried on from premises other than a dwelling-house.

(6) For the purposes of this section—

- (a) a benefit claimant is a person who has claimed housing benefit; and
- (b) a benefit recipient is a person to whom housing benefit has been paid.

(7) Persons are liable to supply information or produce documents under this section if they—

- (a) occupy any premises liable to inspection under this section or are found by an inspector in any such premises;
- (b) are believed by an inspector to be benefit claimants or benefit recipients;
- (c) are believed by an inspector to hold or have access to information or documents relating to a person within paragraph (b) above; or
- (d) are employees or agents of a person within any of paragraphs (a) to (c) above.

(8) The Housing Executive may make arrangements for any power under this section which may be exercised in relation to any premises to be exercised—

- (a) by any inspector appointed by, or an officer of, the Executive if the premises are liable to be inspected by that inspector or officer or are under the control of the Executive; or
- (b) by any inspector appointed by, or an officer of, a government department if the premises are liable to be inspected by that inspector or officer or are under the control of that department.

(9) In this section—

“inspector” means (except in subsection (8) above) an inspector appointed under section 104A above; and  
“document” means anything in which information of any description is recorded.]

#### Textual Amendments

**F9** Ss. 104A, 104B inserted (1.7.1997) by S.I. 1997/1182 (N.I. 11), art. 11; S.R. 1997/316, art. 2, Sch.; and a new s. 104A was substituted for the inserted ss. 104A, 104B (2.4.2001) by 2000 c. 4 (N.I. 4), s. 68(1), Sch. 6 para. 3 (with ss. 66(6)); S.I. 2001/141, art. 2(1)(a), Sch. Pt. I

### 105 Delay, obstruction etc. of inspector.

(1) If a person—

- (a) wilfully delays or obstructs an inspector in the exercise of any power under this Act; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this Act,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (2) Where a person is convicted of an offence under subsection (1)(b) above and the refusal or neglect is continued by him after his conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which it is continued.

VALID FROM 01/07/1997

**[<sup>F10</sup>105A Dishonest representations for obtaining benefit etc.**

- (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.]

**Textual Amendments**

**F10** S. 105A inserted (1.7.1997) by S.I. 1997/1182 (N.I. 11), art. 12; S.R. 1997/316, art. 2, Sch.

**Modifications etc. (not altering text)**

**C4** S. 105A restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), Sch. 2 Pt. IV para. 13

**106 False representations for obtaining benefit etc.**

- (1) If a person for the purpose of obtaining any benefit or other payment under the legislation to which section 104 above applies, whether for himself or some other person, or for any other purpose connected with that legislation—
- (a) makes a statement or representation which he knows to be false; or
  - (b) produces or furnishes, or knowingly causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,
- he shall be guilty of an offence.

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- (2) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 3 months, or to both.

#### **107 Breach of regulations.**

Regulations and schemes under any of the legislation to which section 104 above applies may provide for contravention of, or failure to comply with, any provision contained in regulations made under that legislation to be an offence under that legislation and for the recovery, on summary conviction of any such offence, of penalties not exceeding—

- (a) for any one offence, level 3 on the standard scale; or
- (b) for an offence of continuing any such contravention or failure after conviction, £40 for each day on which it is so continued.

#### **108 Offences relating to contributions.**

- (1) If a person fails to pay, at or within the time prescribed for the purpose, any contribution which he is liable under Part I of the Contributions and Benefits Act to pay, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) If a person fails to pay at or within the time prescribed for the purpose any sums which he is required by regulations made by virtue of paragraph 6 of Schedule 1 to the Contributions and Benefits Act to pay, he shall be liable to be proceeded against and punished under subsection (1) above without proof of his failure so to pay any particular contribution.
- (3) Subsection (1) above does not apply to Class 4 contributions recoverable by the Inland Revenue.
- (4) If a person—
- (a) buys, sells or offers for sale, takes or gives in exchange, or pawns or takes in pawn a contribution card or a used contribution stamp; or
  - (b) affixes a used contribution stamp to a contribution card,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months, or to both.
- (5) In any proceedings under subsection (4) above with respect to used stamps a stamp shall be deemed to have been used if it has been affixed to a contribution card or cancelled or defaced in any way whatsoever and whether or not it has actually been used for the payment of a contribution.
- (6) In this Act “contribution card” means any card issued under regulations for the purpose of payment of contributions by affixing stamps to it.

