Title: Fraud Penalties and Sanctions **Lead department or agency:** Department for Work and Pensions **Other departments or agencies:** Her Majesty's Revenue and Customs Pensions, Disability and Carer Service	**Impact Assessment (IA)** **IA No:** **Date:** 16 February 2011 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary Legislation **Contact for enquiries:**

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 and neither punish wrong-doing sufficiently, nor deter repeated benefit fraud adequately. This applies equally to high volumes of customer error. The annual cost of welfare benefit fraud and error (including Tax credits) is assessed to be £5.2 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 punish benefit fraud, which costs innocent taxpayers money and undermines public confidence in the welfare system. As part of this the government wants the ability to impose tougher punishments in cases of 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 the number punished for 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. Immediate 3 year loss of benefit for serious organised benefit fraud cases. Hardship payments at a reduced rate will be available for vulnerable groups. A new civil penalty of £50 for customers who are negligent in maintaining their benefit claim to encourage personal responsibility.

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

Do nothing approach – not considered that the current policy adequately addressed the problem and that the current sanctions needed reviewing and toughening in light of customer feedback conducted at the time of benefit fraud campaigns.
Financial Penalties – Higher and lower amounts of fraud penalty considered, the £350 rate was the mid point between existing administrative penalty of £15 min and £600 max. It will be offered not imposed and there will be a 14 day cooling off period attached, if refused the Department may consider prosecution.
Attempted Fraud - The Department already has the necessary powers to prosecute customers 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 considered as a way to toughen the punishments, the periods of 13; 26 and 3 years were determined most appropriate to achieve an appropriate toughening of the sanction and a 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 limited to 3 years to ensure proportionality and a consistent approach.
Civil Penalty - introduced to deter errors and place greater emphasis on personal responsibility for errors that could have reasonably been prevented. Different amounts considered, but £50 rate was determined as appropriate starting point for the majority of benefit customers to encourage better care of their claim, with the option of increasing the civil penalty to up to £300 to recognise higher value overpayments and mirror existing HMRC compliance penalties.

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 in 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 10/11	PV Base Year 10/11	Time Period Years 4	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate(NPV): £107.0m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Cost	£4.4m		–	£5.4m
	–		–	–
Best Estimate	£4.4m		–	£5.4m

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

Exchequer costs = £5.5m over 4 years to 2014/15 ie £350 and £50 penalties and 30% to 50% increase of penalty calculations (but capped to max of £2000 limit).

- Of which, most of the 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).

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Benefit	–		–	£112.4m
	–		–	–
Best Estimate (NPV)	–		–	£112.4m

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

(1) Benefit fraudsters 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 which will be realised are £47.9m over the four years to 2014/15.

(2) Benefit Fraudsters who commit a benefit fraud offence that results in a conviction or an administrative penalty will be subject to extended loss of benefit sanctions. Savings which will be realised are £11.1m over the four years to 2014/15.

(3) Benefit Fraudsters who commit serious organised fraud will now face a longer loss of benefit. Savings which will be realised are £2.1m over the four years to 2014/15.

(4) Customers that fail to report or are negligent (but not fraudulent) with their benefit claim 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 £60.8m over the 4 years to 2014/15.

The main savings will come from the

- Loss of Benefits Extension, with a reduction in benefit payments = £11.1m over 4 years to 2014/15 , derived from longer and tougher sanction periods applied where benefit payment is either withdrawn completely or income related benefits reduced/hardship provision applied.

Savings from other policy options will be extra savings as a result of financial and civil penalties.

Other key non-monetised benefits by 'main affected groups' Deterrence factor but unable to quantify both on fraud and error cases or those potential fraudsters. Known but unquantifiable effect of deterring benefit fraud and reducing customer error with an added knock on effect of lower administration costs due to any reduction in the number of fraudulent or erroneous claims made which is 'challenging' to estimate robustly.

Key assumptions/sensitivities/risks	**Discount rate**	3.5%
Assumptions: Delivery businesses administer the new rules Monies will be recovered from customers Civil penalty appeals will be low in number Ratio of those who remain on a sanctionable benefit is comparable to present numbers Higher number of attempted fraud cases detected and increase in overall sanctions achieved		

Impact on admin burden (AB) (£m):			**Impact on policy cost savings**	**In**
New AB:	**AB savings:**	**Net:**	**Policy cost savings:**	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			**UK**		
From what date will the policy be implemented?			**01/04/2012**		
Which organisation(s) will enforce the policy?			**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).**		
What is the annual change in enforcement cost (£m)?			**n/a**		
Does enforcement comply with Hampton principles?			**YES**		
Does implementation go beyond minimum EU requirements?			**NO**		
What is the CO_2 equivalent change in greenhouse gas emissions? **(Million tonnes CO_2 equivalent)**			**Traded:** N/a		**Non-traded:** N/a
Does the proposal have an impact on competition?			**No**		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 100%		**Benefits:** 100%
Annual cost (£m) per organisation **(excl. Transition) (Constant Price)**	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	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[1]	**YES**	**Separate Publication**
Economic impacts		
Competition	**NO**	**n/a**
Small firms	**NO**	**n/a**
Environmental impacts		
Greenhouse gas assessment	**NO**	**n/a**
Wider environmental issues	**NO**	**n/a**
Social impacts		
Health and well-being	**NO**	**n/a**
Human rights	**YES**	
Justice system	**NO**	**n/a**
Rural proofing	**NO**	**n/a**
Sustainable development	**NO**	**n/a**

