

## **Department for Social Development**

### **Social Security Fraud Act (Northern Ireland) 2001**

#### **Summary of responses to the public consultation on the draft Code of Practice on Obtaining Information**

**June 2002**

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# **Social Security Fraud Act (Northern Ireland) 2001: Responses to the public consultation on the draft Code of Practice on Obtaining Information**

## **Summary of responses**

### **1. Introduction**

- 1.1** The Department for Social Development carried out a public consultation exercise on a draft statutory Code of Practice governing the information powers contained in sections 1 and 2 of the Social Security Fraud Act (Northern Ireland) 2001. The consultation commenced on 28 November 2001 and closed on 19 February 2002. During the consultation period awareness sessions and information meetings were held with those likely to be impacted, including potential information providers. This report gives a summary of the responses.

## **2. Background**

**2.1** The Social Security Fraud Act (Northern Ireland) 2001 became law on 15 November 2001. Sections 1 and 2 of the Fraud Act will allow Authorised Officers working for the Department for Social Development and authorities administering Housing Benefit to require information from listed organisations where there are reasonable grounds to suspect that an identified person is involved in a benefit offence. Only officers that have received authorisation, may make requests for information under these powers. Although the authorities administering Housing Benefit have the right to exercise these powers, it is not their intention to use them at present. These authorities refer to Northern Ireland Housing Executive and Rate Collection Agency.

**2.2** Organisations from whom information may be required are set out on the face of the Act. They include banks, building societies, insurance companies, providers of credit such as credit card and hire purchase companies, providers of gas, electricity and telecommunications services, credit reference agencies, educational bodies, the Universities and Colleges Admissions Service (UCAS) and the Student Loans Company.

**2.3** Authorised Officers will be able to obtain information by writing to an organisation. This includes the use of fax and e-mail. They will also be permitted to make arrangements with organisations to obtain on-line access to their databases for example, with credit reference agencies.

**2.4** The Fraud Act makes provision for a statutory Code of Practice to govern the use of the new powers to obtain information from the private sector and some public sector organisations to tackle fraud against the benefit system. The powers cannot be commenced until the Statutory

Code of Practice has been published and laid before the Northern Ireland Assembly.

### **3. Code of Practice**

- 3.1** The Code of Practice sets out the guidelines that Authorised Officers will follow when carrying out their functions under sections 1 and 2 of the Act. It sets out the authorisation procedures for those officers, the types of information that can be requested and the circumstances in which it can be obtained. It also outlines the penalties for misuse of the powers.

## 4. Responses to the Consultation Document

4.1 There were approximately 250 copies of the draft Code of Practice issued. Copies were sent to:

- Potential information providers including:
  - Companies in the financial services sector (including major banks, building societies, and their representative trade bodies)
  - Utilities (including electricity and gas suppliers and their regulatory authorities)
  - Telecommunications providers
- The Information Commissioner;
- Members of the Legislative Assembly;
- The Committee for Social Development;
- Civil liberties groups;
- Welfare rights organisations;
- Representatives of police and law enforcement agencies; and
- Other Government Departments.

4.2 The Department received 19 responses. Details of those who responded to the consultation are included at Annex A.

4.3 The table below shows the sources of responses.

### Sources of responses to the consultation document

TYPE	NUMBER
MLAs	2
Other Government Departments	6
Civil Liberties Organisations and Customer Advocates	4
Possible Information Providers	3
Miscellaneous	4
Assembly Committee	1
<b>TOTAL</b>	<b>19</b>

## **5. Summary of responses**

- 5.1** All responses were acknowledged and we have analysed each and every one carefully.
- 5.2** A number of responses acknowledged the opportunity to comment on the Code of Practice and endorsed the Department's efforts to tackle fraud and error in benefit systems but did not make any comments.
- 5.3** The remainder provided comments on the content of the Code of Practice. These mainly sought amendments to clarify matters or requested the inclusion of matters not initially addressed.
- 5.4** The following summary of responses reflects the broad range of feedback received. For ease of reference we have structured the responses in line with the layout of the Code.

## **Chapter One – Introduction**

### **5.5 Legislation**

One respondent suggested that the location of the provisions of the Social Security Fraud Act (NI) 2001 within the principal powers relating to the claiming, payment and administration of social security benefits was confusing.

### **5.6 Human rights issues**

One respondent suggested that an additional paragraph be included to state the contents of Article 8 of the European Convention on Human Rights and to make an explicit statement of commitment to use the powers consistently with Article 8 (right to respect for private and family life).

## **Chapter Two – What are the powers?**

### **5.7 Reasonable grounds**

One respondent felt that a definition of reasonable grounds should be given.

### **5.8 Types of Information**

It was suggested that a statement should be included to the effect that officers cannot request details of ‘traffic data’ in relation to telecommunications provisions.

### **5.9 Family members**

It was proposed that there should be strict guidance in relation to seeking information about other family members. A procedure should be put in place to assess whether any action taken by the Department will cause hardship for family members and if so measures to mitigate this to be put in place. There were concerns around the impact of disclosure of personal information relating to family members particularly where there may be, for example, domestic violence issues. It was suggested that a policy should be developed in relation to disclosure of information in such circumstances.