#### **[<sup>F11</sup>108A Penalties relating to contributions.**

- (1) If a person fails to pay, at or within the time prescribed for the purpose, any contribution which he is liable to pay, he shall be liable to a penalty.

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- (2) If a person fails to pay, at or within the time prescribed for the purpose, any sums which he is required by regulations made by virtue of paragraph 6 or 7B of Schedule 1 to the Contributions and Benefits Act to pay, he shall be liable to a penalty under subsection (1) above without proof of his failure so to pay any particular contribution.
- (3) For the purposes of subsection (1) above, regulations shall—
- (a) prescribe the amount or rate of penalty, or provide for how it is to be ascertained;
  - (b) provide for the penalty to be imposed by the Department—
    - (i) within 6 years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within 3 years after the final determination of the amount of those contributions;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Department, in its discretion, to mitigate or to remit any such penalty, or to stay or to compound any proceedings for a penalty.
- (4) Subsection (1) above does not apply—
- (a) to any failure by a person in respect of which he has been convicted of an offence under section 108(1) above; or
  - (b) to Class 4 contributions recoverable by the Inland Revenue.]

#### Textual Amendments

**F11** Ss. 108, 108A substituted for s. 108 (10.3.1999 for certain purposes, otherwise 6.4.1999 (except in so far as relating to s. 108A) by S.I. 1998/1506 (N.I. 10), arts. 1, 57; S.R. 1999/102, art. 2(a), Sch. 1 Pt. II; and s. 108A was repealed (1.4.1999) without having come into force by S.I. 1999/671, art. 5, Sch. 4 para. 6, Sch. 9 Pt. I; S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)

#### 109 Offences by bodies corporate.

Section 20(2) and (3) of the <sup>M1</sup>Interpretation Act (Northern Ireland) 1954 (offences by bodies corporate) shall apply to this Act as if it were an enactment within the meaning of section 1(b) of that Act.

#### Marginal Citations

**M1** 1954 c. 33 (N.I.).



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VALID FROM 21/11/1997

### **[<sup>F12</sup>109A] Penalty as alternative to prosecution.**

- (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;

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- (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.]

#### Textual Amendments

**F12** S. 109A inserted (21.11.1997 for certain purposes, otherwise 18.12.1997) by S.I. 1997/1182 (N.I. 11), art. 14 (with art. 1(4)); S.R. 1997/508, art. 2

#### Modifications etc. (not altering text)

**C5** S. 109A restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), Sch. 2 Pt. IV para. 15  
S. 109A: functions exercisable by the Department of the Environment for Northern Ireland transferred (26.6.2001) to the Department of Finance and Personnel in Northern Ireland by S.R. 2001/229, art. 4(1) (with art. 12)

VALID FROM 01/05/2002

#### [<sup>F13</sup>109B Penalty as alternative to prosecution: colluding employers, etc.

- (1) This section applies where it appears to the Department or the Housing Executive—
  - (a) that there are grounds for instituting proceedings against any person (“the responsible person” for an offence (whether or not under this Act) in respect of any conduct; and
  - (b) that the conduct in respect of which there are grounds for instituting the proceedings is conduct falling within subsection (2) below.
- (2) Conduct in respect of which there appear to be grounds for instituting proceedings falls within this subsection if—
  - (a) those proceedings would be for an offence under this Act in connection with an inquiry relating to the employment of relevant employees or of any one or more particular relevant employees; or
  - (b) it is conduct which was such as to facilitate the commission of a benefit offence by a relevant employee (whether or not such an offence was in fact committed).
- (3) The Department or the Housing Executive may give to the responsible person a written notice —
  - (a) specifying or describing the conduct in question;
  - (b) stating that he may be invited to agree to pay a penalty in respect of that conduct;
  - (c) stating that, if he does so in the manner specified by the Department or the Housing Executive, no criminal proceedings will be instituted against him in respect of that conduct; and
  - (d) containing such information relating to the operation of this section as may be prescribed.

