

<b>Title:</b> Fraud Penalties and Sanctions  <b>Lead department or agency:</b> Department for Work and Pensions  <b>Other departments or agencies:</b> Her Majesty's Revenue and Customs	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b> 23 November 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary Legislation
<b>Contact for enquiries:</b>	

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The government is concerned that the existing provisions for imposing sanctions on benefit claimants where there is benefit fraud are simply too lenient, do not have an appropriate level of consequence for offences and fail to deter repeated benefit fraud adequately. This applies equally to high volumes of claimant error. The annual cost of welfare benefit fraud and error (including Tax Credits) is assessed to be £5.3 billion. The intention is to reduce this monetary loss and to discourage fraud and negligent behaviour within the benefit system.

### What are the policy objectives and the intended effects?

The policy intention is to prevent, deter and increase the consequences of benefit fraud and reduce claimant error, which costs taxpayers money and undermines public confidence in the welfare system. As part of this, the government wants the ability to impose tougher penalties for benefit fraud. This will mean the introduction of a new minimum administrative penalty of £350 for benefit fraud or 50% of the amount overpaid whichever is greater up to a maximum of £2000; increase in the detection rate of attempted fraud; extension of the loss of benefit sanction for 1 to 3 strikes which will mean a loss for 13 weeks, 26 weeks and 3 years and; immediate 3 year loss of benefit for serious organised benefit fraud cases. Hardship payments at a reduced rate will be available for vulnerable groups. Allied to this is the introduction of a new civil penalty of £50 for claimants who are negligent in maintaining their benefit claim in order to encourage and promote personal responsibility for such claims.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

**Do nothing approach** – the current policy does not adequately address the problem, and the current sanction regime needs reviewing and strengthening in light of claimant feedback.

**Financial Penalties** – Higher and lower amounts for the fraud penalty were considered, and the £350 rate was the most appropriate as a middle point between existing administrative penalties of £15 minimum and £600 maximum. It will be offered to claimants, not imposed, and there will be a 14 day cooling off period. If it is refused, the Department may consider prosecution.

**Attempted Fraud** - The Department already has the necessary powers to prosecute claimants who attempt benefit fraud; however, improved /quicker access to intelligence will increase the number of attempted frauds detected, and the new administrative penalty of £350 will apply as an alternative to prosecution for such cases.

**Loss of Benefit Extension** - Longer and different combinations were considered as a way to increase the consequences of fraud. The periods of 13 weeks, 26 weeks and 3 years were determined to be most appropriate to achieve an appropriate strengthening of the sanction regime and consistency of approach with conditionality sanctions under Universal Credit. In recognition of the serious nature of organised attacks a higher 5 year loss of benefit was considered for such cases, but it was limited to 3 years to ensure proportionality and a consistent approach.

**Civil Penalty** – A new penalty will deter errors and place greater emphasis on personal responsibility for errors that could have reasonably been prevented. Different amounts were considered, but a £50 flat rate was determined as an appropriate starting point for benefit claimants to encourage better care of their claim. The option of increasing the civil penalty to £300 to recognise higher value overpayments and mirror existing HMRC compliance penalties was considered but rejected.

### When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed within 3 to 5 years time

### Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes, see Annex 1

## Summary: Analysis and Evidence

Price Base Year 11/12	PV Base Year 11/12	Time Period Years 4	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low:</b>	<b>High:</b>	<b>Best Estimate(NPV): £42m</b>

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Cost</b>	<b>£7.3m</b>	<b>£8.4m</b>	<b>£26m</b>
	-	-	-
<b>Best Estimate</b>	<b>£7.3m</b>	<b>£8.4m</b>	<b>£26m</b>

### Description and scale of key monetised costs by 'main affected groups'

Exchequer costs = £27.7m over 4 years to 2014/15

- Costs will include IT changes to include the £350 fine etc and the civil penalty fines as well as the 2/3 strikes to Jobseeker's Allowance Payment System (JSAPS), Income Support Computer System (ISCS systems), Fraud Referral and Intervention Management System (FRAIMS) Debt and Customer Information System (CIS).
- Includes 11/12 – 13/14 staffing costs to implement the civil penalty.

