

Status: Point in time view as at 01/04/2007.

Changes to legislation: Social Security Administration (Northern Ireland) Act 1992, Part VI is up to date with all changes known to be in force on or before 09 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



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

[^{F1}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,occurred or may have occurred, or was or may have been received or contracted;

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- (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**

F2103B 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) [^{F3}or (2A)]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.

[^{F4}(2A) The persons who fall within this subsection are—

- (a) any bank;
 - [the Director of National Savings;]
- ^{F5}(aa)

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- (b) any person carrying on a business the whole or a significant part of which consists in the provision of credit (whether secured or unsecured) to members of the public;
 - [^{F6}(c) any insurer;]
 - (d) any credit reference agency (within the meaning given by section 145(8) of the Consumer Credit Act 1974);
 - (e) any body the principal activity of which is to facilitate the exchange of information for the purpose of preventing or detecting fraud;
 - (f) any person carrying on a business the whole or a significant part of which consists in the provision to members of the public of a service for transferring money from place to place;
 - [^{F7}(g) any person who is the holder of a licence under Article 8(1) of the Gas (Northern Ireland) Order 1996 ^{F8} which relates to the conveyance or supply of gas through pipes;]
 - [^{F9}(h) the Director of National Savings; any person who is the holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992 ^{F10} which relates to the transmission or supply of electricity;]
 - [^{F11}(hh) any water undertaker or sewerage undertaker (within the meaning of the Water and Sewerage Services (Northern Ireland) Order 2006);]
 - (i) any person who provides a telecommunications service;
 - (j) any person conducting any educational establishment or institution;
 - (k) any body the principal activity of which is to provide services in connection with admissions to educational establishments or institutions;
 - (l) any body to whom functions are delegated by arrangements made under Article 4(3) of the Education (Student Support) (Northern Ireland) Order 1998;
 - (m) any servant or agent of any person mentioned in any of the preceding paragraphs.
- (2B) Subject to the following provisions of this section, the powers conferred by this section on an authorised officer to require information from any person by virtue of his falling within subsection (2A) above shall be exercisable for the purpose only of obtaining information relating to a particular person identified (by name or description) by the officer.
- (2C) An authorised officer shall not, in exercise of those powers, require any information from any person by virtue of his falling within subsection (2A) above unless it appears to that officer that there are reasonable grounds for believing that the identified person to whom it relates is—
- (a) a person who has committed, is committing or intends to commit a benefit offence; or
 - (b) a person who (within the meaning of Part VII of the Contributions and Benefits Act) is a member of the family of a person falling within paragraph (a) above.
- (2D) Nothing in subsection (2B) or (2C) above shall prevent an authorised officer who is an official of a government department and whose authorisation states that his authorisation applies for the purposes of this subsection from exercising the powers conferred by this section for obtaining from—
- (a) any person who (within the meaning of the Gas (Northern Ireland) Order 1996) supplies gas conveyed through pipes,

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- (b) any person who (within the meaning of the Electricity (Northern Ireland) Order 1992) supplies electricity conveyed by distribution systems, or
 - (c) any servant or agent of a person mentioned in either of the preceding paragraphs,
- any information which relates exclusively to whether and in what quantities gas or electricity are being or have been supplied to residential premises specified or described in the notice by which the information is required.
- (2E) The powers conferred by this section shall not be exercisable for obtaining from any person providing a telecommunications service any information other than information which (within the meaning of section 21 of the Regulation of Investigatory Powers Act 2000) is communications data but not traffic data.
- (2F) Nothing in subsection (2B) or (2C) above shall prevent an authorised officer from exercising the powers conferred by this section for requiring information, from a person who provides a telecommunications service, about the identity and postal address of a person identified by the authorised officer solely by reference to a telephone number or electronic address used in connection with the provision of such a service.]
- (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 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.
- [^{F12}(5) No one shall be required under this section to provide—
- (a) any information that tends to incriminate either himself or, in the case of a person who is [^{F13}married or is a civil partner, his spouse or civil partner] ; or
 - (b) any information in respect of which a claim to legal professional privilege would be successful in any proceedings;
- and for the purposes of this subsection it is immaterial whether the information is in documentary form or not..]
- [^{F14}(6) Provision may be made by order—
- (a) adding any person to the list of persons falling within subsection (2A) above;
 - (b) removing any person from the list of persons falling within that subsection;
 - (c) modifying that subsection for the purpose of taking account of any change to the name of any person for the time being falling within that subsection.
- (7) In this section—
- [^{F15}bank means—
 - (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 ^{F16}to accept deposits;

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- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or other repayable funds from the public; or
- (c) a person who does not require permission under that Act to accept deposits, in the course of his business in the United Kingdom;]

“credit” includes a cash loan or any form of financial accommodation, including the cashing of a cheque;

“residential premises”, in relation to a supply of gas [^{F17}, water] or electricity, means any premises which-

- (a) at the time of the supply were premises occupied wholly or partly for residential purposes, or
- (b) are premises to which that supply was provided as if they were so occupied; and

“telecommunications service” has the same meaning as in the Regulation of Investigatory Powers Act 2000.

[^{F18}“insurer” means—

- (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance;]]

[^{F19}(7A) The definitions of “bank” and “insurer” in subsection (7) above must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

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**
- F3** Words in s. 103B(1)(a) inserted (24.2.2003) by 2001 c. 17 (N.I.), s. 1(2); S.R. 2002/406, **art. 2(1)(b)**
- F4** S. 103B(2A)-(2F) inserted (24.2.2003) by 2001 c. 17 (N.I.) s. 1(2); S.R. 2002/406, **art. 2(1)(b)**
- F5** S. 103B(2A)(aa) inserted (24.2.2003) by The Social Security Administration (Northern Ireland) Act 1992 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/408), **art. 2(2)(a)**
- F6** S. 103B(2A)(c) substituted (24.2.2003) by The Social Security Administration (Northern Ireland) Act 1992 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/408), **art. 2(2)(b)**
- F7** S. 103B(2A)(g) substituted (24.2.2003) by The Social Security Administration (Northern Ireland) Act 1992 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/408), **art. 2(2)(c)**
- F8** S.I. 1996/275 (N.I. 2)
- F9** S. 103B(2A)(h) inserted (24.2.2003) by The Social Security Administration (Northern Ireland) Act 1992 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/408), **art. 2(2)(d)**
- F10** S.I. 1992/231 (N.I. 1)
- F11** S. 103B(2A)(hh) inserted (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336), art. 1(2), **Sch. 12 para. 30(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, art. 2(2), **Sch. Pt. 2** (with **Sch. 2**)
- F12** S. 103B(5) substituted (24.2.2003) by 2001 c. 17 (N.I.), s. 1(3); S.R. 2002/406, **art. 2(1)(b)**
- F13** Words in s. 103B(5)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 116**; S.I. 2005/3255, art. 2(1), **Sch.**