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- (4) If the recipient of a notice under subsection (3) above agrees, in the specified manner, to pay the penalty—
- (a) the amount of the penalty shall be recoverable as a civil debt, and shall be capable of being set off against an amount of relevant benefit payable to the recipient of the notice; and
  - (b) no criminal proceedings shall be instituted against him in respect of the conduct to which the notice relates;
- and section 69(10) above shall apply in relation to an amount recoverable by virtue of paragraph (a) above as it applies in relation to an amount recoverable under the provisions mentioned in section 69(8) above..
- (5) The amount of the penalty shall be—
- (a) in a case in which the conduct in question falls within paragraph (a) of subsection (2) above but not within paragraph (b) of that subsection, £1,000;
  - (b) in a case in which that conduct falls within paragraph (b) of that subsection and the number of relevant employees by reference to whom it falls within that subsection is five or more, £5,000; and
  - (c) in any other case, the amount obtained by multiplying £1,000 by the number of relevant employees by reference to whom that conduct falls within that subsection.
- (6) The responsible person may withdraw his agreement to pay a penalty under this section by notifying the Department or the Housing Executive, in the manner specified by the Department or the Housing Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it.
- (7) Where the responsible person withdraws his agreement in accordance with subsection (6) above—
- (a) so much of the penalty as has already been recovered shall be repaid; and
  - (b) subsection (4)(b) above shall not apply.
- (8) For the purposes of this section an individual is a relevant employee in relation to any conduct of the responsible person if—
- (a) that conduct was at or in relation to a time when that individual was an employee of the responsible person;
  - (b) that conduct was at or in relation to a time when that individual was an employee of a body corporate of which the responsible person is or has been a director; or
  - (c) the responsible person, in engaging in that conduct, was acting or purporting to act on behalf of, in the interests of or otherwise by reason of his connection with, any person by whom that individual is or has been employed.
- (9) In this section —
- “conduct” includes acts, omissions and statements;
- “the Department” also includes the Department of Finance and Personnel;
- “director”—
- (a) in relation to a company (within the meaning of the Companies (Northern Ireland) Order 1986), includes a shadow director;
  - (b) in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company; and

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- (c) in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate;
- “employee” means any person who—
- (a) is employed under a contract of service or apprenticeship, or in an office (including an elective office), or
  - (b) carries out any work under any contract under which he has undertaken to provide his work,
- and “employment” shall be construed accordingly;
- “relevant benefit” means benefit prescribed for the purposes of section 69(8) above;
- “shadow director” means a shadow director as defined in Article 9(2) of the Companies (Northern Ireland) Order 1986;
- “subsidiary” means a subsidiary as defined in Article 4 of the Companies (Northern Ireland) Order 1986.]

