



Isle of Man
Government

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Social Security

Obtaining information from employers, contractors, the self-employed, pension schemes, licensing authorities and landlords

A guide to the powers of Inspectors, and their limitations

The Treasury
Yn Tashtey

Introduction

1. This Code of Practice explains the powers that persons appointed as Inspectors by the Treasury (called "Inspectors" in this guide) have, the extent of those powers, and the responsibilities and rights of those from whom Inspectors may seek information, as defined in the legislation. Inspectors should undertake their enquiries in accordance with this Code of Practice at all times.
2. Inspectors should issue this Code of Practice, on request, to people from whom they require information, under sections 109B(1) (which allows an Inspector to make written enquiries), or 109C (which allows an Inspector to visit premises to obtain information), of the Social Security Administration Act 1992 as it has effect in the Island (called "the Administration Act" in this guide). It explains the powers of the Treasury and therefore assists Inspectors in their enquiries. It should be carried by Inspectors visiting employment premises, and made available in the Treasury's social security offices to members of the public who wish to consult it. It is also available on the Treasury's social security website. An Information Leaflet should always be issued with written enquiries and on visits as it draws attention to the existence and availability of the Code of Practice.
3. The obligation to provide information is now detailed in section 109B(3) of the Administration Act.
4. These powers are only for use in relation to enquiries for the purposes described in section 109A(2) – (paragraph 9 below), from specific people/organisations, as defined in section 109B(2) – (paragraph 12 below) and to question any person who they find on the premises visited.
5. Inspectors operating under this Code of Practice are not permitted to use the information-gathering powers for use in relation to enquiries from other organisations that are listed in the Administration Act, as amended by the Social Security Fraud Act 2001 as it has effect in the Island.

Inspectors

6. Under section 109A, the Treasury may authorise any of its Inspectors to exercise section 109B(1) and 109C powers.
7. Inspectors are required to act reasonably in seeking information from individuals and organisations that hold information necessary to the Treasury's Social Security Division. This means that they must act in an appropriate way given the circumstances of the case, and any representations that may be made during their enquiries. Any actions taken by Inspectors should be ones that would stand up to the scrutiny of a Court, or other independent body.

8. If the course of action undertaken, or proposed, by the Inspector was not considered to be reasonable it should be raised at once with the Inspector. If this does not satisfy the concerns raised the complaints procedure set out in this Code can be applied.

What these powers are used for

9. Inspectors use section 109B(1) and 109C to obtain information from certain people, under 109A(2), to:
 - Establish if benefit is, or was, correctly payable in an individual case;
 - Investigate the circumstances of accidents, or injuries or diseases that give rise to claims for Industrial Injuries benefit or other relevant social security benefits;
 - Establish whether the provisions of the relevant Social Security legislation have been, are being, or are likely to be, contravened, whether by a particular person or more generally; and
 - Prevent, detect and secure evidence of benefit offences being committed.
10. An Inspector can ask for information about individual named persons or, in certain circumstances, the names and other details of the whole workforce. Requests for information can be made in writing or in the course of a visit. This also applies to premises owned, or occupied, by the Isle of Man Government, and anyone employed by, or in the service of the Isle of Man Government (for example, Prisons, Hospitals, etc).
11. The following are examples of the types of information that Inspectors might request:
 - Names of employees;
 - Wage details;
 - Period of employment;
 - Conditioned hours;
 - Terms of employment (for example, whether an employee, sub-contractor or self-employed);
 - Bank details (for example, whether wages are paid into a bank, and its location);
 - Staff/payroll number;
 - National Insurance number;
 - Home address;
 - Date of birth;
 - Details of goods supplied for personal sale;
 - Details concerning licences granted; and
 - Details and rates of pension payments; and
 - Information about the occupancy or tenancy of rented accommodation by tenants and persons occupying premises under licence.

This list is not exhaustive and there will be circumstances in which Inspectors will seek information not specifically listed here, which is relevant to their enquiries, and determined by the circumstances of the investigation.

Written requests for information

12. Section 109B(1) allows an Inspector to write to any of the persons defined in section 109B(2), requiring them to provide information. These people are:
 - Any person who is or has been an employer or employee;
 - Any person who is or has been a self-employed earner;
 - Any person who, under existing legislation, is treated as an employer, employee, or self-employed earner;
 - 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 (for example, catalogue companies);
 - 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;
 - Any person who is carrying on, or has carried on, an agency or other business for the introduction or supply, to others, of persons available to do work or to perform services (for example, employment agencies);
 - Any Local Authority acting in their capacity as an authority responsible for the granting of any licence (for example, in relation to market traders);
 - Any person who is or has been a trustee or manager of a personal or occupational pension scheme;
 - Any person who is or has been liable to make a compensation payment or a payment to the Treasury under section 6 of the Social Security (Recovery of Benefits) Act 1997 as it has effect in the Island (payments in respect of recoverable benefits);
 - Any landlord, including a person granting a licence to another person to occupy premises; and
 - The servants and agents of any person as described above.

13. An Inspector will only write to any of those persons defined above for information if they have reasonable grounds to suspect that benefit fraud is being, or has been, committed. They will provide a written notice that sets out:
 - Who they are;
 - Their address;
 - What information they need;
 - The format in which they would like the information provided; and
 - When they would like the information by.

14. They may ask for original documents, photocopies of documents or extracts of documents (for example, computer printouts, etc.) to be produced. However, they will only request the information they need and will take account of the burden this would place on the business, as well as their own needs.