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- F14** S. 103B(6)(7) inserted (23.12.2002 for specified purposes, otherwise prosp.) by [Social Security Fraud Act \(Northern-Ireland\) 2001 \(c. 17\), s. 1\(4\)](#); [S.R. 2002/406, art. 2\(1\)\(a\)](#)
- F15** S. 103B(7): definition of "bank" substituted (24.2.2003) by [The Social Security Administration \(Northern Ireland\) Act 1992 \(Amendment\) Order \(Northern Ireland\) 2002 \(S.R. 2002/408\), art. 2\(3\)\(a\)](#)
- F16** 2000 c. 8
- F17** Word in s. 103B(7) inserted (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336\), art. 1\(2\), Sch. 12 para. 30\(3\)](#) (with arts. 8(8), 121(3), 307); [S.R. 2007/194, art. 2\(2\), Sch. Pt. 2 \(with Sch. 2\)](#)
- F18** S. 103B(7): definition of "insurer" inserted (24.2.2003) by [The Social Security Administration \(Northern Ireland\) Act 1992 \(Amendment\) Order \(Northern Ireland\) 2002 \(S.R. 2002/408\), art. 2\(3\)\(b\)](#)
- F19** S. 103B(7A) inserted (24.2.2003) by [The Social Security Administration \(Northern Ireland\) Act 1992 \(Amendment\) Order \(Northern Ireland\) 2002 \(S.R. 2002/408\), art. 2\(4\)](#)

[^{F20}103B] **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;
 - (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.]

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Textual Amendments

F20 S. 103BA inserted (24.2.2003) by 2001 c. 17 (N.I.) , ss. 2(1), 17(1); S.R. 2002/406, art. 2(2)

^{F21} 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.
- (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.

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- (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

F21 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**

[^{F39}104Z] **Class 1, 1A, 1B or 2 contributions: powers to call for documents etc**

- (1) Section 20 of the Taxes Management Act 1970 (power to call for documents etc) applies (with sections 20B and 20BB) in relation to a person’s liability to pay relevant contributions as it applies in relation to a person’s tax liability (but subject to the modifications provided by subsection (2)).
- (2) Those sections apply as if—
 - (a) the references to the taxpayer, a taxpayer or a class of taxpayers were to the person, a person or a class of persons required to pay relevant contributions,
 - (b) the references to an inspector were to an officer of the Inland Revenue,
 - (c) the references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
 - (d) the references to the assessment or collection of tax were to the assessment of liability for, and payment of, relevant contributions,
 - (e) the reference to an appeal relating to tax were to an appeal relating to relevant contributions, and
 - (f) the reference to believing that tax has been, or may have been, lost to the Crown were to believing that the Crown has, or may have, incurred a loss.
- (3) In this section “relevant contributions” means Class 1, Class 1A, Class 1B or Class 2 contributions.]

Textual Amendments

F39 S. 104ZA substituted (6.4.2005) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3)**, ss. 8, 13; S.I. 2004/1943, art. 4(b)

[^{F40}104A] **Authorisations by the Housing Executive**

- (1) An individual who for the time being has the authorisation of the Housing Executive for the purposes of this Part (“a Housing Executive authorisation”) shall be entitled, for any one or more of the purposes mentioned in subsection (2) below, to exercise any of the powers which, subject to subsection (7) below, are conferred on an authorised officer by sections 103B and 103C above.
- (2) Those purposes are—

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- (a) ascertaining in relation to any case whether housing benefit is or was payable in that case;
 - (b) ascertaining whether provisions of the relevant social security legislation that relate to housing benefit are being, have been or are likely to be contravened (whether by particular persons or more generally);
 - (c) preventing, detecting and securing evidence of the commission (whether by particular persons or more generally) of benefit offences relating to housing benefit.
- (3) An individual has the authorisation for the purposes of this Part of the Housing Executive if, and only if, the Housing Executive has granted him an authorisation for those purposes and he is—
- (a) an individual employed by the Housing Executive;
 - (b) an individual authorised to carry out functions of the Housing Executive relating to housing benefit; or
 - (c) an official of a government department.
- (4) Subsection (4) of section 103A above shall apply in relation to a Housing Executive authorisation as it applies in relation to an authorisation under that section.
- (5) A Housing Executive authorisation may be withdrawn at any time by the Housing Executive or by the Department.
- (6) It shall be the duty of the Housing Executive to comply with any directions of the Department as to—
- (a) whether or not Housing Executive authorisations are to be granted by the Housing Executive;
 - (b) the period for which authorisations granted by the Housing Executive are to have effect;
 - (c) the number of persons who may be granted authorisations by the Housing Executive at any one time; and
 - (d) the restrictions to be contained by virtue of subsection (4) above in the authorisations granted by the Housing Executive for those purposes.
- (7) The powers conferred by sections 103B and 103C above shall have effect in the case of an individual who is an authorised officer by virtue of this section as if those sections had effect—
- (a) with the substitution for every reference to the purposes mentioned in section 103A(2) above of a reference to the purposes mentioned in subsection (2) above;^{F41} . . .
 - (b) with the substitution for every reference to the relevant social security legislation of a reference to so much of it as relates to housing benefit [^{F42}; and
 - ^{F42}(c) with the omission of section 103B(2D) above.]]

Textual Amendments

F40 S. 104A substituted for ss. 104A, 104B (2.4.2001) by 2000 c. 4 (N.I.), s. 68(1), **Sch. 6 para. 3** (with s. 66(6)); S.I. 2001/141, art. 2(1)(a), **Sch. Pt. I**

F41 Word in s. 104A(7) repealed (24.2.2003) by 2001 c. 17 (N.I.), ss. 16, 17(1); S.R. 2002/406, **art. 2(2)(d)**

F42 S. 104A(7)(c) and preceding "and" inserted (24.2.2003) by 2001 c. 17 (N.I.), ss. 1(5), 17(1); S.R. 2002/406, **art. 2(2)(a)**

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Modifications etc. (not altering text)

C4 S. 104A extended (6.4.2003) by [The Welfare Reform and Pensions \(Northern Ireland\) Order 1999 \(S.I. 1999/3147\)](#), art. 1(2), Sch. 8 para. 32(1), **(2)(a)**; [S.R. 2003/204](#), art. 2

[^{F43}**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

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any benefit to have electronic access to any private information contained in any records,

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

F43 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)

105 Delay, obstruction etc. of inspector.

- (1) If a person—
 - (a) wilfully delays or obstructs an [F45 authorised officer] in the exercise of any power under this Act [F46 other than an Inland Revenue power];
 - [F47](ab) refuses or neglects to comply with any requirement under section 103BA or 104AA above or with the requirements of any arrangements entered into in accordance with subsection (1) of that section, 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 [F48 otherwise than in the exercise of an Inland Revenue power],

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

- (2) Where a person is convicted of an offence under [F49 subsection (1)(ab) or (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.