#### Textual Amendments

**F13** S. 109B inserted (1.5.2002) by 2001 c. 17, ss. 14(1), 17(1); S.R. 2002/165, art. 2

### *Legal proceedings*

#### **110 Legal proceedings.**

- (1) Any person authorised by the Department, the Department of the Environment or the Housing Executive in that behalf may conduct any proceedings under this Act before a magistrates’ court, although not a barrister or solicitor.
- (2) Notwithstanding anything in any statutory provision—
  - (a) proceedings for an offence under this Act other than an offence relating to housing benefit may be begun at any time within the period of 3 months from the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge or within a period of 12 months from the commission of the offence, whichever period last expires; and
  - (b) proceedings for an offence under this Act relating to housing benefit may be begun at any time within the period of 3 months from the date on which evidence, sufficient in the opinion of the Department of the Environment or the Housing Executive to justify a prosecution for the offence, comes to its knowledge or within a period of 12 months from the commission of the offence, whichever period last expires.
- (3) For the purposes of subsection (2) above—
  - (a) a certificate purporting to be signed by or on behalf of the Head or a secretary, under secretary or assistant secretary of the Department or of the Department of the Environment as to the date on which such evidence as is mentioned in paragraph (a) or (b) of that subsection came to its knowledge shall be conclusive evidence of that date; and
  - (b) a certificate purporting to be signed by a member of the Housing Executive or by an officer of the Executive authorised by it to act for the purposes of this

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section as to the date on which such evidence as is mentioned in paragraph (b) of that subsection came to the Executive's knowledge shall be conclusive evidence of that date.

- (4) Any proceedings in respect of any act or omission of an adjudication officer which, apart from this subsection, would fall to be brought against a person appointed by virtue of section 36(1) above who is resident in Great Britain, other than proceedings for an offence, may instead be brought against the Chief Adjudication Officer; and, for the purposes of any proceedings so brought, the acts or omissions of the adjudication officer shall be treated as the acts or omissions of the Chief Adjudication Officer.
- (5) Subject to subsection (6) below, in proceedings for an offence under this Act, the wife or husband of the accused is competent to give evidence, whether for or against the accused.
- (6) The wife or husband is not compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him by the accused during the marriage.

**Modifications etc. (not altering text)**

C6 S. 110 applied (with modifications) (7.2.1994) by 1993 c. 49, s.163(2); S.R. 1994/17, art. 2

## 111 Questions arising in proceedings.

- (1) Where in any proceedings—
  - (a) for an offence under this Act;
  - (b) involving any question as to the payment of contributions (other than a Class 4 contribution recoverable by the Inland Revenue); or
  - (c) for the recovery of any sums due to the Department or the National Insurance Fund,any such question arises as is mentioned in section 15(1) above, the decision of the Department shall be conclusive for the purposes of the proceedings.
- (2) If—
  - (a) a decision of any such question is necessary for the determination of proceedings; and
  - (b) the decision of the Department has not been obtained or a question has been raised with a view to a review of the decision obtained,the question shall be referred to the Department for determination or review in accordance (subject to any necessary modifications) with Part II of this Act.
- (3) Subsection (1) above does not apply if—
  - (a) an appeal under section 16 above is pending;
  - (b) the time for appealing has not expired; or
  - (c) a question has been raised with a view to a review of the Department's decision under section 17 above,and the court dealing with the case shall adjourn the proceedings until such time as a final decision on the question has been obtained.

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VALID FROM 01/04/1999

**[<sup>F14</sup>111A Issues arising in proceedings: contributions, etc.**

- (1) This section applies to proceedings before a court—
  - (a) for an offence under this Act or the Jobseekers (Northern Ireland) Order 1995; or
  - (b) involving any question as to the payment of contributions (other than a Class 4 contribution recoverable in accordance with section 15 of the Contributions and Benefits Act); or
  - (c) for the recovery of any sums due to the Inland Revenue or the National Insurance Fund.
- (2) A decision of an officer of the Inland Revenue which—
  - (a) falls within Article 7(1) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999; and
  - (b) relates to or affects an issue arising in the proceedings,
 shall be conclusive for the purposes of the proceedings.
- (3) If—
  - (a) any such decision is necessary for the determination of the proceedings, and
  - (b) the decision of an officer of the Inland Revenue has not been obtained under Article 7 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999,
 the decision shall be referred to such an officer to be made in accordance (subject to any necessary modifications) with Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.
- (4) Subsection (2) above does not apply where, in relation to the decision—
  - (a) an appeal has been brought but not determined;
  - (b) an appeal has not been brought (or, as the case may be, an application for leave to appeal has not been made) but the time for doing so has not yet expired; or
  - (c) an application for variation of the decision has been made under regulations made under Article 9 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.
- (5) In a case falling within subsection (4) above the court shall adjourn the proceedings until such time as the final decision is known; and that decision shall be conclusive for the purposes of the proceedings.]

