

DMG Memo Vol 1/92, 3/82, 4/106, 9/18 & 13/47

RESTRICTIONS ON PAYMENT OF BENEFIT - BENEFIT OFFENCES

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INTRODUCTION

1. This memo gives guidance on the extension to the provision which allows restrictions on the payment of a sanctionable benefit following convictions for benefit offences. This takes effect from 1.4.10¹. There is a list of definitions at the end of this memo.

1 SS Fraud Act (NI) 2001, sec 5B; sec 7

BACKGROUND

2. Since 1.4.02 legislation has allowed restrictions on the payment of benefit following convictions for benefit fraud offences. From 1.9.11¹ it is possible to restrict payment of benefit for four weeks when the offender is convicted of a first benefit fraud offence or a further non-linking benefit fraud offence; it also introduces a restriction in payment of benefit for four weeks if the offender

1. agrees to pay an administrative penalty **or**

2. is cautioned

in respect of a benefit fraud offence.

Note: The provision which allows restriction on the payment of benefit following a second or subsequent conviction for a benefit fraud offence committed within five years of a conviction for a previous offence continues to apply; this attracts a reduction on payment of benefit for 13 weeks - see paragraph 8.

*1 The Welfare Reform Act (NI) 2010, sec 19; Sch 3;
The SS (Loss of Benefit) (Amendment) Regulations (NI) 2011 No. 291*

BENEFITS AFFECTED - SANCTIONABLE BENEFITS

3. The restrictions on payment of benefit only apply to those benefits which are sanctionable benefits¹. These include
 1. Jobseeker's Allowance (except Joint-claim Jobseeker's Allowance - but see paragraphs 22 and 23)
 2. State Pension Credit
 3. Employment and Support Allowance
 4. Incapacity Benefit and dependency increases

5. benefits for widows and widowers and dependency increases (except Bereavement Payment)
6. Severe Disablement Allowance and dependency increases
7. Carer's Allowance and dependency increases
8. Industrial Injuries Disablement Benefit (except those elements listed at paragraph 4 9.)
9. Income Support
10. war pension (except those elements listed at paragraph 4 8.).

1 SS Fraud Act (NI) 2001, sec 5A

4. The following benefits¹ are not subject to restrictions on payment following benefit offences. This is because either they are not disqualifying benefits e.g. Maternity Allowance or they are disqualifying benefits but not sanctionable benefits
 1. Joint-claim Jobseeker's Allowance - but see paragraphs 22 and 23
 2. any Retirement Pension and dependency increases
 3. Graduated Retirement Benefit
 4. Disability Living Allowance
 5. Attendance Allowance
 6. Social Fund payments
 7. Christmas bonus
 8. Constant Attendance Allowance and Exceptionally Severe Disablement Allowance and mobility supplement paid under war pensions legislation
 9. Constant Attendance Allowance and Exceptionally Severe Disablement Allowance paid with Industrial Injuries Disablement Benefit
 10. Bereavement Payment.

1 SS Fraud Act (NI) 2001 sec 5A; SS (Loss of Benefit) Regs (NI) 2002, regs 19 & 19A

CONDITIONS FOR RESTRICTION ON PAYMENT

Conviction, administrative penalty or caution for benefit offence

5. From 1.9.11, restrictions on the payment of benefit apply where the offender is entitled to a sanctionable benefit at any time within the disqualification period **and**¹
 1. is convicted of one or more benefit offences in any proceedings - but see paragraph 7 below; **or**
 2. having being given proper notice agrees to pay an administrative penalty in respect of a benefit offence; **or**
 3. is cautioned in respect of one or more benefit offences.

1 SS Fraud Act (NI) 2001, sec 5B(1); sec 5B(4); sec 5B(5)

6. The disqualification period in these circumstances is a period of four weeks¹. The first day of this period - DQ-day - depends on the claimant's circumstances² - see paragraphs 10 - 12.