[F50(3) In subsection (1) “Inland Revenue power” means any power conferred on an officer of the Inland Revenue by [F51 virtue of] section 104ZA above or by virtue of [F52 an authorisation granted under section 103A or 104A] above.

[F53(4)]

Textual Amendments

F45 Words in s. 105(1)(a) substituted (24.2.2003) by 2001 c. 17 (N.I.), ss. 1(6), 17(1); S.R. 2002/406, art. 2(2)(a)

F46 Words in s. 105(1)(a) inserted (1.4.1999) by S.I. 1999/671, art. 5, Sch. 4 para. 4(2)(a); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)

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- F47** S. 105(1)(ab) substituted (24.2.2003) for word in s. 105(1)(a) by 2001 c. 17 (N.I.), ss. 2(3)(a), 17(1); S.R. 2002/406, **art. 2(2)(b)**
- F48** Words in s. 105(1)(b) inserted (1.4.1999) by S.I. 1999/671, art. 5, **Sch. 4 para. 4(2)(b)**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of that S.R.)
- F49** Words in s. 105(2) substituted (24.2.2003) by 2001 c. 17 (N.I.), ss. 2(3)(b), 17(1); S.R. 2002/406, **art. 2(2)(b)**
- F50** S. 105(3)(4) inserted (1.4.1999) by S.I. 1999/671, art. 5, **Sch. 4 para. 4(3)**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of that S.R.)
- F51** Words in s. 105(3) inserted (6.4.2005) by National Insurance Contributions and Statutory Payments Act 2004 (c. 3), s. 13, **Sch. 1 para. 4(2)(a)**; S.I. 2004/1943, art. 5(b)(ii)
- F52** Words in s. 105(3) substituted (2.4.2001) by 2000 c. 4 (N.I.), s. 58, **Sch.6 para. 4(a)** (with s. 66(6)); S.R. 2001/141, art. 2(1), **Sch. Pt. I**
- F53** S. 105(4) repealed (6.4.2005) by National Insurance Contributions and Statutory Payments Act 2004 (c. 3), s. 13, **Sch. 1 para. 4(2)(b)**, **Sch. 2**; S.I. 2004/1943, arts. 5(b)(ii), 6(b)(iii)

Modifications etc. (not altering text)

- C5** S. 105 restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), **Sch. 2 Pt. IV para. 12(b)**
- C6** S. 105 applied (with modifications) (27.11.2006) by The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, **Sch. 5**

[^{F54}105A Dishonest representations for obtaining benefit etc.

(1) If a person dishonestly—

- (a) makes a false statement or representation; [^{F55}or]
- (b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;
- ^{F56}(c)
- ^{F56}(d)

with a view to obtaining any benefit or other payment or advantage under the [^{F57}relevant] social security legislation (whether for himself or for some other person), he shall be guilty of an offence.

[A person shall be guilty of an offence if—

- ^{F58}(1A) (a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
- (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and
- (d) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1B) A person shall be guilty of an offence if—

- (a) there has been a change of circumstances affecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
- (c) he knows that the change affects an entitlement of that other person to such a benefit or other payment or advantage; and

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- (d) he dishonestly causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1C) This subsection applies where—

- (a) there has been a change of circumstances affecting any entitlement of a person (“the claimant”) to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the benefit, payment or advantage is one in respect of which there is another person (“the recipient”) who for the time being has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
- (c) the change is not a change that is excluded by regulations from the changes that are required to be notified.

(1D) In a case where subsection (1C) above applies, the recipient shall be guilty of an offence if—

- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
- (b) the entitlement is one in respect of which he has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
- (c) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1E) In a case where subsection (1C) above applies, a person other than the recipient shall be guilty of an offence if—

- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
- (b) the entitlement is one in respect of which the recipient has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
- (c) he dishonestly causes or allows the recipient to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1F) In any case where subsection (1C) above applies but the right of the recipient is confined to a right, by reason of his being a person to whom the claimant is required to make payments in respect of a dwelling, to receive payments of housing benefit—

- (a) a person shall not be guilty of an offence under subsection (1D) or (1E) above unless the change is one relating to one or both of the following-
- (i) the claimant’s occupation of that dwelling;
- (ii) the claimant’s liability to make payments in respect of that dwelling;

but

- (b) subsections (1D)(a) and (1E)(a) above shall each have effect as if after “ knows ” there were inserted “ or could reasonably be expected to know ”.

(1G) For the purposes of subsections (1A) to (1E) above a notification of a change is prompt if, and only if, it is given as soon as reasonably practicable after the change occurs.]

^{F59}(2)

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- (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

- F54** S. 105A inserted (1.7.1997) by [S.I. 1997/1182 \(N.I. 11\)](#), [art. 12](#); [S.R. 1997/316](#), [art. 2](#), [Sch.](#)
- F55** Word in s. 105A(1) inserted (3.12.2001 for certain purposes, otherwise 7.1.2002) by [2001 c. 17 \(N.I.\)](#), [s. 15\(1\)\(a\)](#); [S.R. 2001/416](#), [art. 2](#)
- F56** S. 105A(1)(c)(d) repealed (3.12.2001 for certain purposes, otherwise 7.1.2002) by [2001 c. 17 \(N.I.\)](#), [s. 15\(1\)\(a\)](#), [16](#), [Sch.](#); [S.R. 2001/416](#), [art. 2](#)
- F57** Words in s. 105A(1) inserted (2.4.2001) by [2000 c. 4 \(N.I.\)](#), [s. 58](#), [Sch. 6 para. 5](#) (with [s. 66\(6\)](#)); [S.R. 2001/141](#), [art. 2\(1\)](#), [Sch. Pt. I](#)
- F58** S. 105A(1A)-(1G) inserted (3.12.2001 for certain purposes, otherwise 7.1.2002) by [2001 c. 17 \(N.I.\)](#), [s. 15\(1\)\(b\)](#); [S.R. 2001/416](#), [art. 2](#)
- F59** S. 105A(2) repealed (2.4.2001) by [2000 c. 4 \(N.I.\)](#), [s. 67](#), [Sch. 9 Pt. V](#) (with [s. 66\(6\)](#)); [S.R. 2001/141](#), [art. 2\(1\)](#), [Sch. Pt. I](#)

Modifications etc. (not altering text)

- C7** 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 [^{F60}relevant][^{F61}social security legislation], 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.