**Textual Amendments**

**F14** S. 111A inserted (1.4.1999) by S.I. 1999/671, art. 5, **Sch. 6 para. 10**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of that S.R.)

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*Unpaid contributions etc.*

**112 Evidence of non-payment.**

- (1) Subsection (2) below applies with respect to any period during which, under regulations made by virtue of paragraph 5(1) of Schedule 1 to the Contributions and Benefits Act (deduction with PAYE), contributions fall to be paid in like manner as income tax.
- (2) A certificate of a collector of taxes that any amount by way of contributions which a person is liable to pay to that collector for any period has not been paid—
  - (a) to him; or
  - (b) to the best of his knowledge and belief, to any other person to whom it might lawfully be paid,shall until the contrary is proved be sufficient evidence in any proceedings before any court that the sum mentioned in the certificate is unpaid and due.
- (3) A document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.
- (4) A statutory declaration by an officer of the Department or of the Secretary of State that the searches specified in the declaration for a particular contribution card or for a record of the payment of a particular contribution have been made, and that the card in question or a record of the payment of the contribution in question has not been found, is admissible in any proceedings for an offence as evidence of the facts stated in the declaration.
- (5) Nothing in subsection (4) above makes a statutory declaration admissible as evidence in proceedings for an offence except in a case where, and to the extent to which, oral evidence to the like effect would have been admissible in those proceedings.
- (6) Nothing in subsections (4) and (5) above makes a statutory declaration admissible as evidence in proceedings for an offence—
  - (a) unless a copy of it has, not less than 7 days before the hearing or trial, been served on the person charged with the offence in any manner in which a summons in a summary prosecution may be served; or
  - (b) if that person, not later than 3 days before the hearing or trial or within such further time as the court may in special circumstances allow, gives notice to the prosecutor requiring the attendance at the trial of the person by whom the declaration was made.

**113 Recovery of unpaid contributions on prosecution.**

- (1) Where—
  - (a) a person has been convicted of an offence under section 108(1) above of failing to pay a contribution at or within the time prescribed for the purpose; and
  - (b) the contribution remains unpaid at the date of the conviction,he shall be liable to pay to the Department a sum equal to the amount which he failed to pay.
- (2) Where—
  - (a) a person is convicted of an offence—

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- (i) under section 108(3)(b) above;
  - (ii) under section 13 of the <sup>M2</sup>Stamp Duties Management Act 1891 as applied by regulations made under paragraph 8(3) of Schedule 1 to the Contributions and Benefits Act; or
  - (iii) of contravening or failing to comply with regulations; and
- (b) the evidence on which he is convicted shows that he, for the purposes of paying any contribution which he was liable or entitled to pay, has affixed to any contribution card any used contribution stamp; and
- (c) the contribution (not being a Class 3 contribution) in respect of which the stamp was affixed remains unpaid at the date of the conviction,
- he shall be liable to pay to the Department a sum equal to the amount of the contribution.

#### Marginal Citations

M2 1891 c. 38.

#### 114 Proof of previous offences.

- (1) Subject to and in accordance with subsections (2) to (5) below, where a person is convicted of an offence mentioned in section 113(1) or (2)(a) above, evidence may be given of any previous failure by him to pay contributions within the time prescribed for the purpose; and in those subsections “the conviction” and “the offence” mean respectively the conviction referred to in this subsection and the offence of which the person is convicted.
- (2) Such evidence may be given only if notice of intention to give it is served with the summons or warrant on which the person appeared before the court which convicted him.
- (3) If the offence is one of failure to pay a Class 1 contribution, evidence may be given of failure on his part to pay (whether or not in respect of the same person) such contributions or any Class 1A contributions or state scheme premiums on the date of the offence, or during the 2 years preceding that date.
- (4) If the offence is one of failure to pay a Class 1A contribution, evidence may be given of failure on his part to pay (whether or not in respect of the same person or the same car) such contributions, or any Class 1 contributions or state scheme premiums, on the date of the offence, or during the 2 years preceding that date.
- (5) If the offence—
  - (a) is one of failure to pay Class 2 contributions; or
  - (b) is one of those mentioned in section 113(2)(a) above,
 evidence may be given of his failure to pay such contributions during those 2 years.
- (6) On proof of any matter of which evidence may be given under subsection (3), (4) or (5) above, the person convicted shall be liable to pay to the Department a sum equal to the total of all amounts which he is so proved to have failed to pay and which remain unpaid at the date of the conviction.



