



# Social Security Administration (Northern Ireland) Act 1992

## 1992 CHAPTER 8

### PART VI

#### ENFORCEMENT

##### *Inspection*

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

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

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- (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.]

#### 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**

#### <sup>F2</sup>**103B Power to require information**

- (1) An authorised officer who has reasonable grounds for suspecting that a person—

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- (a) is a person falling within subsection (2) below, and
- (b) has or may have possession of or access to any information about any matter that is relevant for any one or more of the purposes mentioned in section 103A(2) above,

may, by written notice, require that person to provide all such information described in the notice as is information of which he has possession, or to which he has access, and which it is reasonable for the authorised officer to require for a purpose so mentioned.

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

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- (5) No one shall be required under this section to provide any information (whether in documentary form or otherwise) that tends to incriminate either himself or, in the case of a person who is married, his spouse.

#### Textual Amendments

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

VALID FROM 24/02/2003

#### [<sup>F3</sup>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

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

### <sup>F4</sup>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

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

#### [<sup>F22</sup>104Z] Powers exercisable by officers of Inland Revenue.

- (1) For the purposes of the enactments to which this section applies, the Inland Revenue may authorise any of their officers to exercise the powers conferred by this section.
- (2) An officer authorised under this section shall, for the purposes of the execution of those enactments, have the following powers—
  - (a) to enter at all reasonable times any premises liable to inspection under this section;
  - (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of the enactments are being, or have been, complied with in any such premises;
  - (c) to examine, either alone or in the presence of any other person, as he thinks fit, in relation to any matters under the enactments on which he may reasonably require information, every person whom he finds in any such premises or whom he has reasonable cause to believe to be or to have been a person liable to pay—
    - (i) contributions; or
    - (ii) a contributions equivalent premium,
 and to require every such person to be so examined.
- (3) Premises are liable to inspection under this section if an officer has reasonable grounds for believing that—
  - (a) any persons are employed there;
  - (b) a trade or business is being carried on from there;
  - (c) any records relating to a trade or business are kept there; or
  - (d) a personal or occupational pension scheme is being administered there;
 but a private dwelling-house is not liable to inspection under this section unless an officer has reasonable grounds for believing that a trade or business is being carried on from the dwelling-house and that the trade or business is not also being carried on from premises other than a dwelling-house.

[ The references in subsection (3) above to a trade or business include references to <sup>F23</sup>(3A) the administration of any scheme for the provision of benefits to persons by reason of their employment. ]]

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- (4) Every officer authorised under this section shall be furnished with a certificate of his authorisation, and on applying for admission to any premises for the purpose of the enactments shall, if so required, produce the authorisation.
- (5) In accordance with this section, persons shall furnish to an officer all such information, and produce for his inspection all such documents, as he may reasonably require for the purpose of ascertaining—
  - (a) whether—
    - (i) any contribution; or
    - (ii) any contributions equivalent premium,is or has been payable, or has been duly paid, by or in respect of any person; or
  - (b) whether statutory sick pay or statutory maternity pay is or was payable to or in respect of any person.
- (6) The following persons are under the duty imposed by subsection (5) above—
  - (a) any person who is or has been an employer or an employee within the meaning of any provision of the Contributions and Benefits Act;
  - (b) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services;
  - (c) any person who is or has at any time been a trustee or manager of a personal or occupational pension scheme;
  - (d) the servants or agents of any such person as is specified in any of the preceding paragraphs.
- (7) This section applies to the following enactments—
  - (a) the Contributions and Benefits Act so far as relating to contributions, statutory sick pay or statutory maternity pay;
  - (b) this Act; and
  - (c) Part III of the Pensions Act.
- (8) Any reference in this section to a contributions equivalent premium includes a reference to state scheme premiums payable before 6th April 1997 (the day on which Article 138 of the Pensions (Northern Ireland) Order 1995 came into operation).

#### Textual Amendments

**F22** S. 104ZA inserted (1.4.1999) by S.I. 1999/671, art. 5, **Sch. 4 para. 3**; S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6 of that S.R.)

**F23** S. 104ZA(3A) inserted (28.7.2000 with effect as mentioned in s. 79(3) of the amending Act) by 2000 c. 19, s. 79(2) (with ss. 79(3), 83(6))

#### [<sup>F24</sup>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; and
  - (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.]