1 sec 5B(11); 2 SS (Loss of Benefit) Regs (NI), reg 1A

7. If paragraph 5 1. applies, and they are convicted of a benefit offence in any proceedings but this is a second or subsequent conviction and the offence was committed within five years of the previous conviction, the restriction will be that for a second or subsequent benefit offence¹ - see paragraph 8 below.

1 SS Fraud Act (NI) 2001, sec 5B(3); sec 6(1)

Second or subsequent conviction for benefit offence

8. Restrictions on the payment of benefit apply if¹
 1. the offender is convicted of a benefit offence in two separate sets of proceedings **and**
 2. the later offence is committed within the period of five years after the date of conviction for the earlier offence **and**
 3. the later set of proceedings has not previously been taken into account in applying a restriction on payment for a second or subsequent conviction in relation either to the offender or to a member of the offender's family **and**
 4. the earlier set of proceedings has not previously been taken into account in applying a restriction on payment for a second or

subsequent conviction in relation either to the offender or to a member of the offender's family **and**

5. the offender is entitled to a sanctionable benefit at any time within the disqualification period.

1 SS Fraud Act (NI) 2001, sec 6(1)

9. The disqualification period in these circumstances is a period of 13 weeks¹. The first day of this period - DQ-day - depends on the claimant's circumstances² – see paragraphs 13 - 15.

1 sec 6(6); 2 SS (Loss of Benefit) Regs (NI), reg 2

DISQUALIFICATION PERIOD

Conviction, administrative penalty or caution for benefit offence

10. The disqualification period in respect of the circumstances in paragraph 5 is four weeks. Where on the determination day the offender¹
 1. is in receipt of a sanctionable benefit; **or**
 2. is a member of a joint-claim couple which is in receipt of a joint-claim Jobseeker's Allowance; **or**
 3. has a family member - see paragraph 42 - who is in receipt of Income Support, Jobseeker's Allowance, State Pension Credit or Employment and Support Allowance

the first day of the disqualification period - DQ-day - is²

4. for a sanctionable benefit paid in arrears, the day following the first pay day after the end of the period of 28 days beginning with the determination day **and**
5. for a sanctionable benefit paid in advance, the first pay day after the end of the period of 28 days beginning with the determination day.

1 SS (Loss of Benefit) Regs (NI), reg 1A(2); 2 reg 1A(3)

11. If paragraph 10 **1.** to **3.** applies on the determination day but ceases to apply before the first day of the disqualification period as in paragraph 10 **4.** and **5.** DQ-day is the first day after the end of the period of 28 days beginning with the determination day¹.

1 reg 1A(7)

12. In any other case, including where a sanctionable benefit is awarded after the determination day, DQ-day is the first day after the end of the period of 28 days beginning with the determination day¹.

1 reg 1A(6)

Second or subsequent conviction for benefit offence

13. The disqualification period in respect of the circumstances in paragraph 8 (second or subsequent conviction of benefit offence) is 13 weeks. Where on the determination day the offender¹
1. is in receipt of a sanctionable benefit; **or**
 2. is a member of a joint-claim couple which is in receipt of a joint-claim Jobseeker's Allowance; **or**
 3. has a family member - see paragraph 42 - who is in receipt of Income Support, Jobseeker's Allowance, State Pension Credit or Employment and Support Allowance

DQ-day is²

4. for a sanctionable benefit paid in arrears, the day following the first pay day after the end of the period of 28 days beginning with the determination day
5. for a sanctionable benefit paid in advance, the first pay day after the end of the period of 28 days beginning with the determination day.

1 reg 2(2); 2 reg 2(3)

14. In any other case¹, DQ-day is the first day after the end of the period of 28 days beginning with the determination day on which the Department decides to award
1. a sanctionable benefit to the offender **or**
 2. a joint-claim Jobseeker's Allowance to a joint-claim couple of which the offender is a member **or**
 3. Income Support, Jobseeker's Allowance, State Pension Credit or Employment and Support Allowance to the offender's family member.

1 SS (Loss of Benefit) Regs (NI), reg 2(6)

15. In paragraphs 13 and 14, DQ-day must be no later than 5 years and 28 days after the date of conviction of the offender for the benefit offence in the later proceedings¹.

