

**Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 and Code of Practice for Investigations:**

**Children's Rights and Wellbeing Impact Assessment (CRWIA)**

**Date of publication : 25 November 2019**

**Executive Summary**

The aim of this Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, research, analyse and record the anticipated impact of :

- Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020; and
- Code of Practice for Investigations

On children's human rights and wellbeing in Scotland.

The provisions in Social Security Act (Scotland) 2018 have been considered and assessed for compliance with/advancement of the articles of the UNCRC and how they will protect and promote the wellbeing of children and young people who may be affected by it, using the child wellbeing indicators.

While this assessment considers the potential impacts of the regulations and the Code of Practice for Investigations, the implementation of the high level requirements set out in the Code will be dictated by detailed operational procedures. These are still subject to service design but will fall under the agency's overarching duties within Part 1 of the Act, in particular the social security principles and the recognition of the importance of inclusive communications, accessible information and independent information, advice and advocacy.

The agency will also operate in accordance with our Charter and other legislation and Codes of Practice listed in the annex to the Code of Practice.

The regulations will not directly affect children as only those over the age of 16 will be the subject of an investigation. As is currently the case in the UK reserved system, until the age of 16 a person will be represented by an adult who is responsible for all claim related activities.

The regulations may impact upon young people between the ages of 16-18 because they may be the subject of an investigation, a witness or be acting in some other capacity such as an appointee or a support for another person under investigation. They could be investigated either in relation to their own application for benefit, or in relation to an application for another person on whose behalf they have been acting. This would only be expected to happen in exceptional circumstances.

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|                          | <p>The proposed regulations and Code of Practice may indirectly impact families. If a parent, carer or guardian is investigated and as a result of that investigation, is found guilty of fraud and a prison sentence is imposed, a child or young person may be indirectly impacted. As a Specialist Reporting Agency, Social Security Scotland will be responsible for undertaking investigations and where appropriate, preparing a report to the Crown Office and Procurator Fiscal Service (COPFS).</p> <p>COPFS is Scotland’s independent prosecution service and is responsible for all prosecutions in Scotland. Part of their role is to consider whether the evidence presented in a report from the police or other reporting agency is sufficient and capable of proving beyond reasonable doubt that an offence has been committed. If so, COPFS will decide what action if any it is appropriate to take in the public interest.</p> <p>Based on the evidence gathered, the Scottish Government considers that the regulations and Code of Practice do not infringe upon the rights of the child as set out in the Articles of the UNCRC, nor upon the indicators of wellbeing (SHANARRI).</p>   |
| <p><b>Background</b></p> | <p>Social Security Scotland began administering social security benefits in September 2018, and has since started paying Carer’s Allowance Supplement, Pregnancy and Baby, Early Learning and School Age Payments, Best Start Foods, Funeral Support Payments and the Young Carer Grant.</p> <p>The Scottish Government is creating a social security system to deliver the devolved benefits that is rights-based and grounded in the principles of dignity, fairness and respect.</p> <p>Social Security Scotland are responsible for investigating allegations or suspicions of fraud. It will be important to do this effectively in a way that is fair, objective, and presumes innocence.</p> <p>The CRWIA has been informed by a range of evidence including two public consultations:-</p> <ul style="list-style-type: none"> <li>• The analysis of results<sup>1</sup> from the 2016 Consultation on Social Security in Scotland was published in March 2017.</li> <li>• On 6 August 2018 a 12 week public consultation was launched on the Investigation of Offences Regulations and Code of Practice for Investigations, seeking views from individuals and over 200 organisations. This included a consultation event held on 2 October attended by several key stakeholders attended including welfare rights, One</li> </ul> |