### Other key non-monetised costs by 'main affected groups'

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Benefit</b>	<b>£12m</b>	<b>£30m</b>	<b>£68m</b>
	-	-	-
<b>Best Estimate (NPV)</b>	<b>-</b>	<b>-</b>	<b>£68m</b>

### Description and scale of key monetised benefits by 'main affected groups'

(1) Claimants who commit a benefit fraud offence and are offered an alternative to prosecution will face a higher financial penalty and will no longer be offered a caution as a method of disposal. Savings of £42m will be realised over the three years to 2014/15.

(2) Claimants who commit a benefit fraud offence that results in a conviction will be subject to extended loss of benefit sanctions. Savings of £11m will be realised over the three years to 2014/15.

(3) Claimants who commit serious organised fraud will now face a longer loss of benefit. Savings of £2m will be realised over the three years to 2014/15.

(4) Claimants who fail to provide information or evidence or those who are negligent (but not fraudulent) with their benefit claim resulting in an overpayment of £65 or more will now face a financial penalty for failing to ensure the correctness of their claim as well as recovery of the overpaid benefit. Savings will be £19m over the three years to 2014/15.

**Other key non-monetised benefits by 'main affected groups'**

The Department expects these measures to create a deterrence factor, but is unable to quantify both on fraud and error cases or those potential fraudsters. This will have an added knock on effect of lower administration costs due to any reduction in the number of fraudulent or erroneous claims made for which we are also unable to provide robust figures.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
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Assumptions:  
 Delivery businesses administer the new rules correctly.  
 Overpayments will be recovered from claimants.  
 As the Civil penalty will be added to the overpayment decision this is unlikely to increase the overall number of appealable decisions issued.  
 The ratio of those who remain on a sanctionable benefit is comparable to present numbers.  
 A higher number of attempted fraud cases will be detected and increase in overall sanctions achieved.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings</b>		<b>In</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>	

**Enforcement, Implementation and Wider Impacts**

<b>What is the geographic coverage of the policy/option?</b>		[UK-actually no-only			
<b>From what date will the policy be implemented?</b>		01/04/2012			
<b>Which organisation(s) will enforce the policy?</b>		Job Centre Plus (JCP);Pensions Disability Carers Service(PDCS);Fraud Investigation Service (FIS); HM Revenue & Customs (HMRC); Local Authorities (LA); Service Pensions And Veterans agency (SPAV).			
<b>What is the annual change in enforcement cost (£m)?</b>		n/a			
<b>Does enforcement comply with Hampton principles?</b>		YES			
<b>Does implementation go beyond minimum EU requirements?</b>		NO			
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>		<b>Traded:</b> N/a	<b>Non-traded:</b> N/a		
<b>Does the proposal have an impact on competition?</b>		No			
<b>What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?</b>		<b>Costs:</b> 100%		<b>Benefits:</b> 100%	
<b>Annual cost (£m) per organisation (excl. Transition) (Constant Price)</b>	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
<b>Are any of these organisations exempt?</b>	n/a	n/a	n/a	n/a	n/a

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties <sup>1</sup>	YES	Separate Publication
<b>Economic impacts</b>		
<b>Competition</b>	NO	n/a
<b>Small firms</b>	NO	n/a
<b>Environmental impacts</b>		
<b>Greenhouse gas assessment</b>	NO	n/a
<b>Wider environmental issues</b>	NO	n/a
<b>Social impacts</b>		
<b>Health and well-being</b>	NO	n/a
<b>Human rights</b>	YES	
<b>Justice system</b>	NO	n/a
<b>Rural proofing</b>	NO	n/a
<b>Sustainable development</b>	NO	n/a

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

# Evidence Base (for summary sheets) – Notes

## References

No.	Legislation or publication
1	“ Tackling fraud and error in the benefit and tax credits systems” , published on 18 <sup>th</sup> October 2010, <a href="http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf">http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf</a>
2	Universal Credit command paper ( <a href="http://dwp.gov.uk/docs/universal-credit-full-document.pdf">http://dwp.gov.uk/docs/universal-credit-full-document.pdf</a> )Universal Credit White Paper published on 11 November 2010 chapter 5 covers fraud and error.