[^{F62}(1A) A person shall be guilty of an offence if—

- (a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
- (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and
- (d) he fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1B) A person shall be guilty of an offence under this section if—

- (a) there has been a change of circumstances affecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation;

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- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
 - (c) he knows that the change affects an entitlement of that other person to such a benefit or other payment or advantage; and
 - (d) he causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1C) In a case where subsection (1C) of section 105A above applies, the recipient shall be guilty of an offence if—
- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
 - (b) the entitlement is one in respect of which he has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
 - (c) he fails to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1D) In a case where that subsection applies, a person other than the recipient shall be guilty of an offence if—
- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
 - (b) the entitlement is one in respect of which the recipient has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
 - (c) he causes or allows the recipient to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1E) Subsection (1F) of section 105A above applies in relation to subsections (1C) and (1D) above as it applies in relation to subsections (1D) and (1E) of that section.
- (1F) For the purposes of subsections (1A) to (1D) above a notification of a change is prompt if, and only if, it is given as soon as reasonably practicable after the change occurs.]
- (2) A person guilty of an offence under [^{F63}this section] 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.

^{F64}(3)

Textual Amendments

- F60** Words in s. 106(1) inserted (2.4.2001) by 2000 c. 4, s. 58, **Sch. 6 para. 6** (with s. 66(6)); S.R. 2001/141, art. 2(1), **Sch. Pt. I**
- F61** Words in s. 106(1) substituted (1.7.1997) by S.I. 1997/1182 (N.I. 11), art. 19(1), **Sch. 1 para. 3(2)**; S.R. 1997/316, art. 2, **Sch.**
- F62** S. 106(1A)-(1F) substituted for s. 106(1A) (3.12.2001 for certain purposes, otherwise 7.1.2002) by 2001 c. 17 (N.I.), s. 15(2); S.R. 2001/416, art. 2
- F63** Words in s. 106(2) substituted (1.7.1997) by S.I. 1997/1182 (N.I. 11), art. 19(1), **Sch. 1 para. 3(3)**; S.R. 1997/316, art. 2, **Sch.**
- F64** S. 106(3) repealed (2.4.2001) by 2000 c. 4, s. 67, **Sch. 9 Pt. V** (with s. 66(6)); S.R. 2001/141, art. 2(1), **Sch. Pt. I**

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Modifications etc. (not altering text)

- C8** S. 106 restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), **Sch. 2 Pt. IV para. 13**
- C9** S. 106 applied (with modifications) (27.11.2006) by **The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, Sch. 5**

[^{F65}107 Breach of regulations.

- (1) Regulations and schemes under any of the legislation to which [^{F66}this section] applies may provide that any person who contravenes, or fails to comply with, any provision contained in regulations made under that legislation—
- (a) in the case of a provision relating to contributions, shall be liable to a penalty;
 - (b) in any other case, shall be guilty of an offence under that legislation.

[The legislation to which this section applies is—

- ^{F67}(1A) (a) the relevant social security legislation; and
- (b) the statutory provisions specified in section 115CA(1) so far as relating to contributions^{F68}....]
- (2) Any regulations or scheme making such provision as is mentioned in subsection (1) (a) above 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 [^{F69}Inland Revenue]—
 - (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 [^{F69}Inland Revenue], in [^{F69}their] discretion, to mitigate or to remit any such penalty, or to stay or to compound any proceedings for a penalty.
- (3) A person guilty of such an offence as is mentioned in subsection (1)(b) above shall be liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale;
 - (b) in the case of an offence of continuing a contravention or failure after conviction, to a fine not exceeding £40 for each day on which it is so continued.
- (4) Any provision contained in regulations which authorises statutory sick pay or statutory maternity pay to be set off against secondary Class 1 contributions is not a provision relating to contributions for the purposes of this section.]

Textual Amendments

- F65** S. 107 substituted (10.3.1999 for certain purposes, otherwise 6.4.1999) by 1998/1506 (N.I. 10), art. 56; S.R. 1999/102, art. 2, **Sch. Pt. II**

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- F66** Words in s. 107(1) substituted (22.11.2000) by 2000 c. 4, s. 58, **Sch. 6 para. 7(1)** (with s. 66(6)); S.R. 2000/358, art. 2(a), **Sch. Pt. I**
- F67** S. 107(1A) inserted (22.11.2000) by 2000 c. 4, s. 58, **Sch. 6 para. 7(2)** (with s. 66(6)); S.R. 2000/358, art. 2(a), **Sch. Pt. I**
- F68** Words in s. 107(1A)(b) repealed (6.4.2005) by National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 10(4), 13, **Sch. 2**; S.I. 2004/1943, arts. 4(d), 6(b)(iii)
- F69** Words in s. 107(2) substituted (6.4.1999) by S.I. 1999/671, art. 5, **Sch. 4 para. 5(a)**; S.R. 1999/149, art. 2(d), **Sch. 3** (subject to arts. 3-6 of that S.R.)

Modifications etc. (not altering text)

- C10** S. 107 restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), **Sch. 2 Pt. IV para. 14**
- C11** S. 107 extended (20.11.2006) by The Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006/405), regs. 1(1), **110**
- C12** S. 107 extended (20.11.2006) by The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006/406), regs. 1(1), **91**
- C13** S. 107 applied (with modifications) (27.11.2006) by The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, **Sch. 5**

[^{F70}107A Statutory sick pay and statutory maternity pay: breach of regulations

- (1) Where a person fails to produce any document or record, or provide any information, in accordance with—
- (a) regulations under section 5(1)(j) and (4), so far as relating to statutory sick pay or statutory maternity pay,
 - (b) regulations under section 122 or 124, or
 - (c) regulations under section 149(5)(b) of the Contributions and Benefits Act,
- that person is liable to the penalties mentioned in subsection (2).
- (2) The penalties are—
- (a) a penalty not exceeding £300, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a), a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (3) Where a person fails to maintain a record in accordance with regulations under section 122 or 124, he is liable to a penalty not exceeding £3,000.
- (4) No penalty may be imposed under subsection (1) at any time after the failure concerned has been remedied.
- (5) But subsection (4) does not apply to the imposition of a penalty under subsection (2)
- (a) in respect of a failure to produce any document or record in accordance with regulations under section 122(5) or 124(4).
- (6) Where, in the case of any employee, an employer refuses or repeatedly fails to make payments of statutory sick pay or statutory maternity pay in accordance with any regulations under section 5, the employer is liable to a penalty not exceeding £3,000.
- (7) Section 118(2) of the Taxes Management Act 1970 (extra time for compliance etc) applies for the purposes of subsections (1), (3) and (6) as it applies for the purposes of that Act.