<sup>1</sup> <https://www2.gov.scot/Resource/0051/00514352.pdf>

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|  | <p>Parent Families Scotland, Money Matters, Citizen’s Advice Scotland and Govanhill Housing Association</p> <p>The Investigation of Offences regulations and the Code of Practice for Investigations ensure that Social Security Scotland have the necessary powers to investigate fraud in relation to devolved benefits. The full independent analysis report<sup>2</sup> of the consultation was published on 6 August 2019.</p> <p>As a result of this consultation, amendments were made to strengthen the regulations and Code of Practice prior to being laid in the Scottish Parliament. Although it should be noted that none of the changes relate to impacts on children or their wellbeing.</p> <p>The Investigation of Offences Regulations made under the Social Security (Scotland) Act 2018 (the Act) and the Code of Practice for Investigations are intended to be used by a specialist division within Social Security Scotland.</p> <p>The Fraud and Error Resolution Division (FERD) will investigate reports or suspicions of fraud. In using these powers, FERD will adhere to the Code of Practice for Investigations which sets out standards of conduct to be employed during investigations, and how people will be treated with dignity and respect.</p> |
| <b>Scope of the CRWIA</b>                                | <p>The CRWIA considers potential impacts on children and young people in Scotland from the use of the powers in the Social Security Assistance (Investigation of Offences)(Scotland) Regulations 2020 and the associated Code of Practice.</p>   |
| <b>Children and young people’s views and experiences</b> | <p>The regulations and Code of Practice have been developed in a collaborative way taking into account the views of a wide range of stakeholders. Of the 12 organisations that responded to the consultation 4 were received from stakeholder groups relating to children/ young people, equalities and human rights, disability and long term conditions, and carers.</p>   |
| <b>Key Findings</b>                                      | <p><b>What aspects of the policy/measure will affect children and young people up to the age of 18?</b></p> <p>The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18 including non-citizen and undocumented children and young people.</p> <p>The regulations and Code of Practice have an impact on the following UNCRC articles:</p> <p><b>Indirect: Negative: Article 3: Best Interests of the Child</b></p>  |

<sup>2</sup> <https://www.gov.scot/publications/independent-analysts-report-consultation-investigation-offences-regulations-code-practice-investigations/>

**The best interests of the child must be a top priority in all decisions and actions that affect children.**

The proposed regulations and Code of Practice may indirectly impact families and consequently a child, if a parent, carer or guardian is investigated and as a result of that investigation, is found guilty of a social security offence and any penalties are imposed. They may directly impact upon young people between the ages of 16-18.

Repayment of monies, stopping payments or the outcome of the prosecution (which could include imprisonment) may all negatively impact the interests of any children or young people in the household.

The investigation is the responsibility of FERD however the outcome of a referral to the COPFS is not.

While Section 63 of the Act contains provisions relating to the liability for assistance given in error, a CRWIA was carried out during the passage of the Social Security Scotland Bill<sup>3</sup>.

Ceasing payments or setting repayment levels is responsibility of the operational teams and Section 65 of the Act ensures that the financial circumstances of debtors must be taken into consideration when seeking to recover assistance given in error. The Scottish Government has been clear that no individual will be placed into hardship as a result of repayment.

**Indirect: Negative: Article 9: Separation from parents**

**Children must not be separated from their parents against their will unless it is in their best interests (for example, if a parent is hurting or neglecting a child). Children whose parents have separated have the right to stay in contact with both parents, unless this could cause them harm.**

The proposed regulations and Code of Practice may indirectly impact families and consequently a child or young person, if a parent, carer or guardian is investigated and as a result of that investigation, is found guilty of an offence and a prison sentence is imposed. The investigation is the responsibility of FERD however the outcome is not. That responsibility lies with the Crown Office and Procurator Fiscal Service (COPFS). In all cases the usual range of disposals including fines and community sentencing will be available to judges.

**Positive: Article 12: Respect for the views of the child**

<sup>3</sup> <https://www.gov.scot/publications/social-security-scotland-bill-child-rights-and-wellbeing-impact-assessment/>

**Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.**

While a benefit application for a child under 16 may be the subject of an investigation, until the age of 16 a child will be represented by an adult who is responsible for all claim related activities.

In exceptional circumstances where a child under 16 needs to be interviewed, the Code of Practice also stipulates that this should not take place without a parent or other responsible adult present. The agency will be very clear about the rights of the accompanying person in terms of what they can and cannot do during an interview, which will also be set out in information which will be provided in advance of the interview.

A young person between the ages of 16-18 is responsible for their own benefit claim unless they fall within the definition of an Adult with Incapacity. This means that, in cases of fraud investigation, the young person may be investigated or interviewed under caution. Where there are reasons to suspect they may have committed an offence, they will always be given an opportunity to offer their account of the events and a reasonable explanation at an interview.