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## 115 Unpaid contributions - supplementary.

- (1) Where a person charged with an offence mentioned in section 113(1) or (2)(a) above is convicted of that offence in his absence under Article 24(2) of the <sup>M3</sup>Magistrates' Courts (Northern Ireland) Order 1981 then if—
  - (a) it is proved to the satisfaction of the court, on oath or in the manner prescribed by magistrates' courts rules under Part IV of that Order, that notice under section 114(2) above has been duly served specifying the other contributions in respect of which the complainant intends to give evidence; and
  - (b) the clerk of petty sessions has received a statement in writing purporting to be made by the accused or by a solicitor acting on his behalf to the effect that if the accused is convicted in his absence of the offence charged he desires to admit failing to pay the other contributions so specified or any of them,
 section 114 above shall have effect as if the evidence had been given and the failure so admitted had been proved, and the court shall proceed accordingly.
- (2) Where a person is convicted of an offence mentioned in section 113(1) or (2)(a) above and an order is made under the <sup>M4</sup>Probation Act (Northern Ireland) 1950 placing the offender on probation or discharging him absolutely or conditionally, sections 113 and 114 above, and subsection (1) above, shall apply as if it were a conviction for all purposes.
- (3) Any sum which a person is liable to pay under section 113 or 114 above or under subsection (1) above shall be recoverable from him as a penalty.
- (4) Sums recovered by the Department under the provisions mentioned in subsection (1) above, so far as representing contributions of any class, are to be treated for all purposes of the Contributions and Benefits Act and this Act (including in particular the application of section 142 below) as contributions of that class received by the Department.
- (5) Without prejudice to subsection (5) above, in so far as such sums represent primary Class 1 or Class 2 contributions, they are to be treated as contributions paid in respect of the person in respect of whom they were originally payable; and enactments relating to earnings factors shall apply accordingly.

### Marginal Citations

**M3** [S.I. 1981/1675 \(N.I. 26\)](#).

**M4** [1950 c. 7 \(N.I.\)](#).

VALID FROM 10/03/1999

### <sup>F15</sup>115A Recovery of contributions, etc.

- (1) If—
  - (a) a person is served at any time with a copy of a certificate under section 112(1) above; and
  - (b) he neglects or refuses to pay the contributions, interest or penalty to which the certificate relates within 30 days of that time,

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the Judgments Enforcement (Northern Ireland) Order 1981 (“the 1981 Order”) shall apply in relation to the amount in respect of which the certificate was issued, to the extent that it remains unpaid, as a money judgment, but subject to subsections (2) and (3) below, and such amount unpaid shall be enforceable by the Enforcement of Judgments Office on an application to it by the Department.

- (2) Without prejudice to Article 141 of the 1981 Order (power to make Judgment Enforcement Rules) the Department may, with the consent of the Lord Chancellor, make such regulations with respect to the enforcement by the Enforcement of Judgments Office of amounts unpaid on certificates under section 112(1) above as it considers appropriate.
- (3) Regulations made under subsection (2) above may, in particular, provide for the modification of any provision made by or under the 1981 Order in its application to certificates under section 112(1) above.
- (4) In subsection (3) above, “modification” includes the making of additions, omissions or amendments.]