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- (8) Schedule 1 to the Employment (Northern Ireland) Order 2002 (penalties relating to statutory paternity pay and statutory adoption pay: procedures and appeals) applies in relation to penalties imposed under this section (with the modifications set out in subsection (9)).
- (9) That Schedule applies as if—
- (a) references to a penalty under Article 12 or 13 of that Order were to a penalty under this section,
 - (b) in paragraph 1(2), the reference to Article 12(2)(a) of that Order were to subsection (2)(a) of this section, and
 - (c) the provisions of the Taxes Management Act 1970 having effect in relation to an appeal mentioned in paragraph 3(2) of that Schedule did not include section 50(9) of that Act.

Textual Amendments

F70 S. 107A - S. 107B inserted (6.4.2005) by National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 10(5), 13; S.I. 2004/1943, art. 4(d)

107B Statutory sick pay and statutory maternity pay: fraud and negligence

- (1) Where a person fraudulently or negligently—
- (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory sick pay or statutory maternity pay, or
 - (b) produces any incorrect document or record or provides any incorrect information of a kind mentioned in—
 - (i) regulations under section 5(1)(j) and (4), so far as relating to statutory sick pay or statutory maternity pay,
 - (ii) regulations under section 122 or 124, or
 - (iii) regulations under section 149(5)(b) of the Contributions and Benefits Act,he is liable to a penalty not exceeding £3,000.
- (2) Where an employer fraudulently or negligently makes an incorrect payment of statutory sick pay or statutory maternity pay, he is liable to a penalty not exceeding £3,000.
- (3) Where an employer fraudulently or negligently receives an overpayment in pursuance of regulations under section 163 of the Contributions and Benefits Act (statutory maternity pay: advance payments to employers), he is liable to a penalty not exceeding £3,000.
- (4) Schedule 1 to the Employment (Northern Ireland) Order 2002 (penalties relating to statutory paternity pay and statutory adoption pay: procedures and appeals) applies in relation to penalties imposed under this section (with the modifications set out in subsection (5)).
- (5) That Schedule applies as if—
- (a) references to a penalty under Article 12 or 13 of that Order were to a penalty under this section, and

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- (b) the provisions of the Taxes Management Act 1970 having effect in relation to an appeal mentioned in paragraph 3(2) of that Schedule did not include section 50(9) of that Act.]

Textual Amendments

F70 S. 107A - S. 107B inserted (6.4.2005) by [National Insurance Contributions and Statutory Payments Act 2004 \(c. 3\)](#), [ss. 10\(5\)](#), 13; [S.I. 2004/1943](#), art. 4(d)

[^{F71}108 Offences relating to contributions.

- (1) Any person who is knowingly concerned in the fraudulent evasion of any contributions which he or any other person is liable to pay shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or to both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.]

Textual Amendments

F71 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 \(N.I. 10\)](#), [art. 57](#); [S.R. 1999/102](#), [art. 2\(a\)](#), [Sch. 1 Pt. II](#)

109 Offences by bodies corporate.

Section 20(2) and (3) of the ^{M1}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.

Modifications etc. (not altering text)

C14 S. 109 applied (with modifications) (27.11.2006) by [The Healthy Start Scheme and Day Care Food Scheme Regulations \(Northern Ireland\) 2006 \(S.R. 2006/478\)](#), [reg. 1](#), [Sch. 5](#)

Marginal Citations

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

^{F73}[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.

Status: Point in time view as at 01/04/2007.

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- (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.
- [Subject to subsection (7B) below, the Department and the Housing Executive may
- ^{F74}(7A) agree that, to the extent determined by the agreement, one may carry out on the other’s behalf, or may join in the carrying out of, any of the other’s functions under this section.
- (7B) Subsection (7A) above shall not authorise any delegation of-
 - (a) the function of the person by whom any overpayment is recoverable, or to whom it is due, of determining whether or not a notice should be given under subsection (2) above in respect of that overpayment; or
 - (b) the power to make regulations for the purposes of paragraph (b) of subsection (2) above.]]
 - (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

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(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

F73 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](#)

F74 S. 109A(7A)(7B) inserted (1.5.2002) by [2001 c. 17 \(N.I.\)](#), ss. 13, 17(1); [S.R. 2002/165](#), [art. 2](#)

Modifications etc. (not altering text)

C15 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](#))

[^{F75}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.
- (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

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- (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—
- 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;
 - 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
 - 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—
- so much of the penalty as has already been recovered shall be repaid; and
 - 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—
- that conduct was at or in relation to a time when that individual was an employee of the responsible person;
 - 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
 - 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”—
- in relation to a company (within the meaning of the Companies (Northern Ireland) Order 1986), includes a shadow director;
 - in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company; and
 - 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—
- is employed under a contract of service or apprenticeship, or in an office (including an elective office), or

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(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

F75 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 [^{F76}under any provision of this Act other than section 108 or under any provision of] [^{F77}the Jobseekers (Northern Ireland) Order 1995] 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 [^{F78}, for an offence under the Jobseekers (Northern Ireland) Order 1995,] 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.

[^{F79}(2A) Subsection (2) above shall not be taken to impose any restriction on the time when proceedings may be begun for an offence under section 105A above.]

(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.

[^{F80F81}(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.

[^{F80}(5A) In relation to proceedings for an offence under section 108 above—

- (a) the reference in subsection (2)(a) above to the Department, and
- (b) the reference in subsection (3)(a) above to the Head or a secretary, under secretary or assistant secretary of the Department,

shall have effect as references to the Inland Revenue.]

(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.