#### Textual Amendments

**F24** 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**



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VALID FROM 24/02/2003

**[<sup>F25</sup>104A] Power of Housing Executive to require electronic access to information**

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

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

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

#### Textual Amendments

**F25** 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—
- wilfully delays or obstructs an inspector in the exercise of any power under this Act [<sup>F27</sup>other than an Inland Revenue power]; or
  - 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 [<sup>F28</sup>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 subsection (1)(b) above and the refusal or neglect is continued by him after his conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which it is continued.
- [<sup>F29</sup>(3) In subsection (1) “Inland Revenue power” means any power conferred on an officer of the Inland Revenue by section 104ZA above or by virtue of [<sup>F30</sup>an authorisation granted under section 103A or 104A] above.
- (4) Where by virtue of [<sup>F31</sup>an authorisation granted under section 103A or 104A above, any power conferred by section 103B or 103C above] is exercised by an officer of the Inland Revenue, section 98 of the Taxes Management Act 1970 shall apply as if the reference in that section to section 104ZA above included a reference to [<sup>F32</sup>sections 103B and 103C] above.]

#### Textual Amendments

- F27** 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.)
- F28** 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.)
- F29** 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.)

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- F30** 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**
- F31** S. 105(4) substituted (2.4.2001) by 2000 c. 4 (N.I.), s. 58, **Sch. 6 para. 4(b)(i)** (with s. 66(6)); S.R. 2001/141, art. 2(1), **Sch. Pt. I**
- F32** Words in s. 105(4) substituted (2.4.2001) by 2000 c. 4 (N.I.), s.58, **Sch. 6 para. 4(b)(ii)** (with s. 66(6)); S.R. 2001/141, art. 2(1), **Sch. Pt. I**

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

- C3** S. 105 restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), **Sch. 2 Pt. IV para. 12(b)**

[<sup>F33</sup>**105A Dishonest representations for obtaining benefit etc.**

(1) If a person dishonestly—

- (a) makes a false statement or representation; [<sup>F34</sup>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;
- [<sup>F35</sup>(c) fails to notify a change of circumstances which regulations under this Act require him to notify; or
- <sup>F35</sup>(d) causes or allows another person to fail to notify a change of circumstances which such regulations require the other person to notify,]

with a view to obtaining any benefit or other payment or advantage under the [<sup>F36</sup>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—

- <sup>F37</sup>(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
- (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;

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- (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.]

<sup>F38</sup>(2) . . . . .

(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.]

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#### Textual Amendments

- F33** S. 105A inserted (1.7.1997) by S.I. 1997/1182 (N.I. 11), **art. 12**; S.R. 1997/316, **art. 2**, **Sch.**
- F34** 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**
- F35** 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**
- F36** 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**
- F37** 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**
- F38** 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)

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

## 106 False representations for obtaining benefit etc.

- (1) If a person for the purpose of obtaining any benefit or other payment under the [<sup>F39</sup>relevant][<sup>F40</sup>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.

[<sup>F41</sup>(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;
- (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.

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- (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 [<sup>F42</sup>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.

<sup>F43</sup>(3) . . . . .

#### Textual Amendments

- F39** 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**
- F40** 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.**
- F41** 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**
- F42** 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.**
- F43** 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**

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

- C5** S. 106 restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), **Sch. 2 Pt. IV para. 13**

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## [<sup>F44</sup>107 Breach of regulations.

(1) Regulations and schemes under any of the legislation to which [<sup>F45</sup>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—

- <sup>F46</sup>(1A) (a) the relevant social security legislation; and  
(b) the statutory provisions specified in section 115CA(1) so far as relating to contributions, statutory sick pay or statutory maternity pay.]

(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 [<sup>F47</sup>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 [<sup>F47</sup>Inland Revenue], in [<sup>F47</sup>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

**F44** 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**

**F45** 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**

**F46** 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**

**F47** 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.)



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

C6 S. 107 restricted (5.10.1999) by 1999 c. 10, ss. 2(3), 20(2), Sch. 2 Pt. IV para. 14

### [<sup>F48</sup>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

F48 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 <sup>M1</sup>Interpretation Act (Northern Ireland) 1954 (offences by bodies corporate) shall apply to this Act as if it were an enactment within the meaning of section 1(b) of that Act.

#### Marginal Citations

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

### [<sup>F50</sup>109A Penalty as alternative to prosecution.

- (1) This section applies where an overpayment is recoverable from a person by, or due from a person to, the Department or the Housing Executive under or by virtue of section 69, 69A or 73 above and it appears to the Department or the Executive that—
  - (a) the making of the overpayment was attributable to an act or omission on the part of that person; and
  - (b) there are grounds for instituting against him proceedings for an offence (under this Act or any other statutory provision) relating to the overpayment.
- (2) The Department or the Housing Executive may give to the person a written notice—
  - (a) stating that he may be invited to agree to pay a penalty and that, if he does so in the manner specified by the Department or the Executive, no such proceedings will be instituted against him; and
  - (b) containing such information relating to the operation of this section as may be prescribed.
- (3) The amount of the penalty shall be 30 per cent. of the amount of the overpayment (rounded down to the nearest whole penny).