#### Textual Amendments

**F15** S. 115A inserted (10.3.1999 for certain purposes, otherwise 6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 59; S.R. 1999/102, art. 2(b), Sch. Pt. II

#### [115B <sup>F16</sup>Liability of directors, etc. for company’s contributions.

- (1) This section applies to contributions which a body corporate is liable to pay, where—
  - (a) the body corporate has failed to pay the contributions at or within the time prescribed for the purpose; and
  - (b) the failure appears to the Department to be attributable to fraud or neglect on the part of one or more individuals who, at the time of the fraud or neglect, were officers of the body corporate (“culpable officers”).
- (2) The Department may issue and serve on any culpable officer a notice (a “personal liability notice”)—
  - (a) specifying the amount of the contributions to which this section applies (“the specified amount”);
  - (b) requiring the officer to pay to the Department—
    - (i) a specified sum in respect of that amount; and
    - (ii) specified interest on that sum; and
  - (c) where that sum is given by paragraph (b) of subsection (3) below, specifying the proportion applied by the Department for the purposes of that paragraph.
- (3) The sum specified in the personal liability notice under subsection (2)(b)(i) above shall be—
  - (a) in a case where there is, in the opinion of the Department, no other culpable officer, the whole of the specified amount; and
  - (b) in any other case, such proportion of the specified amount as, in the opinion of the Department, the officer’s culpability for the failure to pay that amount bears to that of all the culpable officers taken together.

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- (4) In assessing an officer's culpability for the purposes of subsection (3)(b) above, the Department may have regard both to the gravity of the officer's fraud or neglect and to the consequences of it.
- (5) The interest specified in the personal liability notice under subsection (2)(b)(ii) above shall be at the prescribed rate and shall run from the date on which the notice is issued.
- (6) An officer who is served with a personal liability notice shall be liable to pay to the Department the sum and the interest specified in the notice under subsection (2)(b) above.
- (7) Where, after the issue of one or more personal liability notices, the amount of contributions to which this section applies is reduced by a payment made by the body corporate—
  - (a) the amount that each officer who has been served with such a notice is liable to pay under this section shall be reduced accordingly;
  - (b) the Department shall serve on each such officer a notice to that effect; and
  - (c) where the reduced liability of any such officer is less than the amount that he has already paid under this section, the difference shall be repaid to him together with interest on it at the prescribed rate.
- (8) Any amount paid under a personal liability notice shall be deducted from the liability of the body corporate in respect of the specified amount.
- (9) In this section—
 

“contributions” includes any interest or penalty in respect of contributions;

“officer”, in relation to a body corporate, means—

  - (a) any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act as such; and
  - (b) in a case where the affairs of the body corporate are managed by its members, any member of the body corporate exercising functions of management with respect to it or purporting to do so;

“the prescribed rate” means the rate from time to time prescribed under paragraph 6 of Schedule 1 to the Contributions and Benefits Act for the purposes of the corresponding provision of that paragraph, that is to say—

  - (a) in relation to subsection (5) above, sub-paragraph (2)(a);
  - (b) in relation to subsection (7) above, sub-paragraph (2)(b).]

#### Textual Amendments

**F16** S. 115B inserted (*prosp.*) by S.I. 1998/1506 (N.I. 10), arts. 1, 60

### [115C <sup>F17</sup> Appeals in relation to personal liability notices.

- (1) No appeal shall lie in relation to a notice except as provided by this personal liability section.
- (2) An individual who is served with a personal liability notice may appeal to an appeal tribunal against the Department's decision as to the issue and content of the notice on the ground that—