Textual Amendments

- F76** Words in s. 110(1) substituted (24.3.1999 for certain purposes, otherwise 1.4.1999) by S.I. 1999/671, arts. 1(2)(b), 3(1), **Sch. 1 para. 24(2)**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of that S.R.)
- F77** Words in s. 110(1) inserted (17.7.1996) by S.I. 1995/2705 (N.I. 15), art. 40(1), **Sch. 2 para. 38(2)**; S.R. 1996/285, art. 2, **Sch.**
- F78** Words in s. 110(2) inserted (17.7.1996) by S.I. 1995/2705 (N.I. 15), art. 40(1), **Sch. 2 para. 38(3)**; S.R. 1996/285, art. 2, **Sch.**
- F79** S. 110(2A) inserted (1.7.1997) by S.I. 1997/1182 (N.I. 11), art. 19(1), **Sch. 1**, para. 4; S.R. 1997/316, art. 2, **Sch.**
- F80** S. 110(5A) substituted (11.11.1999) by 1999 c. 30, ss. 81, 89(4)(d), **Sch. 11 para. 14**
- F81** S. 110(4) repealed (29.11.1999 for certain purposes, otherwise *prosp.*) by S.I. 1998/1506 (N.I. 10), arts. 1(2), 78, Sch. 6 para. 64, **Sch. 7**; S.R. 1999/472, art. 2(1), **Sch. 1** (with arts. 20-22) (subject to art. 2(2) of the said S.R. 1999/472)

Modifications etc. (not altering text)

- C16** S. 110 applied (with modifications) (7.2.1994) by 1993 c. 49, s. 163(2); S.R. 1994/17, art. 2
- C17** S. 110(1) applied (with modifications) (27.11.2006) by The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, **Sch. 5**
- C18** S. 110(2)(a) applied (with modifications) (27.11.2006) by The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, **Sch. 5**
- C19** S. 110(3)(a) applied (with modifications) (27.11.2006) by The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, **Sch. 5**
- C20** S. 110(5) applied (with modifications) (27.11.2006) by The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478), reg. 1, **Sch. 5**

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[^{F82}111 Issues arising in proceedings.

- (1) This section applies to proceedings before a court—
 - (a) for an offence under this Act or the Jobseekers (Northern Ireland) Order 1995;
 - (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 [^{F83}, or the Inland Revenue] or the National Insurance Fund.
- (2) A decision of the Department which—
 - (a) falls within Part II of Schedule 3 to the Social Security (Northern Ireland) Order 1998 (“the 1998 Order”); 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 the Department has not been obtained or an application with respect to the decision has been made under Article 10 or 11 of the 1998 Order,
 the decision shall be referred to the Department to be made in accordance (subject to any necessary modifications) with Chapter II of Part II of that Order.
- (4) Subsection (2) above does not apply where, in relation to the decision—
 - (a) an appeal has been brought but not determined;
 - (b) an application for leave to appeal has been made but not determined;
 - (c) 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
 - (d) an application has been made under Article 10 or 11 of the 1998 Order.
- (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

- F82** S. 111 substituted (5.7.1999 and 29.11.1999 for certain purposes, otherwise *prosp.* by S.I. 1998/1506 (N.I. 10), arts. 1, 78(1), **Sch. 6 para. 65**; S.R. 1999/310, art. 2(1), **Sch. 1** (with arts. 4, 14); S.R. 1999/472, art. 2(1), **Sch. 1** (with arts. 20-22) (subject to art. 2(2) of the said S.R. 1999/472)
- F83** Words in s. 111(1)(c) inserted (5.7.1999) by S.I. 1999/671, art. 5, **Sch. 6 para. 9**; S.R. 1999/271, art. 2(c), **Sch. Pt. II** (subject to art. 4)

[^{F84}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.

Status: Point in time view as at 01/04/2007.

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- (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

F84 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.)

Unpaid contributions etc.

112 Evidence of non-payment.

[^{F85}(1) A certificate of an authorised officer that any amount by way of contributions, or by way of interest or penalty in respect of contributions, which a person is liable to pay to the [^{F86}Inland Revenue] for any period has not been paid—

- (a) to the officer; 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.

^{F85}(1A)]

^{F87}(2)

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- (3) A document purporting to be such a certificate ^{F88} . . . shall be deemed to be such a certificate until the contrary is proved.
- (4) A statutory declaration by an officer of the [^{F89}Inland Revenue] that the searches specified in the declaration ^{F90} . . . for a record of the payment of a particular contribution have been made, and that ^{F90} . . . 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.

[^{F91}(7) In this section “authorised officer” means any officer of the Inland Revenue authorised by them for the purposes of this section.]

Textual Amendments

- F85** S. 112(1)(1A) substituted (6.4.1999) for s. 112(1) by S.I. 1998/1506 (N.I. 10), **art. 58(1)**; S.R. 1999/102, **art. 2(d)**, **Sch. Pt. III** but the said s. 112(1A) was repealed on the same date by S.I. 1999/671, **art. 5**, **Sch. 4 para. 7(3)**, **Sch. 9 Pt. I**; S.R. 1999/149, **art. 2(d)**, **Sch. 3** (subject to arts. 3-6 of that S.R.)
- F86** Words in s. 112(1) substituted (6.4.1999) by S.I. 1999/671, **art. 5**, **Sch. 4 para. 7(2)**; S.R. 1999/149, **art. 2(d)**, **Sch. 3** (subject to arts. 3-6 of that S.R.)
- F87** S. 112(2) repealed (6.4.1999) by S.I. 1999/671, **art. 5**, **24(3)**, **Sch. 4 para. 7(3)**; **Sch. 9 Pt. I**; S.R. 1999/149, **art. 2(d)**, **Sch. 3** (subject to arts. 3-6 of that S.R.)
- F88** In s. 112(3) words “as is mentioned in subsection (1) or (2) above” inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), **art. 58(2)**; S.R. 1999/102, **art. 2(d)**, **Sch. Pt. III** and repealed on the same date by S.I. 1999/671, **art. 5**, **24(3)**, **Sch. 4 para. 7(4)**; S.R. 1999/149, **art. 2(d)**, **Sch. 3** (subject to arts. 3-6 of that S.R.)
- F89** Words in s. 112(4) substituted (6.4.1999) by S.I. 1999/671, **art. 5**, **Sch. 4 para. 7(5)**; S.R. 1999/149, **art. 2(d)**, **Sch. 3** (subject to arts. 3-6 of that S.R.)
- F90** Words in s. 112(4) repealed (6.4.1999) by S.I. 1998/1506 (N.I. 10), **art. 58(3)**, **78(2)**, **Sch. 7**; S.R. 1999/102, **art. 2(d)**, **Sch. Pt. III**
- F91** S. 112(7) substituted (6.4.1999) by S.I. 1999/671, **art. 5**, **Sch. 4 para. 7(6)**; S.R. 1999/149, **art. 2(d)**, **Sch. 3** (subject to arts. 3-6 of that S.R.) (the original subsection (7) being inserted on the same date by S.I. 1998/1506 (N.I. 10), **art. 58(4)**; S.R. 1999/102, **art. 2(d)**, **Sch. Pt. III** and that insertion falls by reason of the repeal (6.4.1999) of the inserting provision by S.I. 1999/671, **art. 24(3)**, **Sch. 9**)

113 Recovery of unpaid contributions on prosecution.

- (1) Where—

Status: Point in time view as at 01/04/2007.