The Code of Practice, describes the support that may be provided to an individual during that interview and lays out how a complaint can be made if an individual feels that Social Security Scotland has fallen below the standards expected.

#### **Indirect: Negative: Article 26: Social Security**

**Every child has the right to benefit from social security. Governments must provide social security, including financial support and other benefits, to families in need of assistance.**

As noted in section 88 of the Code of Practice for Investigations, once enough evidence has been gathered to reach a conclusion, a Counter Fraud Officer will pass the information to a person trained to administer the specific benefit, or benefits, that have been paid.

With the new information they have been given, that decision maker will decide whether it was paid correctly or incorrectly. Correctly means that an individual was entitled to receive the benefit at the level at which it was paid. Incorrectly means they were not entitled to receive it at all, or, alternatively, that they were not entitled to receive it at the level at which it was paid. Benefits

would only be stopped where it had been demonstrated that there was no entitlement.

**Indirect: Negative: Article 27: Adequate Standard of Living**

**Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.**

The Scottish Government considers that the impacts for this article would be the same as for article 26 above. Benefits would only be stopped where it had been demonstrated that there was no entitlement.

In cases where an overpayment of benefit has been identified, as noted in relation to article 3 above, section 65 of the Act would apply. As noted previously, the Scottish Government has been clear that no individual will be placed into hardship as a result of repayment.

**Neutral: Article 37: Inhumane treatment and detention**

**Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care, and be able to keep in contact with their family. Children must not be put in prison with adults.**

As a Specialist Reporting Agency, Social Security Scotland will only be responsible for undertaking investigations and where appropriate, preparing a report to the Crown Office and Procurator Fiscal Service (COPFS).

COPFS is Scotland's independent prosecution service and is responsible for all prosecutions in Scotland. Part of their role is to consider whether the evidence presented in a report from the police or other reporting agency is sufficient and capable of proving beyond reasonable doubt that an offence has been committed. If so, COPFS will decide what action if any it is appropriate to take in the public interest.

The justification for this is the overriding responsibility to protect the public finances from criminal attempts to obtain assistance.

**Neutral: Article 40 : Juvenile Justice**

**A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age.**

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|   | <p><b>Governments must set a minimum age for children to be tried in a criminal court and manage a justice system that enables children who have been in conflict with the law to reintegrate into society.</b></p> <p>As set out above, while a claim relating to a child under the age of 16 may be subject to investigation, as the claim will have been made by an adult over the age of 16 they will not be the subject of a report to the fiscal. A young person between the ages of 16-18 may be in exceptional circumstances.</p> <p>As a Specialist Reporting Agency, Social Security Scotland is only responsible for undertaking investigations and where appropriate, preparing a report to the Crown Office and Procurator Fiscal Service (COPFS). The criminal justice system does not fall within the remit of Social Security Scotland.</p>  |
| <p><b>Conclusions and Recommendations</b></p> | <p>The Scottish Government is creating a social security system to deliver devolved benefits that complies with the overarching duties within Part 1 of the Act, in particular the social security principles and the recognition of the importance of inclusive communications, accessible information and independent information, advice and advocacy. The agency will also operate in accordance with our Charter and other legislation and Codes of Practice listed in the annex to the Code of Practice.</p> <p>As a Specialist Reporting Agency, Social Security Scotland will be responsible for undertaking investigations and where appropriate, preparing a report to the Crown Office and Procurator Fiscal Service (COPFS). The courts will be responsible for determining the appropriate disposal which may include imprisonment, a fine or community sentencing.</p> <p>Based on the evidence gathered, the Scottish Government considers that the regulations and Code of Practice do not infringe upon the rights of the child as set out in the Articles of the UNCRC, nor upon the indicators of wellbeing (SHANARRI).</p> <p>The Scottish Government considers that any direct impacts on children under the age of 16 would be neutral. However, young people between the ages of 16-18 may be directly impacted in exceptional circumstances e.g. they may be subject to investigation, interviewed under caution and referred to COPFS. Although there may be some indirect impacts, these would only occur where they were supported by the findings of the investigation e.g. correction of benefit entitlement or identification of overpayment.</p> <p>The CRWIA, along with consultation analysis and discussions with key stakeholders (including Shelter Scotland), has helped to</p> |