1 reg 2(7)

EFFECT OF RESTRICTION OF BENEFIT

General

16. A restriction is imposed on a sanctionable benefit within the disqualification period but no restriction is applied to any deduction from the benefit made for or in place of Child Support Maintenance¹.

1 reg 20

17. The restriction of benefit is brought into effect by means of supersession¹. The effective date of that supersession will be the first day of the disqualification period².

1 SS CS (D&A) Regs (NI), reg 6(2)(i); 2 reg 7(27)

Sanctionable benefits other than Income Support, Jobseeker's Allowance, State Pension Credit and Employment and Support Allowance

18. Sanctionable benefits are not payable to the offender for any period during the disqualification period¹ but there are special rules for Income Support, Jobseeker's Allowance, State Pension Credit and Employment and Support Allowance.

1 SS Fraud Act (NI) 2001, sec 5B(5); sec 6(2)

19. Where more than one sanctionable benefit is involved none is payable for any period during the disqualification period.

Amount payable – Income Support, income-related Employment and Support Allowance and State Pension Credit

20. The amount of benefit payable to an offender or an offender's family member¹ will be reduced by 40% of a single claimant's personal allowance rate during the disqualification period except that the reduction will be 20% if
1. the offender or a member of the offender's family is pregnant or seriously ill² **or**
 2. in the case of Income Support and income-related Employment and Support Allowance, the offender's applicable amount has been reduced pending the outcome of an appeal against a decision incorporating an incapacity for work determination that they are not incapable of work (whether or not the appeal is successful)³.

1 SS (Loss of Benefit) Regs (NI), reg 3(1)(c); 3A(1)(b); 2 reg 3(1)(a); reg 3A(1)(a); 3 reg 3(1)(b)

Amount payable – Jobseeker’s Allowance

21. Jobseeker’s Allowance is not payable to offenders during the disqualification period¹ but they will have access to hardship applications (see DMG Chapter 35).

1 SS Fraud Act (NI) 2001; sec 5B(4); sec 5B(7); sec 6(2); sec 6(4); SS (Loss of Benefit) Regs (NI), reg 5

Amount payable - Joint-claim Jobseeker’s Allowance - single offender

22. Payment restrictions apply to an offender who is a member of a joint-claim couple during the disqualification period¹. In these cases, unless the couple qualify for hardship, the other member of the couple who is not the offender may receive either

1. contribution-based Jobseeker’s Allowance, if they satisfy the conditions for it **or**
2. income-based Jobseeker’s Allowance at a rate equivalent to a single person’s applicable amount

as long as they are not subject to any labour market sanctions².

1 reg 4; 2 SS Fraud Act (NI) 2001, sec 7(2)

Amount payable - Joint-claim Jobseeker’s Allowance - both offenders

23. No Joint-claim Jobseeker’s Allowance will be payable¹ where both members of the couple would be subject to a sanction for a benefit fraud offence, or one member would be subject to a sanction for a benefit fraud offence and the other is subject to a labour market sanction. But they will have access to hardship applications - see DMG Chapter 35.

1 sec 8(2); sec 8(4); SS (Loss of Benefit) Regs (NI), reg 11

Rounding

24. A reduction under these circumstances shall, if it is¹
1. not a multiple of five pence, be rounded to the nearest such multiple **or**
 2. a multiple of two and half pence but not of five pence, be rounded to the next lower multiple of five pence.

1 SS (Loss of Benefit) Regs (NI), reg 3(3); reg 3A(4)

Changes in rate of benefit payable - Income Support, income-related Employment and Support Allowance and State Pension Credit

25. The rate of benefit payable to an offender, or an offender's family member, may change. In such a case
1. the rules for a reduction in the benefit payable should be applied to the new rate **and**
 2. any adjustment to the reduction will take effect from the first day of the first benefit week to start after the date of change¹.