The legal duty to provide information required under a written notice

15. If an Inspector writes to ask for information recipients are legally obliged, under section 109B(3) of the Administration Act, to provide it, in the form it has been requested and within the time specified.
16. If a recipient of such a request has difficulty meeting any part of a request for information, they may contact the Inspector to explain why, and make alternative arrangements for the provision of the information.
17. The legal duty to provide information is not discharged until the requested information has been received.

Verbal requests for information by visit

18. Under section 109C, an Inspector may seek entry to any premises (including a home) where there are reasonable grounds for suspecting that a business or trade is being carried out. They are also allowed to enter any premises (including a home) where there are reasonable grounds for suspecting that documents relating to a trade or business are kept.
19. An Inspector may also seek entry to any premises:
 - from which a personal or occupational pension scheme is being administered or where documents relating to the administration or such a scheme are being kept; and
 - where a person or someone acting on their behalf, who has paid compensation in relation to an accident, injury or disease is to be found; or
 - which a person is understood to be occupying under a contract of tenancy or a licence to occupy premises.
20. Requests to enter such premises will only be made where the Inspector has reasonable grounds to believe that benefit fraud is being or has been committed by one or more persons.
21. When visiting premises, the Inspector will state who they are and will show their certificate of authorisation and identity card.
22. The authorisation allows the Inspector to be accompanied by any other person or persons they think fit to accompany them, for the purpose of their visit. If other persons are accompanying the Inspector, they will be identified, and will carry identification, which will be presented for inspection.
23. Generally, Inspectors will give advance notice of their intention to visit. In certain circumstances this is not always appropriate, and visits may be made without prior notification.

24. Inspectors, and those accompanying them, will only enter premises, and remain, with consent (that is, from the owner, the occupier, or their representative). They will never try to force an entry – they have no legal powers to do so. If, after entry has been granted, the Inspectors are asked to leave before they have completed their enquiries, they will do so. However, where an Inspector considers that such action has been taken to obstruct their enquiries or to conceal evidence, they will consider criminal proceedings.
25. Under section 111 of the Administration Act, it is an offence to intentionally delay or obstruct Inspectors in the exercise of their powers under this Act (see paragraphs 30 to 35).
26. When visiting premises, an Inspector and any person accompanying them, may inspect the premises and question, with the consent of the owner, occupier, or their representative, anyone they find there. They do not have the power to detain people.
27. The Inspector may require anyone on the premises to produce documents, make photocopies of documents or extracts of documents, or to create computer or other printouts. An Inspector will only seek access to records that are considered to be connected with payments and employment details, of employees, sub-contractors, recipients of commission payments, etc.
28. If absolutely necessary (for example, because there is not a photocopier available), the Inspector may lawfully remove documents from the premises visited. The Inspector will explain why this is necessary. Any original documents that are removed will be returned as soon as possible. A receipt will be given for any documents that need to be removed temporarily.
29. Documents will not be seized and removed by force. They will only be removed with consent.

The statutory duty to provide information

30. No one is required to provide any information (whether documentary or otherwise) that tends to incriminate them, or if they are married/civil partners, their spouse or civil partner.
31. Otherwise, when a request by an Inspector is made, whether in writing or verbally and in person, there is a statutory duty to provide that information, including any documentation that is requested.
32. Under section 111 of the Administration Act, it is an offence to:
 - Intentionally delay or obstruct Inspectors in the exercise of their powers; or
 - Refuse, or neglect, to:
 - Answer any questions;
 - Furnish any information;
 - Produce any documents,

when required to do so by an Inspector.

An initial refusal to provide information (including the withdrawal of consent to remain on premises to undertake enquiries – see paragraph 24) will not be considered as intentional delay or obstruction, where the refusal is given in order to seek independent advice (see paragraph 38) before responding. It should be noted that obstruction includes circumstances where false or inaccurate information is provided in response to enquiries.

33. The Data Protection Act 2002 will not be contravened by providing the information requested by Inspectors. Under section 31(1) of the Data Protection Act 2002 exemption from the non-disclosure provisions exists where a statutory provision, such as section 109B(1) or 109C of the Administration Act, requires the supply of information.
34. **Failure to meet in full requests for information could result in criminal proceedings being instigated. The maximum penalty is a fine, with a continuing penalty of £40 per day (under section 111(2) of the Administration Act).**
35. **If information is not provided the Inspector should explain the Treasury powers under sections 109B(1) and 109B(2) and 109C(3) of the Administration Act, and the potential consequences of non-compliance.**

At the end of Treasury enquiries

36. Where an Inspector has made enquiries, and obtained information, notification of any further action, that is being taken in relation to the employer, will be made as soon as possible. When the enquiry has been concluded notification of that action will also be made.

Complaints

37. If you have grounds for any complaint about how Inspectors have used their powers under sections 109B(1) and 109C of the Administration Act, or the reasonableness of their actions, when obtaining information, please write to:

The Treasury
Social Security Division
Markwell House
Market Street
Douglas
Isle of Man
IM1 2RZ

or email: socialsecuritycomments@gov.im.

38. Independent legal advice may be sought at any time. The local Citizens Advice Service can assist in deciding whom to contact. Their locations and telephone numbers can be found in the telephone directory.

Disclaimer

Please note this Code of Practice gives general guidance only and should not be regarded as a complete and authoritative statement of the law. If you do not understand any of the contents of the Code you may wish to seek independent advice.



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