

*Draft order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994 for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2002 No.**

**CONTRACTING OUT  
SOCIAL SECURITY**

**The Contracting Out (Functions of Local  
Authorities: Income-Related Benefits) Order 2002**

*Made* - - - -

*Coming into force* - -

Whereas the Secretary of State for Work and Pensions has consulted in the case of local authorities in England and Wales such representatives of local government and, in the case of local authorities in Scotland such associations of local authorities as he considers appropriate, pursuant to section 70(3) of the Deregulation and Contracting Out Act 1994<sup>(1)</sup>;

And whereas a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 77(2) of that Act;

Now therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 69, 70(2) and (4) and 77(1) of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Contracting Out (Functions of Local Authorities: Income-Related Benefits) Order 2002 and shall come into force on the seventh day after the day on which it is made.

**Interpretation**

2. In this Order—

“the Administration Act” means the Social Security Administration Act 1992<sup>(2)</sup>;

“the Benefits Act” means the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>;

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(1) 1994 c. 40.  
(2) 1992 c. 5.  
(3) 1992 c. 4.

“council tax benefit” means the benefit to which section 123(1)(e) of the Benefits Act refers<sup>(4)</sup>; “decisions on claims” means any decisions in relation to those benefits or payments referred to in article 3(1) that fall to be made under or by virtue of—

- (a) the Administration Act;
- (b) the Benefits Act;
- (c) section 34 of the Social Security Act 1998<sup>(5)</sup>; and
- (d) the Child Support, Pensions and Social Security Act 2000<sup>(6)</sup>

and any Regulations and Orders made under those provisions for the time being in force and, for the purposes of this Order, references to decisions include references to any determinations embodied in, or necessary to, a decision;

“discretionary housing payment” means any payment made by virtue of regulations under section 69 of the Child Support, Pensions and Social Security Act 2000;

“housing benefit” means the benefit to which section 123(1)(d) of the Benefits Act refers;

“local authority” means a billing authority, housing authority or local authority as they are defined in section 191 of the Administration Act<sup>(7)</sup>;

“subsidy” means rent rebate subsidy, rent allowance subsidy or council tax benefit subsidy as referred to in section 140A(2)<sup>(8)</sup> of the Administration Act or any grant made under section 70 of the Child Support, Pensions and Social Security Act 2000 (grants towards costs of discretionary housing payments).

### Functions which may be contracted out

**3.—**(1) In so far as it is not already lawful for functions of a local authority in relation to council tax benefit, discretionary housing payments and housing benefit under the provisions of—

- (a) the Benefits Act,
- (b) the Administration Act,
- (c) section 34 of the Social Security Act 1998, and
- (d) the Child Support, Pensions and Social Security Act 2000,

and any Regulations and Orders made under those provisions for the time being in force, to be exercised by, or by employees of, such a person (if any) authorised to do so by that authority, any such function of an authority under those provisions (not being a function excluded from section 70 of the Deregulation and Contracting Out Act 1994 by section 71(1) of that Act), other than a function specified in paragraph (2), may, if and in so far as that authority may authorise, be so exercised.

(2) The functions referred to in paragraph (1) are—

- (a) any function relating to the claiming and receipt of subsidy;
- (b) the issue of a certificate under section 116(3)(b) of the Administration Act (as to the date on which evidence sufficient to justify prosecution came to the local authority’s knowledge);

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(4) Section 123(1)(e) with respect to council tax benefit was substituted by the Local Government Finance Act 1992 (c. 14).  
 (5) 1998 c. 14. Section 34(4) and 34(5) were repealed for all purposes, except those specified in article 2(3) of S.I.2001/1252, by section 85 of the Child Support, Pensions and Social Security Act 2000 (c. 19).  
 (6) 2000 c. 19.  
 (7) The definition of “billing authority” was inserted by paragraph 25 of Schedule 9 to the Local Government Finance Act 1992 and the definition of “local authority” was amended by paragraph 94 of Schedule 16 to the Local Government (Wales) Act 1994 (c. 19) and by paragraph 175(5)(b) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).  
 (8) Section 140A was inserted by paragraph 4 of Schedule 12 to the Housing Act 1996 (c. 52).