|  | <p>identify some concerns about the potential indirect impacts on children and young people.</p> <p>The potential indirect impacts are justified because information identified by an investigation will directly relate to eligibility criteria for benefits paid through the Act and chapters 5 and 6 of the Act in relation to recovery of value of assistance, offences and investigations.</p> <p>No changes are required to achieve the best outcome for children and young people.</p>  |   |  |  |
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| <b>Monitoring and review</b>   | <p>The Act places a duty on Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year. The Code of Practice for Investigations and the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 are subject to review.</p> <p>Scotland's Commissioner for Children and Young People also has a role to play. The Commissioner has a duty to review law, policy and practice to examine their effectiveness in respecting the rights of children and young people. The Commissioner can investigate on behalf of groups of children and young people. As of April 2016, the Commissioner has also been able to investigate on behalf of an individual and this may include the Social Security Scotland's use of the Investigation of Offences regulations.</p> |   |  |  |
| <b>Regulation/ Clause</b>  | <b>Aims of measure</b>   | <b>Likely to impact on . .</b>  | <b>Compliance with UNCRC requirements</b>                        | <b>Contribution to wellbeing indicators</b>                          |
| <ul style="list-style-type: none"> <li>• Investigations: Authorised Officers</li> <li>• Power to require information</li> <li>• Restrictions on power to require information and on requirements to provide it</li> <li>• Notices requiring information</li> </ul> | <p>To ensure Social Security Scotland has necessary and proportionate powers to gather information relevant to investigate fraud. They set out who is permitted to use these powers and the circumstances under which</p>  | <p>No direct impact on children</p> <p>Some direct impacts upon young people.</p> | <p>This regulation does not infringe upon any UNCRC Article.</p> | <p>This regulation does not infringe upon any of the indicators.</p> |



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| <ul style="list-style-type: none"> <li>• Electronic access to information</li> <li>• Entry and search of premises</li> <li>• Obstruction etc. of an investigation</li> </ul> | <p>they can be used.</p>   |  |  |  |
| <p>Code of Practice Chapter 1: Power to investigate and safeguards</p>   | <p>This sets out the powers that Social Security Scotland have to investigate fraud and the safeguards in place to</p>   | <p>No direct impact on children<br/><br/>Some direct impacts upon young people</p> | <p>This regulation does not infringe upon any UNCRC Article.</p> | <p>This regulation does not infringe upon any of the indicators.</p>   |
| <p>Code of Practice: Chapter 2: Standards for Counter Fraud Officers</p>   | <p>Describes the standards required of civil servants working in Social Security Scotland and their mandatory training. It also describes checks and balances put in place to prevent misuse of investigatory powers</p> | <p>No impact on children</p>   | <p>This chapter does not infringe upon any UNCRC Article.</p>    | <p>This chapter does not infringe upon any of the indicators.</p>      |
| <p>Code of Practice: Chapter 3<br/>What to expect if you are being investigated</p>  | <p>Describes what will happen when an investigation reaches the stage that evidence has been gathered, and the counter fraud</p>   | <p>The chapter has no impact.</p>  | <p>Article 12</p>  | <p>This chapter supports the indicators, Respected and Responsible</p> |

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|  | officer needs to hear directly from the person being investigated in the form of a voluntary interview  |  |  |  |
| Code of Practice: Chapter 4<br>Outcome of an investigation | Describes the possible outcomes when an investigation is completed  | Neutral Impact on children             | Article 9 & Article 37                                 | This chapter does not infringe upon any of the indicators. |
| Code of Practice: Chapter 5<br>Complaints                  | Describes the complaints process if a person is unhappy with the way they have been treated during an investigation or believe Social Security Scotland has fallen short of the standards set out | Some direct impacts upon young people. | This chapter does not infringe upon any UNCRC Article. | This chapter does not infringe upon any of the indicators. |

**CRWIA Declaration**

Tick relevant section, and complete the form.

**CRWIA required**

**CRWIA not required**

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| <b>Authorisation</b>  |                              |
| <b>Policy lead</b><br>Paul Curtis<br>Social Security Directorate, Policy Division,<br>Legislation and Operational Policy Unit | <b>Date 15 November 2019</b> |
| <b>Deputy Director or equivalent</b><br>Ann McVie<br>Deputy Director<br>Social Security Policy Division                       | <b>Date 15 November 2019</b> |