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- (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 [^{F92}Inland Revenue] a sum equal to the amount which he failed to pay.

^{F93}(2)

Textual Amendments

- F92** Words in s. 113 substituted (24.3.1999 for certain purposes, otherwise 1.4.1999) by S.I. 1999/671, arts. 1(2), 3(1), **Sch. 1 para. 25**; S.R. 1999/149, art. 2(c), **Sch. 2**
- F93** S. 113(2) repealed (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(2), Sch. 6 para. 66, **Sch. 7**; S.R. 1999/102, art. 2(d), **Sch. 1 Pt. III**

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) ^{F94}. . . 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 [^{F95}or Class 1B] contributions or [^{F96}contributions equivalent] premiums on the date of the offence, or during the [^{F97}6 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 [^{F98}amount]) such contributions, or any Class 1 [^{F99}or Class 1B] contributions or [^{F96}contributions equivalent] premiums, on the date of the offence, or during the [^{F100}6 years] preceding that date.
- ^{F101}(4A) If the offence is one of failure to pay a Class 1B contribution, evidence may be given of failure on his part to pay such contributions, or any Class 1 or Class 1A contributions or contributions equivalent premiums, on the date of the offence, or during the 6 years preceding that date.]
- (5) If the offence—
 - (a) is one of failure to pay Class 2 contributions; ^{F102}. . .
 - ^{F102}(b)evidence may be given of his failure to pay such contributions during those [^{F103}6 years].

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- (6) On proof of any matter of which evidence may be given under subsection (3), (4) [F104, (4A)] or (5) above, the person convicted shall be liable to pay to the [F105 Inland Revenue] 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.

Textual Amendments

- F94** Words in s. 114(1) repealed (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1)(2), Sch. 6 para. 67(1), Sch. 7; S.R. 1999/102, art. 2(d), Sch. Pt. III
- F95** Words in s. 114(3) inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6 para. 67(2)(a); S.R. 1998/312, art. 2, Sch., Pt. III
- F96** Words in s. 114(3)(4) substituted (6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 147, Sch. 3 para. 12(3); S.R. 1997/192, art. 2
- F97** Words in s. 114(3) substituted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6 para. 67(2)(b); S.R. 1999/102, art. 2(d), Sch. Pt. III
- F98** Word in s. 114(4) substituted (28.7.2000 with effect as mentioned in s. 78(6) of the amending Act) by 2000 c. 19, s. 78(6) (with ss. 79(9), 83(6))
- F99** Words in S. 114(4) inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6, para. 67(3)(a); S.R. 1998/312, art. 2, Sch. Pt. III
- F100** Words in s. 114(4) substituted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6 para. 67(3)(b); S.R. 1999/102, art. 2(d), Sch. Pt. III
- F101** S. 114(4A) inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6 para. 67(4); S.R. 1998/312, art. 2, Sch. Pt. III
- F102** S. 114(5)(b) and immediately preceding word repealed (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1)(2), Sch. 6 para. 67(5)(a), Sch. 7; S.R. 1999/102, art. 2(d), Sch. Pt. III
- F103** Words in s. 114(5) substituted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6 para. 67(5)(b); S.R. 1999/102, art. 2(d), Sch. Pt. III
- F104** Words in s. 114(6) inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), Sch. 6 para. 67(6); S.R. 1998/312, art. 2, Sch. Pt. III
- F105** Words in s. 114(6) substituted (24.3.1999 for certain purposes, otherwise 1.4.1999) by S.I. 1999/671, arts. 1(2), 3(1), Sch. 1 para. 26; S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of the said S.R.)

115 Unpaid contributions - supplementary.

- (1) Where a person charged with an offence mentioned in section 113(1) F106 . . . above is convicted of that offence in his absence under Article 24(2) of the M2 Magistrates' Courts (Northern Ireland) Order 1981 then if—
- 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
 - 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) F106 . . . above and an order is made under the M3 Probation Act (Northern Ireland) 1950 placing the offender on probation or discharging him absolutely or conditionally, sections 113

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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 [^{F107}Inland Revenue] 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 [^{F107}Inland Revenue].
- (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.

Textual Amendments

F106 Words in s. 115(1)(2) repealed (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1)(2), Sch. 6 para. 68, Sch. 7; S.R. 1999/102, art. 2(d), **Sch. Pt. III**

F107 Words in s. 115(4) substituted (24.3.1999 for certain purposes, otherwise 1.4.1999) by S.I. 1999/671, arts. 1(2), 3(1), **Sch. 1 para. 27**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of the said S.R.)

Marginal Citations

M2 S.I. 1981/1675 (N.I. 26).

M3 1950 c. 7 (N.I.).

^{F108}115 Recovery of contributions, etc.

- (1) If—
 - (a) a person is served at any time with a copy of a certificate under section 112(1), and
 - (b) he neglects or refuses to pay the contributions, interest or penalty to which the certificate relates within 7 days of that time,an authorised officer may distrain upon the goods and chattels of that person (“the person in default”).
- (2) For the purpose of levying any such distress, a justice of the peace, on being satisfied by a complaint on oath that there is reasonable ground for believing that the conditions in subsection (1) are fulfilled, may issue a warrant in writing authorising the authorised officer to enter in the daytime, by force if necessary, any premises to which this section applies, calling on the assistance of any constable.
- (3) Every such constable shall, when so required, assist the authorised officer in the execution of the warrant and in levying the distress in the premises.
- (4) A warrant to enter premises by force shall be executed by the authorised officer, or under his direction and in his presence.
- (5) A distress levied by the authorised officer shall be kept for 5 days, and any costs or charges shall be borne by the person in default.

