

POLICY NOTE

THE REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF OFFICES, ETC. AND SPECIFICATION OF PUBLIC AUTHORITIES) (SCOTLAND) AMENDMENT ORDER 2020

SSI 2020/361

The above instrument was made in exercise of the powers conferred by section 8(1) the Regulation of Investigatory Powers (Scotland) Act 2000 (“the 2000 Act”). The instrument is subject to negative procedure.

Purpose of the instrument. This order seeks to make an adjustment to the personnel prescribed to grant authorisation for directed surveillance on behalf of Scottish Ministers in relation to devolved social security benefits. With one exception, it will bring decision making within the remit of C1 Grade Team Leaders in Social Security Scotland’s specialist Fraud and Error Resolution Unit, so that they can make such decisions, as well as the Chief Executive.

Policy Objectives

Social Security Scotland is the executive agency delivering devolved social security benefits on behalf of Scottish Ministers, and came into being in September 2018. It will eventually make regular payments to approximately 1.4 million citizens in Scotland, with a value in excess of £3 billion. The right payments must be made to the right people at the right time, but attempts are made to defraud the social security system.

The Social Security (Scotland) Act 2018 sets the framework for delivering devolved benefits. For those engaged in fraudulent activity relating to applications for social security assistance, it sets out the social security offences that may be committed by individuals and organisations. Social Security Scotland has a fraud investigation function, which gathers information in the event of an allegation or suspicion that a fraud offence has been committed. In line with a number of other public agencies in Scotland, the ability to authorise directed surveillance in a proportionate and limited way is an essential tool in gathering evidence of wrong-doing, therefore in 2018 Social Security Scotland prescribed the Chief Executive as the individual who can grant authorisations.

This Order is a reflection of the growth and development of Social Security Scotland as an agency, and the number and type of benefits for which Scottish Ministers now have executive competence. It seeks to increase capacity by making an adjustment to the personnel prescribed to grant authorisations. With one exception, it will bring decision making within the remit of C1 Team Leaders in the agency’s specialist Fraud and Error Resolution Unit, so that they can make such decisions, as well as the Chief Executive. This represents the most effective route to increase capacity to the extent required.

In line with recognised best practice, supporting objective decision making, the Head of External Investigations – who has direct responsibility for the operation of the investigatory service that will make requests to carry out directed surveillance – is expressly excluded, by the order, from making decisions on granting authorisation. This means that nobody with a direct interest or involvement in investigations will be dealing with authorisation requests.

Nevertheless, the advantage is maintained of enabling decisions on authorisation, or otherwise, to be made by people who have appropriate practical knowledge and experience to equip them to do so, including detailed knowledge of the benefits being administered.

This will be underpinned by exposure to RIP(S)A training, exploring ECHR and proportionality considerations which must underlie authorisation decisions. All authorisation activity is subject to the officer involved having successfully completed the relevant training, including periodic refresher training.

The exercise of the power to make authorisations under the 2000 Act is overseen by the Investigatory Powers Commissioner's Office.

Consultation

This instrument was made as a consequence of the Social Security (Scotland) Act 2018 and the requirement for Social Security Scotland to have the ability to investigate fraud offences. A wide-ranging consultation on the new social security powers¹ being devolved was undertaken between July and October 2016 and considered the issue of fraud investigations. In addition the published Code of Practice for Investigations² required by Section 76 of the Social Security (Scotland) Act 2018 was subject to public consultation between August and October 2018³.

As there is no statutory requirement for consultation prior to making this Order, no additional formal consultation for this instrument was required. However, discussions took place with interested stakeholders, including CPAG and Inclusion Scotland and who raised no objection to what is proposed.

Impact Assessments

It is not anticipated there will be any significant equalities impacts or impacts on children that have not already been explored in the context of the Code of Practice for Investigations. An Equalities Impact Assessment⁴, Islands Impact Assessment⁵, and the Child Rights and Wellbeing Impact Assessment⁶ were completed in relation to that when the Code was laid in the Scottish Parliament in late 2019.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. Costs associated with authorisations under the 2000 Act will be factored into the budget of Social Security Scotland.

Scottish Government
Social Security Directorate

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¹ <https://consult.gov.scot/social-security/social-security-in-scotland/#:~:text=This%20report%20presents%20an%20analysis%20of%20written%20responses,Approach%20%E2%80%A2%20The%20Devolved%20Benefits%20%E2%80%A2%20Operational%20Policy>

² <https://www.gov.scot/publications/social-security-fraud-code-practice-investigations/>

³ <https://consult.gov.scot/social-security/fraud-investigations/>

⁴ https://www.legislation.gov.uk/ssi/2020/11/pdfs/ssieqia_20200011_en.pdf#:~:text=EQUALITY%20IMPACT%20ASSESSMENT%20-%20RESULTS%20Title%20of%20policy,proportionate%20powers%20to%20gather%20information%20relevant%20to%20the

⁵ https://www.legislation.gov.uk/sdsi/2020/9780111043462/pdfs/sdsiod_9780111043462_en_001.pdf

⁶ https://www.legislation.gov.uk/sdsi/2020/9780111043462/pdfs/sdsiod_9780111043462_en.pdf