1 reg 3(5); reg 3A(5)

RIGHT OF APPEAL

26. There is no right of appeal against a decision that a sanctionable benefit is not payable or is to be reduced following convictions for benefit offences where the only ground of appeal is that any of the convictions was wrong or that the offender did not commit the benefit offence in respect of which there has been agreement to pay an administrative penalty or a caution has been accepted¹.

1 SS CS (D&A) Regs (NI), Sch 1 para 25

COURT DECISION SET ASIDE

27. Where a court quashes or sets aside a conviction which has resulted in a decision that a restriction on the payment of benefit was to be imposed that decision may be revised at any time and payments and other adjustments made as if no restriction had been imposed¹.

1 SS Fraud Act (NI) 2001, sec 5C(1); sec 6(7); sec 7(6); sec 8(6); SS CS (D&A) Regs (NI), reg 3(8A)

CHANGES FOLLOWING ADMINISTRATIVE PENALTY AGREEMENT

28. This applies to the offender who may be
1. the claimant, **or**
 2. in the case of a joint-claim Jobseeker's Allowance, any member of a couple, **or**
 3. a family member.
29. Where

1. the offender withdraws their agreement to pay the administrative penalty **or**
2. it is decided that the overpayment to which that agreement relates is not recoverable or due

any decision that a restriction on the payment of benefit was to be imposed may be revised at any time and payments and other adjustments made as if no restriction had been imposed¹.

1 SS Fraud Act (NI) 2001, sec 5C(2); sec 7(7); sec 8(7); SS CS (D&A) Regs (NI), reg 3(8A)

30. If, after the offender has agreed to pay an administrative penalty, the amount of the overpayment to which it relates
 1. is revised on appeal **or**
 2. is revised in accordance with a decision¹

the restrictions imposed following the agreement cease but new restrictions must be considered².

1 SSA 1998; 2 SS Fraud Act (NI) 2001, sec 5C(3); sec 7(8); sec 8(8)

31. If the restrictions cease as in paragraph 30 and there is a new disqualifying event consisting of any person in paragraph 28
 1. agreeing to pay an administrative penalty in relation to the revised overpayment **or**
 2. being cautioned in relation to the offence to which the old agreement relates

the disqualification period relating to the new disqualifying event is reduced by the number of days in the old disqualification period which had expired before the restrictions imposed following the old agreement ceased. In any other case any decision that a restriction on the payment of benefit was to be imposed may be revised at any time and payments and other adjustments made as if no restriction had been imposed¹.

1 SS Fraud Act (NI) 2001, sec 5C(4); sec 7(8); sec 8(8)

DEFINITIONS

Benefit offence

32. Benefit offence¹ means a criminal offence
 1. in connection with a claim for a disqualifying benefit;
 2. in connection with the receipt or payment of a disqualifying benefit;

3. for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence;
4. consisting of an attempt or conspiracy to commit a benefit offence.

1 *sec 5B(13); sec 6(8)*

33. In respect of

1. paragraph 5 it means any criminal offence committed on or after 1.9.11¹ **and**
2. paragraph 8 means any criminal offence committed on or after 1.4.02².

1 *sec 5B(13); 2 sec 6(8)*

Benefit week – Income Support, Jobseeker’s Allowance, Employment and Support Allowance and State Pension Credit

34. Benefit week means the period of seven days beginning on the day on which, in the claimant’s case, Income Support, Jobseeker’s Allowance, Employment and Support Allowance or State Pension Credit is payable¹.

1 *SS (Loss of Benefit) Regs (NI) 2002, reg 3(6); reg 3A(6)*

Cautioned

35. In relation to any person and offence, cautioned means cautioned after the person concerned has admitted the offence; and caution is to be interpreted accordingly¹.

1 *SS Fraud Act (NI) 2001, sec 12*

Conviction

36. Conviction¹ includes

1. a conviction in which the court makes an order for absolute or conditional discharge or a court in Scotland makes a probation order; **or**
2. an order for absolute discharge made by a court of summary jurisdiction in Scotland under certain legislation² without proceeding to a conviction; **or**
3. a conviction in Northern Ireland.