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- (a) the whole or part of the amount specified under subsection (2)(a) of section 115B above (or the amount so specified as reduced under subsection (7) of that section) does not represent contributions to which that section applies;
  - (b) the failure to pay that amount was not attributable to any fraud or neglect on the part of the individual in question;
  - (c) the individual was not an officer of the body corporate at the time of the alleged fraud or neglect; or
  - (d) the opinion formed by the Department under subsection (3)(a) or (b) of that section was unreasonable.
- (3) The Department shall give a copy of any notice of an appeal under this section, within 28 days of the giving of the notice, to each other individual who has been served with a personal liability notice.
- (4) On an appeal under this section, the burden of proof as to any matter raised by a ground of appeal shall be on the Department .
- (5) Where an appeal under this section—
- (a) is brought on the basis of evidence not considered by the Department , or on the ground mentioned in subsection (2)(d) above; and
  - (b) is not allowed on some other basis or ground,
- the appeal tribunal shall either dismiss the appeal or remit the case to the Department, with any recommendations it sees fit to make, for the Department to consider whether to revise its decision as to the issue and content of the personal liability notice .
- (6) In this section—
- “appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998;
  - “officer”, in relation to a body corporate, has the same meaning as in section 115B above;
  - “personal liability notice” has the meaning given by subsection (2) of that section;
  - “revise” means revise under Article 10 of the Social Security (Northern Ireland) Order 1998.]

#### Textual Amendments

**F17** S. 115C inserted (*prosp.*) by S.I. 1998/1506 (N.I. 10), **arts. 1, 60**

VALID FROM 22/11/2000

#### [<sup>F18</sup>115C Interpretation of Part VI

- (1) In this Part “ the relevant social security legislation ” means the provisions of any of the following, except so far as relating to contributions, working families’ tax credit, disabled person’s tax credit, statutory sick pay or statutory maternity pay, that is to say-
- (a) the Contributions and Benefits Act;
  - (b) this Act;
  - (c) the Pensions Act, except Part III;

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- (d) Article 9 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994;
  - (e) the Jobseekers (Northern Ireland) Order 1995;
  - (f) the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;
  - (g) Parts II and V of the Social Security (Northern Ireland) Order 1998;
  - (h) Part VI of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
  - (i) the Social Security Pensions (Northern Ireland) Order 1975;
  - (j) the Social Security Act 1973;
  - (k) any statutory rule or statutory instrument made, or having effect as if made, under any statutory provision specified in paragraphs (a) to (j) above.
- (2) In this Part “ authorised officer ” means a person acting in accordance with any authorisation for the purposes of this Part which is for the time being in force in relation to him.
- (3) For the purposes of this Part -
- (a) references to a document include references to anything in which information is recorded in electronic or any other form;
  - (b) the requirement that a notice given by an authorised officer be in writing shall be taken to be satisfied in any case where the contents of the notice—
    - (i) are transmitted to the recipient of the notice by electronic means; and
    - (ii) are received by him in a form that is legible and capable of being recorded for future reference.
- (4) In this Part “premises” includes—
- (a) moveable structures and vehicles, vessels, aircraft and hovercraft;
  - (b) installations that are offshore installations for the purposes of the Mineral Workings (Offshore Installations) Act 1971; and
  - (c) places of all other descriptions whether or not occupied as land or otherwise,
- and references in this Part to the occupier of any premises shall be construed, in relation to premises that are not occupied as land, as references to any person for the time being present at the place in question.
- (5) In this Part—
- “benefit” includes any allowance, payment, credit or loan;
  - “benefit offence” means a criminal offence committed in connection with a claim for benefit under a provision of the relevant social security legislation, or in connection with the receipt or payment of such a benefit; and
  - “compensation payment” has the same meaning as in the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997.
- (6) In this Part—
- (a) any reference to a person authorised to carry out any function relating to housing benefit shall include a reference to a person providing services relating to that benefit directly or indirectly to the Housing Executive; and
  - (b) any reference to the carrying out of a function relating to housing benefit shall include a reference to the provision of any services relating to it.]

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#### Textual Amendments

**F18** S. 115CA inserted (22.11.2000 for certain purposes, otherwise 2.4.2001) by 2000 c. 4 (N.I.), s. 58, **Sch. 6 para. 8** (with s. 66(6)); S.R. 2000/358, art. 2, **Sch. Pt. I**; S.R. 2001/141, art. 2(1), **Sch. Pt. I**

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