

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY ADMINISTRATION ACT 1992 (LOCAL AUTHORITY**  
**INVESTIGATIONS) REGULATIONS 2016**

**2016 No. 519**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument defines “an investigation in respect of a benefit offence” for the purposes of section 116ZA of the Social Security Administration Act 1992 which is inserted by section 112 of the Welfare Reform Act 2012. The enactment of section 116ZA greatly limits the powers of local authorities in England and Wales (LAs) to prosecute social security housing benefit and council tax benefit fraud due to the introduction of the Single Fraud Investigation Service in the Department for Work and Pensions (DWP). The new provisions in section 116ZA and these Regulations are intended to prevent local authorities (LAs) from prosecuting social security benefit fraud, other than in very limited circumstances.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

*Prosecution powers of local authorities*

- 4.1 The Welfare Reform Act 2012 section 112 inserted new section 116ZA into the Social Security Administration Act 1992 (SSAA 1992) ([http://www.legislation.gov.uk/ukpga/2012/5/pdfs/ukpga\\_20120005\\_en.pdf](http://www.legislation.gov.uk/ukpga/2012/5/pdfs/ukpga_20120005_en.pdf)). The Regulation making power in section 116ZA(8) of SSAA 1992, under which these Regulations are made, is brought into force by the Welfare Reform Act 2012 (Commencement No. 28) Order 2016 on 20 April 2016 for the purposes of making regulations and on 24 May 2016 for all other purposes.
- 4.2 Upon its commencement section 116ZA will prevent local authorities from prosecuting social security benefit fraud, other than in very limited circumstances.
- 4.3 New section 116ZA also requires the Secretary of State to make Regulations, under section 116ZA(8), to define the term “an investigation in respect of a benefit offence”. This instrument sets out that definition for the purposes of section 116ZA.

- 4.4 The definition was in part derived from wording contained in section 22 of the Criminal Procedure and Investigations Act 1996.  
<http://www.legislation.gov.uk/ukpga/1996/25/section/22> This has been adapted in order to more accurately reflect the particular circumstances of local authority benefit fraud investigations and to properly implement the policy intention.
- 4.5 The term “benefit offence” is defined in section 121DA(5) of the Social Security Administration Act 1992 and a “relevant social security benefit” is defined in section 121DA(7) of the same Act.  
[http://www.legislation.gov.uk/ukpga/1992/5/pdfs/ukpga\\_19920005\\_310515\\_en.pdf](http://www.legislation.gov.uk/ukpga/1992/5/pdfs/ukpga_19920005_310515_en.pdf)

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The Single Fraud Investigation Service project in DWP brought together staff from DWP, Local Authorities and Her Majesty’s Revenue and Customs (HMRC), enabling teams within the Department for Work and Pensions’ Fraud and Error Service to deliver a ‘single fraud investigation’ across the full range of social security benefits, including Housing Benefit, Council Tax as well as covering Tax Credits.
- 7.2 The introduction of this single fraud investigation approach was rolled out across local authorities from July 2014 onwards, and completed its final roll-out in March 2016.
- 7.3 Prior to the introduction of this approach, local authorities had their own autonomous powers to investigate social security housing benefit and council tax benefit fraud offences and referred their own cases to the Crown Prosecution Service or to an independent solicitor for consideration of prosecution.
- 7.4 As the DWP Fraud and Error Service now undertakes all social security benefit fraud investigations, there is no longer a requirement for local authorities to have their own powers to bring proceedings for social security housing and council tax benefit fraud offences. However, in very limited circumstances certain cases will be exempt from the s116ZA restriction placed upon local authorities. Section 116ZA (2) and these Regulations set out the limited scope of when such an exemption applies.
- 7.5 This is intended to ensure that as part of the transition to the new approach criminal investigations that are already started by the local authority are not adversely affected. However all other cases will be investigated only by the DWP Fraud and Error Service and referred to the Crown Prosecution Service if there are grounds for instituting criminal proceedings.
- 7.6 The debate on the Welfare Reform Act 2012 also explained at that time why new section 116ZA was being introduced and why there may be a reason to “exempt” certain cases.

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/110519/am/110519s01.htm>. This was to allow for existing investigations and prosecutions to continue, in limited circumstances, where the process had already begun.

- 7.7 In April 2013 social security Council Tax Benefit was replaced by the Local Council Tax Reduction Schemes (LCTRS) which are administered and investigated by Local Authorities. As LCTRS is not a social security benefit, section 116ZA and these Regulations do not apply to it.

### ***Consolidation***

- 7.8 There is no consolidation required as this is not an amending Regulation.

## **8. Consultation outcome**

- 8.1 As the Regulations cover social security housing benefit and council tax benefit there was a statutory requirement to formally consult with local authorities in respect of these Regulations.
- 8.2 The Department referred the Regulations in draft format along with an explanatory note to the Local Authority Steering Group and officials presented the proposal at their meeting on 9 March 2016. The LAs confirmed that they were content with the proposed Regulations.
- 8.3 The Regulations were considered by the Social Security Advisory Committee at their meeting on 6 April 2016. The Committee has agreed that the Regulations do not need to be formally referred to it.
- 8.4 There is no need to consult more widely as there is no impact on claimants. Where an individual is currently being prosecuted for benefit fraud by the LA the process will continue.

## **9. Guidance**

- 9.1 The Single Fraud Investigation Service project worked with LAs very closely throughout the development and introduction of the single fraud investigation within the Fraud and Error Service in DWP. They have informed LAs about the detail and impact of these Regulations and what they mean for them. Any further communication or guidance needed by LAs will form part of the on-going communications provided by the SFIS project.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 As for impact on the public sector, the Regulations are considered to have no practical impact on the work of LAs at this time. This is because the transfer of responsibilities and resources to the DWP is complete as of March 2016. As a result LAs no longer have the personnel or resources to investigate social security benefit fraud offences. However, as part of completing the legislative changes these Regulations were required to set out the position formally of what constituted “an investigation in respect of a benefit offence”. LAs will continue to administer the payment of housing benefit.
- 10.3 An Impact Assessment has not been prepared for this instrument as it simply sets out technical detail.

**11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 As this Regulation is about a technical matter no direct monitoring or review will be undertaken. It relates to the change in who would investigate fraud cases. Any wider review of the single fraud investigation approach would then be part of the business as usual DWP Fraud and Error Services approach. A process has been established for direct liaison between FES and the LAs should any issues or queries arise on cases.

**13. Contact**

13.1 Judith Hicks at the Department for Work and Pensions. Telephone: 0207 449 5311 or email: [Judith.hicks@dwp.gsi.gov.uk](mailto:Judith.hicks@dwp.gsi.gov.uk) can answer any queries regarding the instrument.