1 *SS Fraud Act (NI) 2001, sec 5C(5)(b); sec 6(9)(b);*
2 *Criminal Procedure (Scotland) Act 1995, sec 246(3)*

37. The date of conviction in any proceedings of a benefit offence¹ is the date on which the person was found guilty of that offence in those proceedings (whenever the person was sentenced) or in the circumstances of paragraph 36 2. the date of the order for absolute discharge.

1 SS Fraud Act (NI) 2001, sec 5C(5)(a); sec 6(9)(a)

Determination day

38. Determination day means the day on which the Department determines that a restriction is applicable under relevant legislation¹ except that in a case where the disqualifying event is an agreement to pay a penalty, the determination day is the 28th day after that day².

1 SS (Loss of Benefit) Regs (NI), reg 1(2); 2 reg 1(2A)

Disqualification period

39. The disqualification period¹ in relation to any disqualifying event means the period of four weeks or 13 weeks beginning with a day falling after the date of the disqualifying event determined in accordance with the SS (Loss of Benefit) Regulations, regs 1A or 2.

1 SS Fraud Act (NI) 2001, sec 5B(11); sec 6(6)

Disqualifying benefit

40. Disqualifying benefit¹ means
1. Jobseeker's Allowance
 2. State Pension Credit
 3. Employment and Support Allowance
 4. any benefit under the SS CB Act 1992 other than Maternity Allowance, Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay and Health in Pregnancy grant
 5. war pension
 6. Housing Benefit and Council Tax Benefit (linked/passported).

1 SS Fraud Act (NI) 2001, sec 5A; SS (Loss of Benefit) Regs (NI), reg 19A

Disqualifying event

41. Disqualifying event¹ means the

1. conviction falling within paragraph 5 **1**.
2. agreement falling within paragraph 5 **2**.
3. caution falling within paragraph 5 **3**.

1 SS Fraud Act (NI) 2001; sec 5B(13)

Family

42. For the loss of benefit provisions, family means¹
1. a couple **or**
 2. a couple and any child or person of a prescribed description who is
 - 2.1 a member of the same household **and**
 - 2.2 the responsibility of either or both members of a couple **or**
 3. person who is not a member of a couple and any child or person of a prescribed description who is
 - 3.1 a member of the same household **and**
 - 3.2 the responsibility of that person.

1 sec 12; SS CB (NI) Act 92, sec 133(1)

Offender

43. Offender means the person who is subject to the restriction in the payment of their benefit¹.

1 SS (Loss of Benefit) Regs (NI), reg 1(2)

Pay day

44. In relation to a sanctionable benefit, pay day means the day on which the benefit is due to be paid¹.

1 reg 1(2)

Administrative penalty

45. Within this guidance administrative penalty means an arrangement, instigated by the Department and with the agreement of the offender, to pay an administrative penalty equal to a percentage of the amount overpaid as an alternative to prosecution¹.

1 SS Fraud Act (NI) 2001, sec 5B(2); SS Admin (NI) Act 1992, sec 109A

Person of a prescribed description

46. A person of a prescribed description for the purposes of the definition of family above is¹ a person
1. who is an additional spouse in the case of a polygamous marriage²
or
 2. aged 16 or over who is in full-time education and is treated as a child for Child Benefit purposes³.

1 SS (Loss of Benefit) Regs (NI), reg 3A(7); 2 reg 3A(7)(a); SPC Act (NI) 02, sec 12(1);

3 SS (Loss of Benefit) Regs (NI), reg 3A(7)(b); C&B (NI) Act, sec 138

Proper notice

47. Within this guidance, proper notice as in paragraph 5 **2.** is that given by the Secretary of State under relevant legislation of a penalty as an alternative to prosecution¹.

1 SS Fraud Act (NI) 2001, sec 5B(2)

ANNOTATIONS

Please annotate the number of this memo (DMG Memo Vol 1/92, 3/82, 4/106, 9/18 & 13/47) against the following DMG paragraphs –

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