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- (6) If the person in default does not pay the sum due, together with the costs and charges, the distress shall be appraised by one or more independent persons appointed by the authorised officer, and shall be sold by public auction by the authorised officer for payment of the sum due and all costs and charges.
- (7) Any surplus arising from the distress, after the deduction of the costs and charges and of the sum due, shall be paid to the owner of the goods distrained.
- (8) Regulations made by the Inland Revenue may make provision with respect to—
 - (a) the fees chargeable on or in connection with the levying of distress; and
 - (b) the costs and charges recoverable where distress has been levied.
- (9) In this section “authorised officer” means an officer of the Inland Revenue authorised by them for the purposes of this section.
- (10) The premises to which this section applies are premises where an authorised officer has reasonable grounds for believing that—
 - (a) any persons are employed, or
 - (b) a trade or business is being carried on;
 but this section does not apply to a private dwelling-house unless an authorised 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.]

Textual Amendments

F108 S. 115A substituted (1.9.2004) by [National Insurance Contributions and Statutory Payments Act 2004](#) (c. 3), [ss. 6\(1\), 13](#); [S.I. 2004/1943](#), [art. 2\(f\)](#)

^{F109}[115B] **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 [^{F110} Inland Revenue] 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 [^{F110} Inland Revenue] 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 [^{F110} Inland Revenue]—
 - (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 [^{F110} Inland Revenue] for the purposes of that paragraph.
- (3) The sum specified in the personal liability notice under subsection (2)(b)(i) above shall be—

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- (a) in a case where there is, in the opinion of the [F110 Inland Revenue], 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 [F110 Inland Revenue], the officer's culpability for the failure to pay that amount bears to that of all the culpable officers taken together.
- (4) In assessing an officer's culpability for the purposes of subsection (3)(b) above, the [F110 Inland Revenue] 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 [F110 Inland Revenue] 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 [F110 Inland Revenue] 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.
- [F111(8A) The amount which an officer is liable to pay under this section is to be recovered in the same manner as a Class 1 contribution to which regulations under paragraph 6 of Schedule 1 to the Contributions and Benefits Act apply and for this purpose references in those regulations to Class 1 contributions are to be construed accordingly.]
- (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

F109 S. 115B inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 60; S.R. 1999/102, art. 2(d), Sch. Pt. III

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F110 Words in s. 115B substituted (1.4.1999) by S.I. 1999/671, art. 5, **Sch. 4 para. 10(2)**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of the said S.R.)

F111 S. 115B(8A) inserted (1.9.2004) by National Insurance Contributions and Statutory Payments Act 2004 (c. 3), **ss. 6(2), 13**; S.I. 2004/1943, art. 2(f)

Modifications etc. (not altering text)

C21 S. 115B applied with modifications (5.10.1999) by 1999 c. 10, **ss. 11(1)(2), 20(2)**

[^{F112}115C 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 [^{F113}the Special Commissioners]] against [^{F114}the Inland Revenue’s] decision as to the issue and content of the notice on the ground that—
 - (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 [^{F114}the Inland Revenue] under subsection (3)(a) or (b) of that section was unreasonable.
- (3) [^{F114}The Inland Revenue] 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 [^{F114}the Inland Revenue].
- (5) Where an appeal under this section—
 - (a) is brought on the basis of evidence not considered by [^{F114}the Inland Revenue], or on the ground mentioned in subsection (2)(d) above; and
 - (b) is not allowed on some other basis or ground,
 the [^{F115}Special Commissioners shall either dismiss the appeal or remit the case to the Inland Revenue, with any recommendations the Special Commissioners see fit to make, for the Inland Revenue to consider whether to vary their] decision as to the issue and content of the personal liability notice.
- (6) In this section—

^{F116} . . .

“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;

^{F116} . . .

[^{F117}“the Special Commissioners” means the Commissioners for the special purposes of the Income Tax Acts;

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“vary” means vary under regulations made under Article 9 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.]

Textual Amendments

- F112** S. 115C inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 60; S.R. 1999/102, art. 2(d), Sch. Pt. III
- F113** Words in s. 115C(2) substituted (1.4.1999) by S.I. 1999/671, art. 5, Sch. 4 para. 10(3); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)
- F114** Words in s. 115C(2) substituted (1.4.1999) by S.I. 1999/671, art. 5 Sch. 4 para. 10(1)(3); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)
- F115** Words in s. 115C(5) substituted (1.4.1999) by S.I. 1999/671, art. 5, 24(3), Sch. 4 para. 10(4); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)
- F116** Definitions in s. 115C(6) repealed (1.4.1999) by S.I. 1999/671, arts. 5, 24(3), Sch. 4 para. 10(5), Sch. 9 Pt. I; S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)
- F117** Definitions in s. 115C(6) inserted (1.4.1999) by S.I. 1999/671, art. 5, Sch. 4 para. 10(5); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6 of that S.R.)

Modifications etc. (not altering text)

- C22** S. 115C applied with modifications (5.10.1999) by 1999 c. 10, ss. 11(1)(2), 20(2)

[^{F118}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, ^{F119}... statutory sick pay or statutory maternity pay, that is to say-
- the Contributions and Benefits Act;
 - this Act;
 - the Pensions Act, except Part III;
 - Article 9 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994;
 - the Jobseekers (Northern Ireland) Order 1995;
 - the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;
 - Parts II and V of the Social Security (Northern Ireland) Order 1998;
 - Part VI of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
 - [^{F120}(hh) the State Pension Credit Act (Northern Ireland) 2002;]
 - the Social Security Pensions (Northern Ireland) Order 1975;
 - the Social Security Act 1973;
 - 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 -
- references to a document include references to anything in which information is recorded in electronic or any other form;
 - 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-

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- (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;

[^{F121}“benefit offence” means -

- (a) any criminal offence in connection with a claim for a relevant social security benefit;
- (b) any criminal offence in connection with the receipt or payment of any amount by way of such a benefit;
- (c) any criminal offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
- (d) any attempt or conspiracy to commit a benefit offence;] 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.]

[^{F122}(7) In this section “ relevant social security benefit ” means a benefit under any provision of the relevant social security legislation.]

Textual Amendments

F118 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**

F119 Words in s. 115CA(1) repealed (8.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(4)(e), **Sch. 2** (with art. 3)

F120 S. 115CA(1)(hh) inserted (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by State Pension Credit Act (Northern Ireland) 2002 (c. 14), s. 14, **Sch. 2 Pt. 2 para. 12**; S.R. 2002/366, art. 2; S.R. 2003/373, art. 2

F121 Definition of “benefit offence” in s. 115CA(5) substituted (24.2.2003) by 2001 c. 17 (N.I.), ss. 1(7), 17(1); S.R. 2002/406, art. 2(2)(a)

F122 S. 115CA(7) inserted (24.2.2003) by 2001 c. 17 (N.I.), ss. 1(8), 17(1); S.R. 2002/406, art. 2(2)(a)

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