- (c) the grant or withdrawal of authorisations under section 110A(3) to (7)(9) of the Administration Act (to exercise the powers of inspection);
- (d) the function of requiring a person to enter into arrangements under section 110AA(10) of the Administration Act (to allow access to electronic records); and
- (e) any function under sections 139D to 139H of the Administration Act(11) (directions by the Secretary of State).

### **Checking requirement attaching to the exercise of functions**

4.—(1) Subject to paragraph (5) an authorisation given under this Order in relation to any function involving decisions on claims shall include the checking requirement specified in paragraph (2), and the authorisation shall be subject to the inclusion of that requirement.

(2) The checking requirement shall require the authorised person to—

- (a) provide a random sample of decisions on claims made on a day, of not less than 10 per cent. of those decisions, to the local authority for checking within two working days of that day;
- (b) take all reasonable steps to prevent errors identified by the local authority from recurring.

(3) When providing a random sample for the purposes of paragraph (2)(a) above, the authorised person shall use such method of random selection as may be specified by the local authority in the authorisation or, where no such method has been specified, the authorised person shall notify the local authority of the method of random selection that has been used.

(4) When taking reasonable steps to prevent identified errors from recurring for the purposes of paragraph (2)(b) above, the authorised person shall take such steps to prevent that error from recurring as may be required by the local authority.

(5) An authorised person shall be subject to the checking requirement only if he employs at least one other person to carry out the work in relation to the exercise of any function involving decisions on claims.

(6) For the purposes of this article “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(12) in any part of the United Kingdom.

### **Extent of an authorisation**

5.—(1) An authorisation given under this Order in relation to any function involving decisions on claims shall not extend to any decisions on any claims where the authorised person—

- (a) is a person to whom rent is payable for a dwelling in respect of which the claim is made; or
- (b) may otherwise be affected financially by reason of a payment of housing benefit under that claim.

(2) An authorisation given under this Order in relation to any function involving decisions on claims shall not extend to a decision made by an employee of an authorised person on any claim where that employee—

- (a) is a person to whom rent is payable for a dwelling in respect of which that claim is made; or
- (b) may otherwise be affected financially by reason of a payment of housing benefit under that claim.

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(9) Section 110A was amended by section 69 of, and Schedule 6 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) and by section 1 of the Social Security Fraud Act 2001 (c. 11).

(10) Section 110AA was inserted by section 2 of the Social Security Fraud Act 2001.

(11) Section 139D was inserted by section 8, and sections 139E to 139H were inserted by section 9, of the Social Security Administration (Fraud) Act 1997 (c. 47).

(12) 1971 c. 80.

Signed by authority of the Secretary of State for Work and Pensions

2002

Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides that, with specified exceptions, functions of a local authority exercisable under the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 (“the Administration Act”) section 34 of the Social Security Act 1998 and the Child Support, Pensions and Social Security Act 2000 and Regulations and Orders made thereunder, in relation to council tax benefit, discretionary housing payments and housing benefit may be exercised by such persons as the authority may authorise to do so.

Excepted functions are

- (a) any function relating to the claiming and receipt of subsidy;
- (b) the issue of a certificate under section 116(3)(b) of the Administration Act (as to the date on which evidence sufficient to justify prosecution came to the local authority’s knowledge);
- (c) the grant or withdrawal of authorisations under section 110A(3) to (7) of the Administration Act (to exercise the powers of inspection);
- (d) requiring a person to enter into arrangements under section 110AA of the Administration Act (to allow access to electronic records); and
- (e) any function under sections 139D to 139H of the Administration Act (directions by the Secretary of State).

Article 4 of the Order requires that an authorisation involving decisions on claims include a requirement that the authorised person provides a local authority with a random sample of not less than 10 per cent. of decisions on claims and that the authorisation is subject to the inclusion of that requirement. This requirement applies to an authorised person only if he employs more than one other person to carry out the work in relation to the exercise of any function involving decisions on claims.

Article 5 of the Order provides that an authorisation given under this Order relating to any function involving decisions on claims shall not extend to a person who has a financial interest in the payment of housing benefit.

This Order does not impose a charge upon business.