## Evidence Base

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	2010/11	2011/12	2012/13	2013/14	2014/15
<b>Transition costs</b>	-	1.2	6.1	-	-
<b>Annual recurring cost</b>	-	0.2	3.4	8.4	8.4
<b>Total annual costs</b>	-	1.4	9.5	8.4	8.4
<b>Transition benefits</b>	-	-	-	-	-
<b>Annual recurring</b>	-	-	12	29	32
<b>Total annual benefits</b>	-	-	12	29	32

\* For non-monetised benefits please see summary pages and main evidence base section

## Evidence Base

### Policy Rationale

#### What is the current policy?

1. DWP has a comprehensive and successful strategy for tackling benefit fraud based on preventing, detecting and deterring fraud.
2. DWP has an extensive criminal sanction regime to deter claimants from committing benefit fraud. This includes recovery of fraud overpayments at a higher rate from benefit, formal cautions<sup>2</sup>, administrative penalties<sup>3</sup>, prosecution, restraint/confiscation of assets obtained from the proceeds of crime and loss/reduction of certain benefits for a first offence (“one strike”) and a second conviction for a benefit fraud offence (“two strikes”).
3. DWP has an existing error strategy and does correct claimant errors and recover overpayments. However, there is no current provision allowing a civil penalty to be imposed where the claimant has been negligent in their dealings with the Department.

#### What is the change in policy?

4. The proposed policy change is to increase the consequences of benefit fraud. This will mean an amended administrative fraud penalty regime that will introduce a £350 minimum financial penalty for benefit fraud with a maximum of £2,000; retaining the 4 week loss of benefit for such cases; widening the penalties for attempted fraud; extending the current loss of benefit sanction for 1 to 3 strikes to introduce a loss for 13 weeks, 26 weeks and 3 years, and; introducing an immediate 3 year loss of benefit for serious organised benefit fraud cases. Cautions will no longer be part of the DWP sanctions policy.
5. This would mean that in all cases where there is sufficient evidence that benefit fraud had been committed to commence a prosecution there would be:
  - Recovery of the overpayment
  - An offer of a fraud penalty (£350 or 50% up to £2000)
  - A four week loss of benefit.

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<sup>2</sup> A formal caution is an administrative sanction that the Department in England and Wales is able to offer as an alternative to a prosecution as long as specific criteria are met, and the case is one the Department could take to court if the caution was refused.

In Scotland cautions are known as administrative cautions and cannot be cited in court, but may be referred to in reports to the procurator fiscal for consideration of prosecution of any subsequent offence.

<sup>3</sup> An administrative penalty is the offer to the claimant to agree to pay a financial penalty where the claimant has caused benefit to be overpaid to them, by either an act or omission. The amount of the penalty is currently stipulated at 30 per cent of the amount of the gross overpayment.

6. Where there is a conviction for benefit fraud there would be:
  - Recovery of the overpayment
  - A 13 week, 26 week or 3 year loss of benefit (the period applied will depend on any previous benefit fraud offences). In the case of serious organised fraud it will be an immediate 3 year loss of benefit
  - Where appropriate recovery of assets under POCA.

Hardship payments at a reduced rate are available for vulnerable groups

7. For cases of claimant error where the claimant has negligently supplied incorrect information or statements without taking reasonable steps to correct the error or fails (other than fraudulently) to provide information or evidence, resulting in an overpayment, there will be:
  - Recovery of the overpayment
  - A new civil penalty of £50
  - A right of appeal against the civil penalty.

## **Reason for change in policy?**

### **Policy Objective**

8. The new policy is being introduced to strengthen the deterrents and to increase the consequences of fraud compared with the current criminal sanction. It introduces a new civil penalty for those who are negligent in maintaining their benefit claim to increase the importance of personal responsibility.

### **Rationale for Intervention**

9. Current DWP fraud and error overpayments are estimated from national statistics to be £3.3bn, (£5.3bn if Tax Credits included). DWP has a fiscal responsibility to reduce this loss and cost to the tax payer and considers that it is right that the consequences for those who choose to steal from it should be appropriately severe. The current policy is seen as too weak in its impact on offenders who are sanctioned or convicted of benefit fraud. This change will strengthen the penalties and sanctions available to deter the opportunist and significantly increase consequences for more determined, repeated or organised attempts.
10. Introduction of a minimum financial penalty for fraud cases ensures that all benefit fraud offenders receive an appropriate level of financial punishment as an alternative to prosecution.
11. Increasing the length of the periods of the loss of benefit is consistent with the changes proposed under Universal Credit for conditionality sanctions. It is important that benefit fraud sanctions continue to be equal to or tougher than labour market sanctions.