### **5.10 Informing customers**

There was a recommendation that the Department should make a commitment to tell anyone about any information it has sought or obtained under the Fraud Act about them unless there is a lawful reason not to do so, such as prejudicing a continuing investigation. In such a case the person should be told when the investigation has been completed.

### **5.11 Information gathering**

A few respondents were concerned about the extent of the information that could be gathered on each individual suspected of benefit fraud. Whilst it may be implicit throughout the draft Code, it may be worthwhile stating explicitly that, in requesting information from the specified information providers, the Authorised Officer will only request the minimum information that is known to be required and that is wholly justified and relevant for investigative purposes.

### **5.12 Process**

A request was made for a clearer explanation of the process of enquiry and the triggers that might instigate an enquiry. It was also proposed that a detailed visual description of the whole process involved from making an enquiry to the destroying of information be included.

### **5.13 Last resort**

It was requested that the Department should confirm that information should only be obtained as a last resort and not used as a standard process for every benefit customer and that other means should not only be considered but actually pursued before consideration is given to undertaking activities under these powers.

## **Chapter Three – Who is authorised to use these powers?**

### **5.14 Authorised Officers**

It was suggested that an ongoing assessment and review of the performance of Authorised Officers should be built into staff supervision and support arrangements. There was also a need identified for some guidance to be provided on the numbers and reviewing of

authorised officers in any given period. There were also concerns that the grades of the Authorised Officer were not sufficiently senior.

### **5.15 Training**

There was a recommendation that appropriate training should be compulsory and include an element on equality issues and the handling and sharing of information on-line.

### **5.16 Use of the Fraud Act**

It was requested that an explanation on the territorial limits of the use of the Fraud Act should be included. This would be to explain that the powers of the Authorised Officers in Northern Ireland to request information can only be exercised within the territorial limit of Northern Ireland.

## **Chapter Four – How should the powers be used?**

### **5.17 Reasonable Grounds**

There were concerns that the list of reasonable grounds was not sufficient and whether the examples provided to illustrate ‘reasonableness’ were consistent and clear.

### **5.18 Monitoring and control of Authorised Officers**

Responses suggested that the decision making process of Authorised Officers should be recorded in a standardised manner and reference to the consideration of reasonable grounds, should be included.

Management checks should be formalised into regular reviews and records of all requests must be kept.

It was also felt that there should be a more explicit statement about the way Authorised Officers would document their decisions to request information. Such documentation would form part of an audit trail that would demonstrate that the test of “reasonableness” had been met.

### **5.19 Compliance with requests**

A few information providers were concerned that organisations might not be able to comply within the 10 days time scale to provide information on request.

### **5.20 Payment**

A proposal was received to include an insertion “that no information will be paid for outside the terms of any resulting agreements and no payments will be made to individuals”.

## **Chapter Five - Safeguards**

### **5.21 Complaints**

One response requested the inclusion of a statement that the Department will recognise that it may sometimes get things wrong, welcomes feedback from its customers and undertakes to do its best to learn from its mistakes and that no-one will be treated less favourably for having made a complaint.

### **5.22 Openness**

It was also suggested that the Department should consider publishing information on usage of the powers, in order that real monitoring and evaluation can take place. Similarly, information on any abuses of the powers by Authorised Officers or others should also be made available.

### **5.23 Assurances**

A proposal was received that in addition to the assurances already provided it should be stated that the information supplied by Information Providers will not be used for purposes other than that for which it was obtained.

### **5.24 Review of Code**

Several responses requested that the Code should be reviewed one year after its initial publication and at least once every three years thereafter.

### **5.25 Disclaimer**

One respondent felt that “the disclaimer” paragraph might appear to undermine the Code in some way, especially when combined with the fact that failure to observe the provision of the Code of Practice does not of itself constitute an offence.

## **6. Conclusion**

**6.1** There were a number of proposed amendments and insertions to the Code with the aim of strengthening the human rights position. Overall the view was that the finalised Code should offer a robust and rigorous framework for the obtaining of information in relation to benefit customers. The Department is currently working on the revision of the Code of Practice taking account of these comments received from the consultation exercise.

## **7. Thanks**

- 7.1** The Department for Social Development would like to thank all those who contributed to the consultation exercise.

## **ANNEXE A**

### **List of respondents to consultation exercise**

Association of Independent Advice Centres  
Department of Enterprise, Trade and Investment  
Department of Environment  
Department of Health, Social Services & Public Safety  
Equality Forum Northern Ireland  
Ian Paisley Jnr B.A. (Hon) M.S.Sc MLA  
Information Commissioner  
North Eastern Education & Library Board  
Northern Ireland Audit Office  
Northern Ireland Bankers Association  
Northern Ireland Housing Executive  
Northern Ireland Human Rights Commission  
Northern Ireland Women's European Platform  
Police Service of Northern Ireland  
Rates Collection Agency  
Sir Reg Empey MLA  
The Committee for Social Development  
The Law Society  
University of Ulster at Coleraine