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- (4) If the person agrees in the specified manner to pay the penalty—
  - (a) the amount of the penalty shall be recoverable by the same methods as those by which the overpayment is recoverable; and
  - (b) no proceedings will be instituted against him for an offence (under this Act or any other statutory provision) relating to the overpayment.
- (5) The person may withdraw his agreement to pay the penalty by notifying the Department or the Housing Executive, in the manner specified by the Department or the Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it; and if he does so—
  - (a) so much of the penalty as has already been recovered shall be repaid; and
  - (b) subsection (4)(b) above shall not apply.
- (6) Where, after the person has agreed to pay the penalty, it is decided on a review or appeal or in accordance with regulations that the overpayment is not recoverable or due, so much of the penalty as has already been recovered shall be repaid.
- (7) Where, after the person has agreed to pay the penalty, the amount of the overpayment is revised on a review or appeal or in accordance with regulations—
  - (a) so much of the penalty as has already been recovered shall be repaid; and
  - (b) subsection (4)(b) above shall no longer apply by reason of the agreement; but if a new agreement is made under this section in relation to the revised overpayment, the amount already recovered by way of penalty, to the extent that it does not exceed the amount of the new penalty, may be treated as recovered under the new agreement instead of being repaid.
- (8) In this section “overpayment” means—
  - (a) a payment which should not have been made;
  - (b) a sum which the Department should have received;
  - (c) an amount of benefit paid in excess of entitlement; or
  - (d) an amount equal to an excess of benefit allowed;

and the reference in subsection (1)(a) above to the making of the overpayment is to the making of the payment, the failure to receive the sum, the payment of benefit in excess of entitlement or the allowing of an excess of benefit.]

#### **Textual Amendments**

**F50** S. 109A inserted (21.11.1997 for certain purposes, otherwise 18.12.1997) by S.I. 1997/1182 (N.I. 11), art. 14 (with art. 1(4)); S.R. 1997/508, art. 2

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

**C7** 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)

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VALID FROM 01/05/2002

**[<sup>F51</sup>109B Penalty as alternative to prosecution: colluding employers, etc.**

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

and section 69(10) above shall apply in relation to an amount recoverable by virtue of paragraph (a) above as it applies in relation to an amount recoverable under the provisions mentioned in section 69(8) above..
- (5) The amount of the penalty shall be—
  - (a) in a case in which the conduct in question falls within paragraph (a) of subsection (2) above but not within paragraph (b) of that subsection, £1,000;
  - (b) in a case in which that conduct falls within paragraph (b) of that subsection and the number of relevant employees by reference to whom it falls within that subsection is five or more, £5,000; and

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- (c) in any other case, the amount obtained by multiplying £1,000 by the number of relevant employees by reference to whom that conduct falls within that subsection.
- (6) The responsible person may withdraw his agreement to pay a penalty under this section by notifying the Department or the Housing Executive, in the manner specified by the Department or the Housing Executive, at any time during the period of 28 days beginning with the day on which he agrees to pay it.
- (7) Where the responsible person withdraws his agreement in accordance with subsection (6) above—
- (a) so much of the penalty as has already been recovered shall be repaid; and
  - (b) subsection (4)(b) above shall not apply.
- (8) For the purposes of this section an individual is a relevant employee in relation to any conduct of the responsible person if—
- (a) that conduct was at or in relation to a time when that individual was an employee of the responsible person;
  - (b) that conduct was at or in relation to a time when that individual was an employee of a body corporate of which the responsible person is or has been a director; or
  - (c) the responsible person, in engaging in that conduct, was acting or purporting to act on behalf of, in the interests of or otherwise by reason of his connection with, any person by whom that individual is or has been employed.
- (9) In this section —
- “conduct” includes acts, omissions and statements;
- “the Department” also includes the Department of Finance and Personnel;
- “director”—
- (a) in relation to a company (within the meaning of the Companies (Northern Ireland) Order 1986), includes a shadow director;
  - (b) in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company; and
  - (c) in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate;
- “employee” means any person who—
- (a) is employed under a contract of service or apprenticeship, or in an office (including an elective office), or
  - (b) carries out any work under any contract under which he has undertaken to provide his work,
- and “employment” shall be construed accordingly;
- “relevant benefit” means benefit prescribed for the purposes of section 69(8) above;
- “shadow director” means a shadow director as defined in Article 9(2) of the Companies (Northern Ireland) Order 1986;
- “subsidiary” means a subsidiary as defined in Article 4 of the Companies (Northern Ireland) Order 1986.]

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#### Textual Amendments

**F51** S. 109B inserted (1.5.2002) by 2001 c. 17, ss. 14(1), 17(1); S.R. 2002/165, art. 2

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