[1] 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 18th October 2010, http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf
2	Universal Credit command paper (http://dwp.gov.uk/docs/universal-credit-full-document.pdf)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
Transition costs		4.4	-	-	-
Annual recurring cost		-	0.4	0.4	0.4
Total annual costs		4.4	0.4	0.4	0.4
Transition benefits		-		-	-
Annual recurring		-	17.1	41.7	63.2
Total annual benefits		-	17.1	41.7	63.2

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

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 customers from committing benefit fraud. This includes recovery of fraud overpayments at a higher rate from benefit, formal cautions[2], administrative penalties[3], 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 customer errors and recover overpayments however there is no existing civil penalty incurred where the customer has been negligent in their dealings with the Department.

What is the change in policy?

4. The proposed policy change is to introduce tougher punishments in cases 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; widen the punishments available 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. Introduce 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

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 will be available for vulnerable groups.

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[2] 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.
[3] An administrative penalty is the offer to the customer to agree to pay a financial penalty where the customer 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.

7. For cases of customer error where the customer has been negligent or failed to report changes of circumstances:
   - Recovery of the overpayment
   - A new civil penalty of £50 imposed for customers who are negligent in maintaining their benefit claim.
   - 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 punishments that currently exist in the Department's criminal sanction regime to deter more people from committing benefit fraud in the first place. It introduces a new civil penalty for those who are negligent in maintaining their benefit claim and increase their personal responsibility.

Rationale for Intervention

9. Current DWP fraud and error overpayments are estimated from national statistics to be £3.1bn, (£5.2bn if TCs included). The Department has a fiscal responsibility to reduce this loss and cost to the tax payer and considers that it is right that it should punish those offenders severely who choose to steal from it. 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 punishments and sanctions available to deter the opportunist and significantly toughen the punishment for those whose attempts are more determined/repeated or organised.

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. The Department wants to reduce the financial loss from customer error and achieve greater customer compliance. It is a customer'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 customer has failed to do this the Department 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 customer error.

Sources:

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

- An assumption was made that Local Authority benefits would have the same impact on application of the fraud sanctions as would DWP benefits. Impact on Tax credits has not been included in these costings.

- Fine for low level fraud or customer error -This assumes that a new fine for customers that for example fail to report changes and transgress into overpayment have an additional penalty added onto their benefit. This assumes a de minimus value of £15 or above for those who should receive a civil penalty, added to the civil penalty to make the overall amount recoverable £65 and over.

- The volume of sanctions is assumed to grow in line with the extra staff and assumptions under the Single Fraud Intelligence Service and Central Risk and Intelligence.

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
	Costs	**£4.4m**	**£0.4m**	**£0.4m**	**£0.4m**	**£5.5m**
Organised and Attempted fraud	Savings	**£0.0m**	**£0.3m**	**£0.7m**	**£1.1m**	**£2.1m**
Civil penalty £50	Savings	**£0.0m**	**£9.0m**	**£21.2m**	**£30.5m**	**£60.8m**
Longer 1-3 strike loss of benefit sanction	Savings	**£0.0m**	**£1.6m**	**£3.8m**	**£5.8m**	**£11.1m**
Financial Penalty : £350 minimum fine for existing administration penalties or caution cases and 50% admistration penalties	Savings	**£0.0m**	**£6.2m**	**£15.9m**	**£25.8m**	**£47.9m**
Grand total	Total Savings	**£0.0m**	**£17.1m**	**£41.7m**	**£63.2m**	**£121.9m**
	Net Savings	**-£4.4m**	**£16.7m**	**£41.3m**	**£62.8m**	**£116.4m**

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.

Basis of the review: 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.
Review objective: To assess whether the policy changes to fraud sanctions and the new civil penalty for customer 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.
Review approach and rationale: A mixture of approaches will be used including: 1) Analysis of internal administrative datasets such as FRAIMS which holds information on detected overpayments. 2) Any management information collected and secondary analysis to supplement this.
Baseline: Projected trends in fraud sanctions; volumes of overpayments as a result of customer error, levels of expenditure as a result of loss of benefit.
Success criteria: Criteria will include indicators such as benefit expenditure, trends on levels of fraud and customer error.
Monitoring information arrangements: 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.
Reasons for not planning a PIR: Not applicable