12. For organised fraud cases a tougher loss of benefit sanction is considered appropriate given the serious nature of the criminal behaviour involved.
13. DWP wants to reduce the financial loss from claimant error and achieve greater claimant compliance. It is a claimant's responsibility to make sure that the information held by the Department is correct and up to date at all times and what they tell us is truthful. Where a claimant has failed to do this, DWP will impose a civil penalty, similar to the existing Tax Credits Civil Penalty regime (and in readiness for the advent of Universal Credit and transfer of tax credit claimants), for those who fail to comply.

## **Estimating Costs and Benefits**

14. Table 1 below shows the Savings and Costs to the Exchequer for fraud and error measures:

- 3 year loss of benefit for organised fraud,
- Longer 1-3 strike loss of benefit sanction,
- Financial Penalty: £350 minimum fine for existing administration penalties or caution cases and 30% to 50% administration penalties,
- Increased sanction or prosecution for attempted fraud,
- £50 civil penalty in certain cases of claimant error.

### **Sources:**

15. A combination of Fraud Investigation Service/Debt management statistics were used to estimate volumes and values of administration penalties, cautions & prosecutions and claimant error cases.

16. Assumptions:

- Information from Debt management and the Fraud and Error Strategy Division were used to determine average amounts of penalties imposed and values of overpayments.
- The application of the fraud sanctions on Local Authority benefits would have the same impact as that on DWP benefits. The impact on Tax Credits has not been included in these costings.
- New fines for claimants that, for example, fail to report changes and transgress into overpayment have an additional penalty added onto their benefit.
- A de minimis value of overpayment of £65 will be applied when considering the imposition of the £50 civil penalty.

**Table 1: Breakdown of Costs & Savings to the Exchequer from individual fraud and error measures (constant prices)**

		2011/12	2012/13	2013/14	2014/15	Total
<b>Costs</b>		<b>£1.4m</b>	<b>£9.5m</b>	<b>£8.4m</b>	<b>£8.4m</b>	<b>£27.7m</b>
Organised and Attempted fraud	Savings	£m	£m	£1m	£1m	<b>£2m</b>
Civil penalty £50	Savings	£m	£2m	£8m	£9m	<b>£19m</b>
Longer 1-3 strike loss of benefit sanction	Savings	£m	£2m	£4m	£5m	<b>£11m</b>
Financial Penalty : £350 minimum fine for existing administration penalties or caution cases and 50% administration penalties	Savings	£m	£8m	£16m	£18m	<b>£42m</b>
<b>Grand savings total</b>	Total Savings	<b>£m</b>	<b>£12m</b>	<b>£29m</b>	<b>£32m</b>	<b>£73m</b>
	<b>Net Savings</b>	<b>-£1m</b>	<b>£3m</b>	<b>£21m</b>	<b>£24m</b>	<b>£45m</b>

17. The wider social benefits of the new regimes would include:

- Compliance with benefit conditions by encouraging personal responsibility and deterring criminal behaviour
- Increased public perception that benefit fraud and error is taken seriously by the Department.

## Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b></p> <p>The impact of the policy changes will be reviewed and monitored regularly. All analysis in the review will be subject to the ongoing availability of the underlying datasets for benefits administered by DWP.</p>
<p><b>Review objective:</b></p> <p>To assess whether the policy changes to fraud sanctions and the new civil penalty for claimant error meets the broad objectives set out in the Impact Assessment, and also the scale of the potential knock on impacts e.g. reductions in the level of fraud and error.</p>
<p><b>Review approach and rationale:</b></p> <p>A mixture of approaches will be used including:</p> <ol style="list-style-type: none"><li>1) Analysis of internal administrative datasets such as FRAIMS which holds information on detected overpayments.</li><li>2) Any management information collected and secondary analysis to supplement this.</li></ol>
<p><b>Baseline:</b></p> <p>Projected trends in fraud sanctions; volumes of overpayments as a result of claimant error, levels of expenditure as a result of loss of benefit.</p>
<p><b>Success criteria:</b></p> <p>Criteria will include indicators such as benefit expenditure, trends on levels of fraud and claimant error.</p>
<p><b>Monitoring information arrangements:</b></p> <p>Where possible, Business operational units will be the main source of information for the application of a fraud financial penalty; loss of benefit sanction and the civil penalty.</p>
<p><b>Reasons for not planning a PIR:</b></p> <p>Not applicable</p>